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Rule ID(s): 6248
File Date: 7/15/16
Effective Date: 10/13/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Treasurer David H. Lillard, Jr., as Chair of the Tennessee Consolidated Retirement System Board of Trustees, on behalf of the State of Tennessee Deferred Compensation Program
Division:	Deferred Compensation
Contact Person:	Kaci Lantz
Address:	502 Deaderick Street, 13 th Floor Andrew Jackson Building, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-2347
Email:	Kaci.Lantz@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1700-09-01	Qualified Domestic Relations Orders
Rule Number	Rule Title
1700-09-01-.01	Purpose
1700-09-01-.02	Definitions
1700-09-01-.03	Submission of Orders
1700-09-01-.04	Administrative Expenses
1700-09-01-.05	Delegation to Third Party Administrator
1700-09-01-.06	Requirements for a Valid QDRO
1700-09-01-.07	Review of Orders
1700-09-01-.08	Payment to Alternate Payee
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New

Chapter 1700-09-01
Qualified Domestic Relations Orders

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Rule 1700-09-01-.01 Purpose.

The rules in this chapter implement T.C.A. § 8-25-114.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.02 Definitions.

In addition to the definitions contained in T.C.A. Title 8, Chapter 25, the following definitions are applicable to this chapter:

- (1) Alternate payee means a former spouse of a deferred compensation program participant who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the amount payable to a deferred compensation program participant.
- (2) Deferred compensation program means the program through which the state of Tennessee administers deferred compensation plans authorized under T.C.A. Title 8, Chapter 25, Parts 1 and 3.
- (3) Participant means any employee who has elected to participate in a deferred compensation plan administered by the state of Tennessee that is authorized under T.C.A. Title 8, Chapter 25, Parts 1 and 3; any former employee who has an account balance in a deferred compensation plan administered by the state of Tennessee that is authorized under T.C.A. Title 8, Chapter 25, Parts 1 and 3; and any member of the Tennessee Consolidated Retirement System who participates in the hybrid plan authorized under T.C.A. Title 8, Chapter 36, Part 9, through which the member's defined contribution component consists of a deferred compensation plan administered by the state of Tennessee that is authorized under T.C.A. Title 8, Chapter 25, Part 3.
- (4) Plan(s) mean the deferred compensation plan(s) in which an employee participates through the deferred compensation program.
- (5) Qualified domestic relations order ("QDRO") has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. §414(p); provided, that such order may only relate to the provision of marital property rights for the benefit of the former spouse of the deferred compensation program participant.

Authority: T.C.A. §§ 8-25-103(a); 8-25-104; 8-25-114; 8-25-301; 8-25-304; 8-36-903; 8-36-916.

Rule 1700-09-01-.03 Submission of Orders.

A person who wishes to have the deferred compensation program review a domestic relations order to determine whether it is a QDRO for the purpose of receiving a portion of a participant's account shall submit a copy of the

signed domestic relations order to the deferred compensation program. Such order may be, but is not required to be, on the form provided by the deferred compensation program. However, such order must contain all requirements prescribed by these rules. The copy shall show the seal by the clerk of the court that entered the order. If validity cannot be determined, the deferred compensation program may request a certified copy of an order. The deferred compensation program shall not make a final determination for orders not yet entered by the court.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.04 Administrative Expenses.

The deferred compensation program may assess the administrative expenses of processing a QDRO in order that the deferred compensation plans shall operate without cost to or contribution from the state. Any such administrative expenses shall be assessed to the participant's account unless the QDRO states that all or a portion of the administrative expenses should be deducted from amounts paid to the alternate payee.

Authority: T.C.A. §§ 8-25-104; 8-25-113; 8-25-114; and 8-25-309.

Rule 1700-09-01-.05 Delegation to Third Party Administrator.

The deferred compensation program may, at its discretion, delegate the review and implementation of QDROs, including the collection of administrative expenses as authorized by T.C.A. §§ 8-25-104(c) and 8-25-113, to a third party administrator with which it has a contract for administrative services.

Authority: T.C.A. §§ 8-25-104; 8-25-113; 8-25-114; and 8-25-309.

Rule 1700-09-01-.06 Requirements for a Valid QDRO.

