



New Hampshire Retirement System
54 Regional Drive, Concord, NH 03301
Phone: (603) 410-3500 - Fax: (603) 410-3501
Website: www.nhrs.org - Email: info@nhrs.org

QDRO Summary Guide

The New Hampshire Retirement System is a public employee pension plan and trust qualified as a tax-exempt organization under Sections 401(a) and 501(a) of the Internal Revenue Code (IRC). It is a contributory, **governmental defined benefit plan** to which its participating employers and membership make regular contributions.

With a defined benefit plan, **a Participant's monthly retirement benefit is determined by a formula which generally considers two variables:** 1) the average of the three (or five) highest years' salaries; and 2) the years of service credit as an NHRS contributing member. The benefit is not based on the amount of contributions and interest made to the Plan.

NHRS as a governmental defined benefit plan is subject to pertinent sections of the IRC regulations that apply to governmental plans. **Pension benefits may only be awarded to someone other than a plan participant through a domestic relations order** which meets the requirements of a Qualified Domestic Relations Order (QDRO) within the meaning of section 414(p) of the Internal Revenue Code of 1986 (IRC). NH RSA 100-A:26-a provides a statutory link to the federal regulations regarding QDROs.

Following are the basic requirements for a Court Order to be considered a "Qualified Domestic Relations Order" under NHRS plan provisions.

The Order must:

- 1) be **a judgment, decree or court order** relating to the provision of child support, alimony payments or marital property rights awarded to a spouse, former spouse, child or other dependent of the Participant.
- 2) be **signed by a judge or marital master**. (*A certified copy is not required unless there are handwritten corrections or if other causes for concern are apparent*)
- 3) **name the NHRS** as the retirement plan responsible for issuing payment.
- 4) **use the term "Alternate Payee"** to refer to the person (former spouse, spouse or dependent child(ren) of the member) to which the NHRS must make payment.
- 5) **use the term "Participant"** to refer to the NHRS member whose benefit is subject to attachment under the terms of the QDRO.
- 6) provide the **names, last known mailing addresses, and social security numbers** for the Participant and Alternate Payee as well as the Alternate Payee's date of birth.
- 7) state **when payments are to commence** e.g. when payments commence to the Participant; or as soon as administratively possible *if the Participant is already in receipt of a monthly pension.*

- 8) state **how long payments are to be made** e.g. the number of payments or the period over which payments are to be made. (*typically, it is over the Participant's lifetime unless a period of shorter duration is specified in the Order*)
- 9) state the **percentage or amount of benefit payable**. *Regardless of the Participant's intentions, the QDRO must specify payment instructions for both a monthly benefit or a lump sum as the Participant may elect.*
- 10) state the **State Domestic Relations or Community Property Law** under which the Order is issued.

The Order should:

- 1) contain clear instruction regarding **preretirement and postretirement death benefits** (*including any Option selection which may be required*) in the event the Participant predeceases the Alternate Payee.
- 2) state whether or not the Alternate Payee's benefit should include **cost-of-living increases**.
- 3) state the Alternate Payee's **tax responsibility**. *Benefits payable to the Alternate Payee under a QDRO shall be reported as taxable income to the Alternate Payee except in the case of Child Support. In that case, the Participant would bear the full tax responsibility.*

The Order cannot:

- 1) require **a form or type of benefit or option** to be paid that is **not typically provided for under the plan**. (*See NH RSA 100-A*)
- 2) require the NHRS to pay **increased benefits** (determined on the basis of actuarial value) **not due the Participant**.
- 3) require payment which has already been **awarded to another Alternate Payee** under an earlier QDRO order.
- 4) require payment to the Alternate Payee **in a different form** than the Participant has elected.
- 5) require a **lump sum cash settlement or rollover** if: 1) the Participant is an *active contributing member*; or, 2) if *not active*, the Participant has *not completed a request for a return of accumulated contributions*. The Alternate Payee benefit can only be paid in the same manner as that elected by the Participant.

- 6) require a **lump sum cash settlement or rollover as a partial withdrawal** of the Participant's retirement account. *Partial withdrawals are not part of the plan benefits available to a Participant, nor an Alternate Payee under a QDRO.*
- 7) require payment to an **individual who is not the spouse, former spouse or dependent child(ren)**. *This includes awarding death benefits to parties other than the designated Alternate Payee(s) under the terms of the Order.*
- 8) require payments to be **based on the Alternate Payee's lifetime**. *However, the Alternate Payee may be designated as beneficiary under a joint survivor option. (See NH RSA 100-A:13)*
- 9) require **interest on** the Alternate Payee's portion of the **monthly pension benefit**. *Interest is only paid on the Alternate Payee benefit if it is paid in the form of a lump sum return of accumulated contributions as elected by the Participant.*
- 10) require the Alternate Payee's portion to be **segregated out** to a separate account to **earn interest and grow separately** from the Participant's benefit. *(The NHRS is a governmental defined benefit plan which pays benefits to Participants in the form of single life annuities.)*
- 11) award the **Alternate Payee the right to designate beneficiaries**. *(Upon the Alternate Payee's death, the Alternate Payee's entitlement under the QDRO shall be forfeited and such benefit shall revert to the Participant.)*
- 12) **change** the Participant's **option selection (or beneficiary designation for a joint survivor option) if 120 days have passed** since the Participant's retirement date. *(The beneficiary may be changed if Maximum or Option 1 was elected)*
- 13) require **payment to be made retroactive** to a date preceding the Order's receipt by the Plan. *An Alternate Payee's entitlement under a QDRO would be effective with the payroll month following receipt of the Order.*
- 14) require the Alternate Payee to be designated as the Participant's **surviving spouse under IRC Section 417**. *(The NHRS, as a governmental plan, is not subject to the surviving spouse provisions of Internal Revenue Code Section 417; however, the Alternate Payee may be designated as beneficiary for all or a portion of pre- or postretirement death benefits as provided for under NH RSA 100-A.)*
- 15) require **multiple payment arrangements** that would either increase or decrease the Alternate Payee's benefit amount. *Payment must be stated in the form of a level percentage or set dollar amount which remains constant throughout the payment period. The terms of the Order may be amended at a later date by providing the NHRS with an amended court-approved Order, thereby superseding the terms of the existing Order.*

Other Special Issues:

WITHDRAWALS / REFUNDS:

- Lump sum payments can only be made to an Alternate Payee under a QDRO if the Participant has terminated his (*her*) position of employment and has elected to take a refund of contributions in lieu of a monthly pension benefit. ***Regardless of the Participant's intentions, the QDRO must specify payment instructions for both a monthly benefit or a lump sum payment as the Participant may elect.***
- Partial withdrawals are not part of the plan benefits available to a Participant, nor an Alternate Payee under a QDRO.

DISABILITY BENEFITS:

- If the Participant is in receipt of accidental disability benefits and the state annuity (employer contribution) is being totally offset by a Workers' Compensation award or for exceeding Gainful Occupation earnings limits, the Alternate Payee will only share in the Participant's residual Member Annuity (funded by the member contributions only) until the Workers' Compensation benefits or Gainful Occupation earnings offset ceases.

DEATH BENEFITS:

- If the Alternate Payee has **not** been designated beneficiary for purposes of preretirement death benefits under RSA 100-A:8, 9 and 11, the Alternate Payee's entitlement to any further benefit would cease if the Participant dies prior to retirement.
- If the Participant predeceases the Alternate Payee **after** the Participant has retired, the monthly annuity benefit awarded to the Alternate Payee would likewise terminate ***unless the QDRO contains a provision requiring the Participant to designate the Alternate Payee as beneficiary under one of the following retirement allowances.***
 - ◆ **Maximum Retirement Allowance:** the maximum monthly allowance payable until the Participant's death, at which point the designated beneficiary(ies) receives a one-time lump sum payment representing a return of the Participant's contributions and interest which are remaining in the Participant's account (*Note: Typically a Member's funds are fully recovered within five years following the Participant's retirement.*) The Alternate Payee's percentage should be clearly stated in the QDRO.

Or, an Optional Benefit with a Reduced Lifetime Pension may be elected:

- ◆ **Option 1 Retirement Allowance:** a reduced monthly allowance payable until the Participant's death, at which point the designated beneficiary(ies) receives a one-time lump sum payment representing a return of the Participant's contributions and interest which are remaining in the Participant's account. (*Note: Typically a Member's funds are recovered within ten years following the Participant's retirement.*) The Alternate Payee's percentage should be clearly stated in the QDRO.
- ◆ **Option 2 (100%) Retirement Allowance:** a reduced monthly joint survivorship allowance payable until the Participant's death, at which point the designated beneficiary receives a monthly annuity based on **100%** of the Participant's **total** monthly benefit, payable for the

beneficiary's lifetime. (*No other percentage may be provided.*)

- ◆ **Option 3 (50%) Retirement Allowance:** a reduced monthly joint survivorship allowance payable until the Participant's death, at which point the designated beneficiary receives a monthly annuity based on **50%** of the Participant's **total** monthly benefit, payable for the beneficiary's lifetime. (*No other percentage may be provided.*)
 - ◆ **Option 4A (100%) Pop-Up Retirement Allowance:** a reduced monthly joint survivorship allowance payable until the Participant's death, at which point the designated beneficiary receives a monthly annuity based on **100%** of the Participant's **total** monthly benefit, payable for the beneficiary's lifetime. (*No other percentage may be provided.*) The pop-up feature allows the Participant to cancel the joint survivor option and return to the Maximum Retirement Allowance benefit in the event the designated beneficiary predeceases the Participant.
 - ◆ **Option 4B (50%) Pop-Up Retirement Allowance:** a reduced monthly joint survivorship allowance payable until the Participant's death, at which point the designated beneficiary receives a monthly annuity based on **50%** of the Participant's **total** monthly benefit, payable for the beneficiary's lifetime. (*No other percentage may be provided.*) The pop-up feature allows the Participant to cancel the joint survivor option and return to the Maximum Retirement Allowance benefit level in the event the designated beneficiary should predecease the Participant.
 - ◆ **Option 4C:** some other benefit approved by the NHRS Board of Trustees. (*No QDROs have yet to use this option*)
- If the Alternate Payee is designated as beneficiary under a joint survivor option such as a 50% survivor benefit, the Alternate Payee's joint survivor benefit, payable upon the Participant's death, will be based on the Participant's **total** retirement benefit and not on the benefit calculated for the term of the marriage. Also, a joint survivor benefit cannot be shared or split between a current and former spouse. *With the exception of multiple children (or current spouse and children), only one beneficiary may be designated for a joint survivor benefit.*
 - If the Alternate Payee has been designated beneficiary under an Optional Retirement Allowance for postretirement death purposes (*See NH RSA 100-A:13*), then ***the cost for the option shall be shared by the Alternate Payee and the Participant on a prorata basis*** by applying the applicable option factor to the respective benefits.
 - The cost of the joint survivorship annuity is a variable cost dependent on the relative ages of both the Participant and beneficiary and is a reduction to the gross pension benefit. ***If the Alternate Payee predeceases the Participant, the Alternate Payee's portion would revert to the Participant, but the cost of the joint survivor option benefit will not be restored unless a pop-up Option 4 Retirement Allowance has been elected.***
 - NHRS Group I and Group II members **may be subject to death benefit limitations under IRC section 401(a)(9).** This is especially true for Group II members in regard to benefits payable under a joint survivor option (NH RSA 100-A:13) and the 50% automatic spousal death benefit (NH RSA 100-A:12). The Alternate Payee of certain Group II members may also be designated for a lump sum postretirement death benefit. (NH RSA 100-A:12)