



Montana Public Employee Retirement Administration
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Defined Benefit (DB)

Family Law Order

Information

for participants of

**Municipal Police Officers' Retirement System
Firefighters' Unified Retirement System
and
Highway Patrol Officers' Retirement System**

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INTRODUCTION

Family Law Orders (FLOs) assign all or a portion of a retirement system member's benefit rights to the member's alternate payee (generally the ex-spouse). A FLO must be either incorporated directly into or referenced in a court order, judgment or decree issued under Title 40 of the Montana Code Annotated. Each FLO must also contain a statement that it is subject to review and approval by the Public Employees' Retirement Board (the Board).

FLOs have more restrictive criteria under Montana law (Section 19-2-907, MCA - see Appendix B) than Qualified Domestic Relations Orders (QDROs) have under federal law (26 IRC 414 (p), et seq. and 29 U.S.C. - 1001, et seq.). A properly drafted FLO will meet the criteria necessary for a QDRO. However, not all QDROs will meet FLO criteria.

The information in this publication is based on Montana law as of July 1, 2021. If this information conflicts with statute or rules, the statute or rules will apply.

These components are a starting point only, not a definitive interpretation of what is legally required to implement a particular FLO. However, FLO provisions structured similarly to the examples provided here are easier for Board staff to review. It may be necessary to harmonize several of the examples to achieve the desired result. These examples do not address every potential complication or issue which may arise. Individual circumstances require careful consideration of all alternatives available to both the member and the alternate payee.

MPERA administers eight defined benefit retirement systems as follows: Public Employees' Retirement System (PERS), Firefighters' Unified Retirement System (FURS), Judges' Retirement System (JRS), Game Wardens' and Peace Officers' Retirement System (GWPORS), Highway Patrol Officers' Retirement System (HPORS), Municipal Police Officers' Retirement System (MPORS), Sheriffs' Retirement System (SRS), and Volunteer Firefighters' Compensation Act (VFCA). Each system has unique payment options and beneficiary requirements.

The information in this publication is for members of the MPORS, FURS and HPORS defined benefit systems.

FLO COMPONENTS

We strongly recommend you reference this publication when drafting your FLO, we also have various templates available in electronic and paper form. If you would like a template(s) please contact our office and we will determine the appropriate template(s) to send you.

The sections outlined below provide information necessary for administration of a FLO and meet the statutory requirements. These suggested components apply to the FURS, MPORS, and HPORS. These systems have one option at retirement and require statutory beneficiaries. The asterisks denote further explanation of the section, limiting circumstances to consider, or an explanation for alternatives to address individual circumstances.

1. THE PARTIES

- A. [PAYEE NAME] is a participant* in the [NAME OF RETIREMENT SYSTEM]. Payee's full legal name, address, social security number, and birth date are:

[PAYEE NAME]
[PAYEE MAILING ADDRESS]
**[PAYEE SOCIAL SECURITY NUMBER]
**[DATE OF BIRTH (month spelled out)]

*A participant can be a member of the retirement system, an actual or statutory beneficiary or survivor of the member.

- B. [ALTERNATE PAYEE NAME]* is an alternate payee entitled to marital property from Payee, pursuant to Section 19-2-907, MCA, as specified in this document. Alternate Payee's full legal name, address, social security number, and birth date are:

[ALTERNATE PAYEE NAME]
[ALTERNATE PAYEE MAILING ADDRESS]
**[ALTERNATE PAYEE SOCIAL SECURITY NUMBER]
**[ALTERNATE PAYEE DATE OF BIRTH (month spelled out)]

* May be a child, spouse or parent who may be entitled to child support, maintenance or marital property, or parental support, respectively.

** The Social Security Number and the Birth Date can be filed separately in a Sensitive Data Sheet.

2. RIGHT TO MONETARY PAYMENTS

A. REFUND OF ACCUMULATED CONTRIBUTIONS.

If Payee withdraws accumulated contributions from [Acronym for Retirement System], Alternate Payee is entitled to the first [_____] Payee may withdraw.**

*May be a dollar amount or a percentage. Either must be specified or enough information must be provided for calculation of the payment amount at the time of withdrawal. Below is a list of alternative formats to use for the alternate payee payment in the event payee withdraws accumulated contributions.

Examples of alternative formats for withdrawal of accumulated contributions for payment to alternate payee.

- \$5,000 plus 5% interest from July 1, 2012 to the date of withdrawal compounded annually.
- 50% of the withdrawal or \$5,000, whichever is less.
- a percentage of the withdrawal calculated as follows: 50% times 120 months (months of marriage during service) divided by the number of months of service credit at the date of withdrawal.

Please note these are examples and should not be viewed as the only choices available under the FLO.

**May not be more than the member may withdraw.

B. MONTHLY PAYMENTS ON SERVICE RETIREMENT.

If Payee receives a service retirement benefit* during Payee's life**, Alternate Payee is entitled to receive the portion specified below.

*Participants in these systems may be entitled to service retirement benefits because of the member's retirement. Four alternative formats for payment of the retirement benefit to the alternate payee are outlined below. **Please note these are examples** and should not be viewed as the only choices available under a FLO.

**All payments are limited to the life of the participant whose benefit payments are being divided. In addition, payments may be limited to the life of the alternate payee, a specified amount of time or date, or the life of another relevant specified participant. On the other hand, the death of the alternate payee does not conclude payment obligations to the alternate payee's heirs or devisees unless the FLO limits payment to the life of the alternate payee.

Examples of alternative formats for payment of the retirement benefit to alternate payee:

ALTERNATIVE 1 - FLAT DOLLAR AMOUNT OF MONTHLY BENEFIT

Alternate Payee is entitled to receive \$500 of the monthly retirement benefit payment or 50%, whichever is less, otherwise payable to Payee for each month until July 1, 2030*. Thereafter, the Alternate Payee is entitled to nothing.

*For this alternative where a fixed dollar amount is set, reference must be made to the period or length of time payment to alternate payee is to be made. This alternative sets a fixed amount to be paid each month for a specific time, alternatively a fixed number of years could be set. This can be distinguished from

Alternatives 3 and 4 below, where no dollar amount is set, but a percentage of each payment (including adjustments) is paid.

This alternative does not take into consideration the amount of the participant's potential future benefit as it may not be known at the time of the dissolution. It also does not take into consideration any post-retirement adjustments that may be granted.

ALTERNATIVE 2 - FLAT DOLLAR AMOUNT WITH INTEREST (Defined Sum)

Alternate Payee is entitled to receive \$10,000 plus interest beginning January 1, 2012 and ending on the effective date of Payee's retirement, at a rate of 5% per annum compounded annually (the sum of principal and interest will be called the entitlement), to be received at a payment rate of \$700 per month or 50% of the initial month's benefit payment otherwise payable to Payee, whichever is less. The entitlement will be divided by the appropriate payment rate defined above to determine the number of months of full payments to be made, beginning with the second month of benefits. Any partial payment will be paid in the first month.*

*Although the specified payment amount and the number of months must be calculated, this language does establish both. It is important that the interest ends on the date of the member's termination, so that the full entitlement amount can be accurately calculated on that date. It is also important that the partial payment be made in the first month, so no adjustment is needed after the initial payment.

ALTERNATIVE 3 - FORMULA METHOD -- (Rolfe Formula)

Alternate Payee is entitled to receive a percentage of each monthly benefit payment which would otherwise be payable to Payee. The percentage to be received by the Alternate Payee will be calculated as 50% times 120 months* divided by the total number of service credit months** used to calculate Payee's retirement benefit.

* The percentage and the number of service credit months to be specified in the order are open to negotiation between the parties. In this example, a somewhat simplistic but effective method is used to split the benefits equally. The parties were married for 10 years while Payee was a member of the retirement system. If Payee remained a member of the system for 15 more years before retiring, the resulting calculation would give Alternate Payee 50% times 120 months divided by 300 months, or 20% of Payee's benefit, including any cost-of-living or other future increases.

**The total months of service credit used may include all retirement system-covered employment and any other service the member purchased or receives credit for prior to retirement. The retirement system uses months of service credit to the nearest 100th of a month.

Note: The formula used in this alternative provides the calculation to divide the benefit at the date of the member's retirement. This may be a more equitable way of determining the percentage payable to the alternate payee if the participant is still an active member. In this instance, the actual percentage amount cannot be determined at the time of the dissolution because it is not known how long the participant will continue to work.

ALTERNATIVE 4 - FORMULA METHOD

Alternate Payee is entitled to receive a proportional amount of each monthly benefit payment, which proportion is represented by a fraction with \$400 as a numerator and the initial month's benefit payment which would otherwise be payable to the Payee as the denominator. *

*Alternative 4 can be expressed as a percentage, therefore, this alternative will divide, on a percentage basis, the benefit payments as well as any post-retirement adjustment, guaranteed annual benefit allowance, cost of living allowance or ad hoc increase in benefit payments.

Note: The formula for dividing the benefit may be modified in any way desired to meet individual needs and circumstances

C. DISABILITY OR SURVIVORSHIP PAYMENTS.

If Payee receives a disability retirement benefit or in the event of Payee's death before retirement, Alternate Payee is entitled to payments from the <<Retirement System>> in the proportionate amount of [set sum or proportion] of Payee's monthly disability retirement benefit or a survivorship benefit. The maximum amount of disability or *survivorship benefits that may be apportioned to an alternate payee is the monthly benefit that would have been payable on the date of termination of service if the member had retired without disability or death.**

**All payments are limited to the life of the participant whose benefit payments are being divided. In addition, payments may be limited to the life of the alternate payee, a specified amount of time or date, or the life of another relevant specified participant. On the other hand, the death of the alternate payee does not conclude payment obligations to the alternate payee's heirs or devisees unless the FLO limits payment to the life of the alternate payee.

Note: Statute limits the amount of disability or survivorship benefit payable to an alternate payee. [§ 19-2-907(5)(b), MCA.] