

## COUNTY OF FRESNO 457(b) DEFERRED COMPENSATION PLAN POLICY: QUALIFIED DOMESTIC RELATIONS ORDER

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### POLICY:

It is the policy of the County of Fresno 457(b) Deferred Compensation Plan (the "Plan") to process all Domestic Relations Orders received in compliance with all applicable laws and Plan provisions.

### ADMINISTRATIVE RESPONSIBILITY:

Pursuant to Section 8.9 of the County of Fresno 457(b) Deferred Compensation Plan document, the Deferred Compensation Management Council (the "Council") established the following Qualified Domestic Relations Order Policy and Procedures (the "Policy") for determining the qualified status of Domestic Relations Orders and for administering distributions under such qualified orders with respect to benefits payable under the Plan.

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### I. DEFINITIONS

**Alternate Payee:** Any spouse, former spouse, child or other dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

**Domestic Relations Order ("DRO" or "Order"):** A judgment, decree, or order (including the approval of a property settlement) that is made pursuant to State Domestic Relations Law (including community property law) and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a Participant.

**Participant:** An employee whose Plan account is subject to a Domestic Relations Order.

**Council:** The Council is the Deferred Compensation Management Council ("DCMC") or its designee, and is responsible for administering the Plan and this Policy. The Council is located at 2220 Tulare Street, 14<sup>th</sup> Floor, Fresno, CA 93721 and can be reached via telephone at (559) 600-1810 and fax at (559) 455-4787.

**Record Keeper:** The Record Keeper is the third party service provider with whom the County of Fresno contracts for investment, record-keeping or other management services for the Plan.

**State Domestic Relations Law:** Applicable State Domestic Relations Law includes, but is not limited to California Family Code Sections 2337 and 5208.

### II. REQUIREMENTS FOR A QUALIFIED DOMESTIC RELATIONS ORDER ("QDRO")

**A.** A DRO shall be determined to be a QDRO only if it creates or recognizes the existence of an Alternate Payee's right to receive, or assigns to an Alternate Payee the right to receive, all or a part of a Participant's benefits under the Plan and includes all of the following information:

1. The names, Social Security numbers (which should be provided to the Council under separate cover and not filed with the court) and last known mailing addresses of the Participant and the Alternate Payee(s);
2. The name of the Plan;
3. The dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the Alternate Payee(s); and
4. The time period or number of payments to which the Order applies.

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**B.** An Order is not qualified if any of the following apply:

1. The Order fails to comply with all of the requirements in subsection A above;
2. The Order requires the Plan to provide an Alternate Payee or Participant with any type or form of benefit, or any option, not otherwise provided under the Plan;
3. The Order requires the Plan to provide for increased benefits;
4. The Order requires the Plan to 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; and
5. The Order is not issued by or certified by a state agency or instrumentality with the authority to issue judgments, decrees, or orders, or to approve property settlement agreements, pursuant to State Domestic Relations Law (including community property law).

**III. PROCESSING A QDRO**

**A. Notice to Participant and to Alternate Payee.** Within thirty (30) days after receipt of an Order, the Council will notify the Participant and the Alternate Payee (and, upon written request of the Participant and/or Alternate Payee, to the Participant's and/or Alternate Payee's representative, including, in the case of an Order for child support, the Department of Child Support Services or other applicable organization, if the representative is identified by name and address in writing) of the receipt of the Order, and will deliver to the Participant and to each Alternate Payee (and to the Participant's and/or Alternate Payee's representative, as applicable) a copy of this Policy.

**B. Suspension of Participant Distributions.** Upon receipt of the Order, the Council will suspend the Participant's right to receive all distributions, including distributions in the form of a loan or on account of unforeseeable emergency to the extent of the amount of the award in the Order to the Alternate Payee during the time of review. If the award is not clear in the Order, then 100% of the Participant's rights to receive all distributions, including distributions in the form of a loan or on account of unforeseeable emergency will be suspended, unless otherwise agreed to in writing by the parties. If the Participant is receiving benefits in the form of periodic payments at the time of receipt of the Order, the Council will suspend periodic payments made to the Participant.