The deferred compensation program will accept a court order as a valid QDRO that meets all of the following requirements:

- (1) The order must create or recognize the right of an alternate payee to all or a portion of a participant's account.
- (2) The order must contain the name, current mailing address, date of birth, and social security number of the participant.
- (3) The order must contain the name, current mailing address, date of birth, and social security number of the alternate payee.
- (4) The order must contain the amount or percentage of the participant's account, distribution, or payments to be paid by the plan to the alternate payee, or a description of how to calculate the amount or percentage.
- (5) The order must contain the number of payments or the period of time to which the order applies if the participant is receiving periodic or annuity payments.
- (6) If the participant receives lump sum payments in addition to periodic payments, the order must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.
- (7) The order must include a specified distribution or payment that is of a type or form permitted under the plan.
- (8) The order must not include a specified amount or duration of the payment to the alternate payee that is greater than that available to the participant under the plan.
- (9) The order must not grant the alternate payee payment of any benefits that have already been awarded to

another alternate payee under another order previously determined to be a QDRO.

- (10) The order may specify an alternative method for the parties to verify their social security numbers to the deferred compensation program, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if the deferred compensation program finds that the method of verification is insufficient for the purpose of payment of benefits or reporting of income for tax purposes.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.07 Review of Orders.

The deferred compensation program will notify the participant and alternate payee when it receives a domestic relations order showing the official stamp of the court. If validity cannot be determined the deferred compensation program may request a certified copy of an order. The notice will explain the procedures for determining if the domestic relations order is qualified. Upon completion of review of the domestic relations order, the deferred compensation program shall notify the participant and alternate payee in writing of the determination.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.08 Payment to Alternate Payee.

- (1) If approved as a QDRO, the alternate payee may receive his or her payment only as a direct payment, rollover, or transfer.
- (2) Payment to an alternate payee as directed by a QDRO shall be made without regard to whether the participant is eligible for a distribution of benefits under the plan.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.09 Alternate Payee's Information.

An alternate payee is responsible to report to the deferred compensation program in writing each change in his or her name and residence address.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Treasurer, with approval of the Trustees, on behalf of the Deferred Compensation Program, on 05/24/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 5, 2016

Signature: *David H. Lillard, Jr.*

Name of Officer: David H. Lillard, Jr.

Title of Officer: Treasurer and Chair of the Board of Trustees of the Tennessee Consolidated Retirement System



Subscribed and sworn to before me on: July 5, 2016

Notary Public Signature: *Heather Szczepczenski*

My commission expires on: March 10, 2019

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
7/8/2016 Date

Department of State Use Only

Filed with the Department of State on: 7/15/16

Effective on: 10/13/16

Tre Hargett
 Tre Hargett
 Secretary of State

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Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule does not have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules establish the guidelines for the State of Tennessee's deferred compensation program to accept qualified domestic relations orders pursuant to T.C.A. § 8-25-114, which provides that the deferred compensation program shall honor claims under qualified domestic relations orders at a time designated by the state treasurer. The Tennessee Consolidated Retirement System has separately promulgated rules for qualified domestic relations orders in Chapter 1700-03-03.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 8-25-114 provides that any deferred compensation program established on behalf of state employees under this part or under Title 8, Chapter 25, Part 3 shall honor claims under a qualified domestic relations order at a time designated by the state treasurer. 26 U.S.C. § 414(p) contains requirements for a domestic relations order to be considered qualified under the Internal Revenue Code in regard to qualified retirement plans. T.C.A. § 26-2-105 provides that effective July 1, 2016, public retirement plans are no longer exempt from claims under qualified domestic relations orders.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons who are participants in the State's deferred compensation program; the deferred compensation program has received numerous requests to promulgate rules to begin accepting Qualified Domestic Relations Orders.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is not estimated to be an increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule. The deferred compensation program will process such orders utilizing existing staff and third party administrators; payments to alternate payees through the orders will occur in the same manner as payments are already processed. Any administrative expenses will be assessed to the participating employee as required by T.C.A. §§ 8-25-104(c) and 8-25-309 so that the deferred compensation plans operate without cost to or contribution from the state.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kaci Lantz, Director, Deferred Compensation Program, Department of Treasury, and Courtney Hess, Assistant General Counsel, Department of Treasury.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kaci Lantz, Director, Deferred Compensation Program, Department of Treasury, and Courtney Hess, Assistant
SS-7038 (December 2015)

General Counsel, Department of Treasury.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Kaci Lantz, Director, Deferred Compensation Program, Department of Treasury, 502 Deaderick Street, 13th Floor, Andrew Jackson Building; (615) 532-2347; Kaci.Lantz@tn.gov, and Courtney Hess, Assistant General Counsel, Department of Treasury, 502 Deaderick Street, 13th Floor, Andrew Jackson Building; 615-532-3067; Courtney.Hess@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.