

PROCEDURES FOR DETERMINING THE QUALIFIED STATUS OF A DOMESTIC RELATIONS ORDER FOR QUALIFIED PLANS

Background

If you wish to divide an individual's retirement benefits under a qualified pension plan as part of a domestic relations proceeding, under federal law you are required to provide the plan with a document called a "Qualified Domestic Relations Order" (hereinafter called a "QDRO") entered by the appropriate authority (typically a court of appropriate jurisdiction). QDROs must meet certain specific requirements as set forth in Section 206(d)(3)(B)(i) of the Employee Retirement Income Security Act ("ERISA"), as amended, and Section 414(p)(1)(A) of the Internal Revenue Code.

Pursuant to Section 206(d)(3)(G)(ii) of ERISA and Section 414(p)(6)(B) of the Internal Revenue Code, the BAE Systems Administrative Committee has adopted these procedures for handling a Domestic Relations Order (hereinafter called a "DRO") that may be entered with respect to the qualified pension plans sponsored by BAE Systems, Inc., including any pension plans that have been merged into such plans (collectively, "Plans").

This document describes the procedures to be followed by Plan representatives in determining whether a DRO is a QDRO under ERISA Section 206(d)(3), with respect to the Plan to which it applies. They also provide guidance regarding how distributions under QDROs will be administered. These procedures are provided with the understanding that neither BAE Systems, Inc. nor any of its directors, officers, affiliates, employees, agents, representatives, advisors, or counsel are engaged in the practice of or providing advice regarding legal, tax, accounting, or similar issues. If legal or tax advice or other expert assistance is required, the services of a competent professional should be sought. BAE Systems, Inc. assumes no responsibility or liability for any harm or damages, financial or otherwise, resulting from the use of or reliance upon these procedures or the model QDRO provisions that are included. Any inconsistencies between these procedures and the actual terms of the governing documents for the Plans will be resolved by reference to the specific provisions of the applicable Plan. These procedures are not a contract and do not create any legal rights for any persons, including Participants and Alternate Payees.

For additional information regarding QDROs, the United States Department of Labor's publication entitled "QDROs: The Division of Retirement Benefits Through Qualified Domestic Relations Orders" may prove helpful. It is available on the Internet at:

<http://www.dol.gov/ebsa/publications/qdros.html>

or you can call the Department of Labor at 1.866.444.3272 and request a copy.

In addition, attached to these procedures is sample QDRO language for the defined benefit and defined contribution plans sponsored by BAE Systems, Inc. However, BAE Systems, Inc. makes no representations as to the suitability of such sample language under any particular state law.

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We strongly recommend that you consult with an attorney to help with the process of drafting a QDRO and having it approved by both the appropriate Plan and court or agency. We also strongly recommend that you and/or your counsel submit a draft domestic relations order to the BAE Systems QDRO Service Center for review and pre-determination prior to submission to the court. Proposed and final orders should be sent to:

BAE Systems QDRO Service Center
c/o Groom Law Group
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006

or emailed to: BAEqdro@groom.com

1. **“Domestic Relations Order” (“DRO”) Defined.** Under Section 206(d)(3)(B)(ii) of ERISA and Section 414(p)(1)(B) of the Code, a DRO is any judgment, decree, or order (including approval of a property settlement agreement) which:
 - a) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Plan Participant and
 - b) is made pursuant to a State domestic relations law (including community property law).
2. **“Alternate Payee” Defined.** For the purposes of these procedures and as defined in Section 206(d)(3)(K) of ERISA, an “Alternate Payee” means any spouse, former spouse, child, or other dependent of a Participant who is recognized by a DRO as having a right to receive all, or a portion of, the benefits payable under a Plan with respect to such Participant.
3. **Notices.** As soon as reasonably practicable following receipt of a DRO, the BAE Systems QDRO Service Center shall provide notice to the Participant and Alternate Payee with respect to whom the DRO relates, acknowledging receipt of the DRO and enclosing a copy of these procedures. If the Participant and/or Alternate Payee are represented by counsel, the notice may be sent to counsel in lieu of the individual. The notice shall be sent by email, or if an email address is not available, via first-class mail or fax to the address shown in the DRO. The Participant and the Alternate Payee each may designate a representative for receipt of copies of notices that are sent to the Participant and the Alternate Payee with respect to the DRO.