The Council will direct the Record Keeper to maintain a separate accounting (which may include a segregated account) at the time the Order is received for each Alternate Payee until the Plan has completed distribution of benefits under the QDRO.

Upon receipt of written notice of an adverse interest in a Participant's Account claimed by an alleged Alternate Payee under California law, including but not limited to Joinder documents, including a conformed file-stamped Request for Joinder of Employee Benefit and Order, or a draft or proposed Order that is not yet court-certified, the Council will suspend all distributions, as described in this section, until receipt of a proper Order

**C. Notice to Legal Counsel.** Within thirty (30) days after receipt of the Order, the Council may send a copy of the Order to legal counsel for review.

**D. Review of Order.** The Order will be reviewed within a reasonable period of time to determine whether the Order complies with applicable law and Plan provisions. After review, the Council will determine whether the Order is a QDRO.

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**E. Determination that Order is a QDRO.** If it is determined that the Order is a QDRO, the Council shall implement the following:

1. Notify the Participant and each Alternate Payee (and his/her legal representative, as applicable) that the Order is a QDRO and the Plan will make distribution pursuant to the QDRO.
2. Initiate the payment process for the designated benefits as soon as administratively feasible following receipt of the election forms completed by the Alternate Payee, and pursuant to Section IV below.
3. Entitle the Alternate Payee to file with the Plan a beneficiary designation in the same manner as a Participant in the Plan with respect to the Alternate Payee's assigned benefit in the Plan as established by the QDRO, unless the QDRO specifically provides otherwise.
4. Allow the Participant or the Alternate Payee (or their representatives, as applicable) to appeal the final determination of the Council by filing a written notice of appeal with the Council within thirty (30) days of the final determination. If the parties choose to expedite QDRO processing, the Participant and Alternate Payee may waive the appeal process by signing a waiver appeal form.

**F. Ambiguity in Order.** In the event of an ambiguity or defect in an Order that would otherwise constitute a QDRO, the Council may resolve the ambiguity or defect by written agreement of the Participant and the Alternate Payee (and their representatives, as applicable).

Note: If the Order provides a retroactive assignment date, that date must be after November 19, 2009, the date Great-West Retirement Services became the Record Keeper.

**G. Determination that Order is not a QDRO.** If the Council determines the Order is not a QDRO:

1. The Council will advise the Participant and each Alternate Payee (and the Participant's and Alternate Payee's representative, as applicable) of the adverse decision and of the reasons for the adverse decision.
2. If the qualified status of the Order has not been established within 18 months from the date the first payment to the Alternate Payee would have been required under the Order, the Council shall cease the suspension of the Participant's distributions. If the Participant is eligible for payment of those amounts in the absence of the Order, the Council shall pay the amounts (plus interest, if any) to the person or persons entitled thereto.

#### **IV. PAYMENT OF BENEFITS**

**A. Order qualified within the 18-month period.** If the qualified status of an Order is established within 18 months of the date the first payment to the Alternate Payee would be required under the Order, the Council shall make payment of the amounts separately accounted for (plus interest, if any), to the person or persons entitled to benefits under the terms of the Order.

**B. After the 18-month period.** If the Order is determined to be qualified after the end of the 18-month period, the Council shall comply with the terms of the Order, but only on a prospective basis with respect to any payments that may be due after the later of the date the Council determines the Order is qualified or the date the Council receives written notice of such determination by a court of competent jurisdiction.

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**C. When benefits are payable.** Benefits under the Plan are subject to a QDRO as of the date specified in the QDRO.

**1. Before retirement.** If the Participant has not retired:

- i. The Council shall require the Alternate Payee and Participant to provide any information that is reasonably required for the determination of the amount payable to the Alternate Payee;
- ii. Once the Council has all the necessary information, it shall determine the amount payable to the Alternate Payee;
- iii. The Council shall notify the Alternate Payee of the amount to which he or she is entitled and, where appropriate, provide the Alternate Payee with an opportunity to elect to receive benefits in any form available to a similarly-situated Participant.

**2. After retirement.** If the Participant has retired, the Council shall notify the Alternate Payee and the Participant of the amount of Participant's benefits payable by the Council directly to the Alternate Payee pursuant to the QDRO.

**3. In all cases.** In all cases, the following procedures shall apply:

- i. The Council shall attach the QDRO to the Plan's record of the Participant's account and take the Plan's obligations under the QDRO into account in any future determination of the Participant's benefits under the Plan;
- ii. The Council shall initiate appropriate administrative action to effect a distribution to the Alternate Payee of the amount to which the Alternate Payee is entitled under the terms of the QDRO.
- iii. Notwithstanding the above, QDRO benefits shall be distributed to an Alternate Payee pursuant to the QDRO as soon as administratively feasible after the Plan approves the Order, but no earlier than:
  1. The date that the 30-day appeal period expires (i.e. 30 days from the date of the final determination); or
  2. The date that the Council receives a waiver of the 30 day appeal form signed by both the Participant and the Alternate Payee. The waiver must be either notarized or signed by the Participant and the Alternate Payee in the presence of the Council.

**D. Form of payment.** In the event that the Order does not specify how the Alternate Payee will receive their benefit (i.e., lump-sum distribution or rollover to qualified plan), the Alternate Payee may elect when and how payment will be made, as long as the election is at a time and in a form acceptable under the terms of the Plan.

**E. Gains and losses.** The Plan will include gains and losses on the Alternate Payee's assigned benefit as of the date specified in the Order, or, if a date is not specified in the Order, as of the date the Order was issued.

**F. Allocation of Funds.** If the Order is silent regarding the allocation of funds to the Alternate Payee, the Alternate Payee's assigned benefit will be comprised of a pro rata share of each of the assets in the Participant's account(s).

**G. Address Changes.** It is the responsibility of the Participant and Alternate Payee to keep the Plan informed of any address changes. If, after reasonable efforts, an Alternate Payee

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cannot be located by the Council at the time any payment is to be made to the Alternate Payee pursuant to a QDRO, the Alternate Payee shall forfeit the right to such payment and the same shall remain in the Plan for its general purposes. However, if the Alternate Payee later claims such payments, the Alternate Payee's right to those payments shall be reinstated and the Council shall promptly pay the same to the Alternate Payee, without interest.

**V. DEATH OF ALTERNATE PAYEE**

- A.** If the Alternate Payee dies before a proposed order becomes a final Order of the court, the Order will not be approved as a QDRO.
- B.** If the Alternate Payee dies after a proposed order becomes a final Order of the court, and the Council determines that the Order is qualified, benefits will be paid to the Alternate Payee's designated beneficiary, or if none, to the Alternate Payee's estate.

**VI. TAXATION OF QDRO PAYMENTS**

- A.** An Alternate Payee who is the spouse or former spouse of the Participant is responsible for taxes owed on any benefit they receive. A payment made to an Alternate Payee who is the spouse or former spouse of the Participant is subject to a 20% mandatory income tax withholding unless the Alternate Payee elects a direct rollover to a qualified plan, as provided in the Plan document.
- B.** The Participant is responsible for paying taxes on any lump-sum payment to an Alternate Payee who is a child under the age of 18, or pursuant to a QDRO for Support for child support arrearages for the benefit of an Alternate Payee who is, or was, a child under the age of 18. Any lump sum payment under this provision will have an amount withheld and paid over to the appropriate taxing authorities to satisfy the Plan's mandatory federal and state withholding obligations.

**VII. REIMBURSEMENT FOR QDRO ADMINISTRATION**

- A.** The Plan shall assess reasonable administrative fees (Fees), not to exceed \$500, for administration of proposed agreements or Orders.
- B.** If the Alternate Payee is the spouse or former spouse, Fees shall be deducted equally from the Alternate Payee's share of benefits and from the Participant's account(s) on a pro-rata basis.
- C.** If the Alternate Payee is a child, or a former child, the Fees will be deducted solely from the Participant's account(s) on a pro-rata basis.