In the event that a Plan is paying an Alternate Payee pursuant to a QDRO and a subsequent DRO is received which requires payments to a second, different Alternate Payee from the same portion of the Participant's benefit, the Plan shall notify the first Alternate Payee regarding receipt of the subsequent DRO.
4. **Administrative Hold.** When representatives of the Plan receive a DRO, notice indicating a domestic relations matter is pending, notice indicating that a divorce or separation has occurred, or notice of intent to assign plan benefits to an Alternate Payee, a temporary hold will be placed on the Participant's account and/or benefit. This means that if the participant is

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not in pay status, no distributions will be made to the Participant during the period of the hold, including hardship distributions, plan loans, or any other withdrawal or distribution available under the Plan. If the participant is in pay status or applies for and is determined to be eligible to receive a benefit, a portion of the participant's benefit may be suspended in accordance with the segregation procedures described in Section 5, below. The restriction, hold, or segregation will be effective as soon as administratively feasible following the date the DRO or notice is received by the Plan.

Notwithstanding the above, if the DRO relates to benefits under a defined contribution Plan that provides for participant-directed investments, the Participant is permitted to change his or her investment allocations in accordance with Plan provisions during the administrative hold period.

When the hold originates other than from receipt of a DRO, the hold will remain effective for a period of 12 months. However, even after such a 12-month hold has expired, the Plan reserves the right in its discretion and to the degree permissible under applicable law, to require the Participant to provide evidence that the domestic relations matter is no longer pending prior to the Plan Administrator removing the hold.

Upon receipt of a DRO as defined in Section 1 of these procedures, the hold will remain in place for a period of 18 months from the first date (after the Plan receives the order) that the DRO would require payment to the Alternate Payee. If the DRO is received during an original 12-month hold period, as described in the preceding paragraph, then the DRO will have the effect of extending the original 12-month hold period through the 18-month period described in this paragraph.

5. Segregation of Benefit.

- (a) If the Plan receives a DRO, a proposed DRO, notice indicating a domestic relations matter is pending, notice indicating that a divorce or separation has occurred, or notice of intent to assign plan benefits to an Alternate Payee, any of which relate to the benefit of a Participant in pay status, the Plan shall reduce the Participant's benefit payment as soon as administratively feasible. The Participant's benefit will be reduced by whatever amount the Plan determines would be payable to the Alternate Payee if a QDRO was submitted, based on the information available to the Plan with regard to the intent of the Participant and Alternate Payee. The Plan shall separately account for the amounts that would be allocated to the benefit of the Alternate Payee if a QDRO had been submitted. The Plan is authorized to take any additional action with respect to the Participant's benefits as necessary on a case-by-case basis to comply with the terms of the Plan and applicable law, with due consideration given to the Plan's determination of the intent of the Participant and Alternate Payee. If, prior to the expiration of the administrative hold period, the Plan receives a QDRO, the Plan will pay the segregated amounts to the Alternate Payee in accordance with the terms of the QDRO as soon as administratively feasible after the determination.

Any segregated amounts that are not payable to the Alternate Payee under the terms of the QDRO will be paid to the Participant. Notwithstanding the above, if the Plan has

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insufficient information regarding the intent of the Participant and Alternate Payee and cannot make a determination of the amount that would be payable to the Alternate Payee if a QDRO was submitted, the Participant's benefit will not be reduced.

- (b) If the Plan receives a DRO, proposed DRO, notice indicating a domestic relations matter is pending, notice that a divorce or separation has occurred, or notice of intent to assign plan benefits to an Alternate Payee, any of which relate to a Participant who is not yet in pay status, but is applying for and eligible to receive a benefit from the Plan, the Participant will generally not be able to commence benefits while the administrative hold is in place, subject to the exceptions below.

(i) Notwithstanding the above, if a defined benefit Plan receives a DRO relating to a Participant who is not yet in pay status, but is applying for and eligible to receive a benefit from that Plan, the defined benefit Plan may commence benefits to the Participant, but will reduce the Participant's benefit by whatever amount the Plan determines would be payable to the Alternate Payee if a QDRO is submitted, based on the terms of the DRO. The Plan shall separately account for the amounts that would be allocated to the benefit of the Alternate Payee if a QDRO has been submitted. The Plan is authorized to take any additional action with respect to the Participant's benefits as necessary on a case-by-case basis to comply with the terms of the Plan and applicable law, with due consideration given to the Plan's determination of the intent of the Participant and Alternate Payee. If, prior to the expiration of the administrative hold period, the Plan receives a QDRO, the Plan will pay the segregated amounts to the Alternate Payee in accordance with the terms of the QDRO as soon as administratively feasible after the determination. Any segregated amounts that are not payable to the Alternate Payee under the terms of the QDRO will be paid to the Participant. However, if the Plan has insufficient information regarding the intent of the Participant and Alternate Payee and cannot make a determination from the DRO of the amount that would be payable to the Alternate Payee if a QDRO was submitted, the administrative hold will remain in effect and the Participant will not be able to commence benefits.

(ii) Notwithstanding the above, if a defined benefit Plan receives a DRO, proposed DRO, notice indicating a domestic relations matter is pending, or notice that a divorce or separation has occurred, and the Participant is applying for and eligible to receive a benefit from that Plan, the Plan will release the hold on the Participant's benefit if the Participant submits a sworn affidavit attesting that his or her former spouse has agreed to waive any right to receive benefits under the Plan. The affidavit must state that the Participant and his or her former spouse have agreed not to enter a valid QDRO, have agreed not to divide the Participant's benefits under the Plan at any time in the future, and have agreed to indemnify BAE Systems and the Plan from liability if the former spouse makes a claim for benefits from the Plan at any time in the future. The Plan has discretion to determine whether the affidavit is acceptable.

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(c) If a Participant has a plan loan outstanding under a defined contribution Plan, and the DRO assigns to the Alternate Payee an amount in excess of the Participant's unencumbered account balance, then Plan Administration may separately account for the unencumbered account balance to the credit of the Alternate Payee.

6. Removal/Expiration of Hold. If an administrative hold is implemented, and the Plan does not receive a QDRO with regard to that Participant's benefit before the expiration of the 12- or 18-month hold period described in Section 4, the hold on the Participant's benefits will be removed and any amounts separately accounted for or segregated shall be treated as solely an accrued benefit of Participant or, returned to the Participant's account (if any) or to such person(s) who would have been entitled to receive such amounts in absence of the DRO. The Participant shall again have complete access to his or her account or accrued benefit in accordance with the provisions of the applicable plan.

Other than expiration of the applicable period specified in the preceding paragraph of this Section 6, the restriction on the Participant's access to her or her benefits will be removed only under the following circumstances:

- a) The Plan receives a complete copy of a Court-executed document (i.e. — a Property Settlement Agreement, Dissolution of Marriage, or a Final Decree of Divorce) or an affidavit executed by the Participant and the former spouse which clearly states that the Participant's former spouse has waived his/her spousal rights to benefits under the Plan, or
- b) The Plan is properly advised in writing that a restraining order has expired or been vacated or that the domestic relations matter is no longer pending, or
- c) The Plan approves and processes a QDRO.

7. Qualified Domestic Relations Order: After receiving a DRO, the Plan shall determine whether such order is a QDRO. A QDRO is generally an order that:

- i. creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant under a Plan, and
- ii. includes each of the following:
 1. The name and the last known mailing address (if any) of the Participant and the name and mailing address of each Alternate Payee covered by the QDRO.
 2. The amount or percentage of the Participant's benefits to be paid by the Plan to each Alternate Payee, or the manner in which such amount or percentage is to be determined. [This is typically met in one of the following ways: (1) specifying a fixed dollar amount, provided that the amount does not exceed more than 100% of the Participant's benefit; (2) specifying a percentage of the

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Participant's benefit, but not more than 100% of the Participant's monthly benefit; (3) providing a formula by which the Plan can determine the amount due the Alternate Payee at any given time.]

3. The number of payments or period to which the order applies.

[The QDRO should address when the Alternate Payee's benefit will commence. There are two forms of QDROs: (1) a "Separate Interest QDRO" in which the Alternate Payee controls the timing and form of distribution of the Alternate Payee's benefit payments from the Plan and (2) a "Shared Interest QDRO" in which the Participant controls the timing and form of distribution of benefit payments from the Plan, and the Alternate Payee shares in each payment.

However, the defined contribution Plans do not generally administer Shared Interest QDROs.

If the Alternate Payee is assigned a benefit under a Separate Interest QDRO from a defined benefit Plan, the Alternate Payee's benefit may commence on the Participant's earliest retirement date or such later date as the Alternate Payee may elect, but not later than such date in which the Fund requires benefits to commence. If the Alternate Payee is assigned a benefit under a Shared Interest QDRO from a defined benefit Plan, the Alternate Payee will not receive benefits until the Participant goes into pay status.

The QDRO should also address when the Alternate Payee's benefit will terminate, and for how long the Order will apply. A QDRO can meet this requirement by (1) setting forth a span of time (e.g., "for 24 months"); (2) setting forth the total amount to be paid over time (e.g., "until \$___ has been paid"); (3) indicating an indefinite duration, (e.g., "until further order of the court"); or (4) a particular form of payment. For example, under a defined benefit Plan, the QDRO could provide that the Alternate Payee's benefit will be paid as an annuity for the Alternate Payee's lifetime (under a "Separate Interest QDRO") or a share of the Participant's monthly benefit until the earlier of the Participant's death or the Alternate Payee's death (under a "Shared Interest QDRO").

Under a defined contribution Plan, a Separate Interest QDRO can assign the Alternate Payee a percentage or a dollar amount of the account balance as of a certain date and can provide that the separate interest will be held in a separate account under the Plan with respect to which the Alternate Payee is entitled to exercise the rights of a Participant.]

4. The name of the Plan to which the QDRO applies;

[A QDRO can assign rights to retirement benefits under more than one Plan as long as each Plan and the assignment of benefit rights under each Plan are clearly specified.]

and

iii. Does not require the Plan to do any of the following:

1. **Provide the Alternate Payee with any type or form of benefit, or any option, not otherwise provided under the Plan.**

[For example, a DRO that is submitted to a defined benefit Plan after the Participant's annuity starting date cannot require payments to the Alternate Payee for the Alternate Payee's lifetime. Therefore, a Separate Interest QDRO cannot be entered with regard to a defined benefit Plan after the Participant's annuity starting date.

In addition, a DRO that is submitted to a defined benefit Plan after the Participant's surviving spouse's annuity starting date cannot assign the Alternate Payee all or part of the surviving spouse benefit that, under the form of benefit in effect, is payable to the Participant's surviving spouse.

A Separate Interest QDRO can allow the Alternate Payee to elect any form of payment allowed under the Plan, except with regard to a defined benefit Plan, the Alternate Payee may not elect to receive a benefit in the form of a Joint and Survivor Annuity with his or her subsequent spouse.]

2. **Provide increased benefits (determined on the basis of actuarial value).**
3. **Pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a QDRO.**

If a Participant has a plan loan outstanding under a defined contribution Plan, and the DRO assigns to the Alternate Payee an amount in excess of the Participant's unencumbered account balance, then the DRO will be determined NOT to be qualified.

8. Determination of Qualified Status and Effect of Determination.

The Plan is entitled to a reasonable period of time in which to determine whether a DRO is a QDRO.

Determination of Qualified Status. Upon making a determination that a DRO is a QDRO, the Plan shall send a letter to the Participant and the Alternate Payee of its interpretation of the terms of the QDRO. The Participant and the Alternate Payee will have 30 days from the date of the letter to advise if they disagree with any part of the Plan's interpretation of the Order. The 30-day review period can be waived if the Plan receives written verification from both parties that they agree with the Plan's interpretation of the Order and wish to waive the remainder of the 30-day review period. There is no particular form for making the waiver – however, it must be in writing, and state agreement with the Plan's interpretation of the Order and a desire to waive the remainder of the 30-day review period. The parties can email their request for a waiver of the 30-day review period to the BAE Systems QDRO Service Center, provided that they attach a copy of their signature assenting to the waiver.

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Upon the expiration of the 30-day review period described above, or its earlier waiver by both parties, the QDRO will be implemented as soon as administratively feasible. If the QDRO relates to a defined benefit Plan, the Alternate Payee will be assigned a portion of the Participant's benefit. If the QDRO relates to a defined contribution plan, a separate account will be established for the Alternate Payee, and in the absence of language in the QDRO to the contrary, the Alternate Payee's assigned benefit shall be invested in the Plan's Qualified Default Investment Alternative ("QDIA") fund until the Alternate Payee exercises his or her right to control the investment of the funds pursuant to the terms of the Plan.

If either or both of the parties disagree with the Plan's interpretation of the QDRO and notify the Plan within the 30-day review period, the Plan will review whether it agrees that the alternative interpretation is consistent with the language of the QDRO. If the Plan agrees that the alternative interpretation is consistent with the language of the QDRO, the Plan will write to the parties and advise them accordingly. If the Plan does not agree with the alternative interpretation or determines that the language of the QDRO is unclear, the Plan will advise the parties that they have sixty days to amend or withdraw the QDRO to clarify the issue, and the administrative hold will remain in effect until: (a) an amended QDRO is received, approved, and processed; or (b) the sixty day period expires (if an amended QDRO has not been received within that period). If the sixty day period expires and the Plan has not received notice that the QDRO has been amended or withdrawn, the Plan will implement the QDRO based on the Plan's initial interpretation of its terms.

Determination of Unqualified Status. Upon making a determination that a DRO is not "qualified," a notice will be sent to the Participant and Alternate Payee advising them of the determination. An explanation of the reasons for the determination will be included. As set forth in Section 4, the administrative hold will remain in place until 18 months following the first date (after the Plan receives the order) that the DRO would require payment to the Alternate Payee, which gives the parties the ability to re-submit another DRO that meets the qualification requirements.

If by the end of the 18-month period described in the previous paragraph, no final determination has been made as to whether the DRO is a QDRO, then the Plan shall notify the Participant and Alternate Payee in writing of such fact. The administrative hold will be lifted and any segregated amounts (in accordance with Section 5 of the procedures) will be released to the Participant.

- 9. Source of Funds- Defined Contribution Plan.** If a QDRO relates to a defined contribution Plan, when the Plan establishes the account for the Alternate Payee, the default is that funds shall be taken pro-rata from all investments of the Participant as of the valuation date for the creation of the separate account of the Alternate Payee, with the exception of any "Excepted Account." An "Excepted Account" is any: (a) Participant loan account; (b) Participant self-directed brokerage account; or (c) Participant Money Purchase Account. If the balance of the non-Excepted Accounts is not sufficient to cover the amount to be transferred to the Alternate Payee, the Participant must transfer assets from any self-directed brokerage account to one or more of the non-Excepted Accounts as necessary for the Plan to comply with the QDRO. If the Participant fails to do so within the timeframe established by the Plan, the Plan will liquidate investments in the self-directed brokerage

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account based on the following hierarchy, as necessary to transfer funds back to the non-Excepted Accounts: (a) money market fund; (b) no load/no transaction fee mutual funds (by last in, first out order); (c) no load/transaction fee mutual funds (by last in, first out order); (d) load funds (by last in, first out order); (e) stocks; (f) bonds.

10. **Posthumous QDROs.** A DRO that is entered after the death of the Participant whose benefit is subject to the DRO will not fail to be a QDRO solely because it is issued or received by the Plan after the death of the Participant. However, such a DRO will fail to be a QDRO if it requires the Fund to provide a type or form of benefit, or any option, not otherwise provided by the Plan or if the DRO fails to satisfy any other test in Section 7 above.
11. **Proposed DROs.** The BAE Systems QDRO Service Center will review a proposed DRO to determine whether the proposed DRO would meet the requirements of a QDRO if entered or approved by a court. Following review, the QDRO Service Center will notify the Participant and the Alternate Payee (or their counsel or other designated representatives) of its determination. If the Participant is receiving a benefit from a Plan at the time a proposed DRO is received, amounts will be segregated from the Participant's benefit in accordance with Section 5 while the QDRO Service Center is reviewing whether the proposed order would meet the requirements of a QDRO.
12. **Information Needed.** For administrative and benefit determination purposes, the Participant and Alternate Payee must provide the Plan with their birth dates and Social Security numbers, unless the Plan has reason to know this information. The birth dates and Social Security numbers may be provided in the DRO. However, because the DRO is generally filed with a court, the birth dates and Social Security numbers may instead be provided to the Plan in a separate document or letter accompanying the DRO to protect the privacy of the parties.
13. **Limits of Review.** The Plan does not review the reasonableness of the allocation of the Participant's benefit under the QDRO. Further, the Plan does not make any determination as to the validity of the underlying domestic relations proceedings or the QDRO's compliance with the applicable state domestic relations law.
14. **Correspondence:** All correspondence or questions relating to QDROs should be sent to:

BAE Systems QDRO Service Center
c/o Groom Law Group
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006

or emailed to: BAEqdro@groom.com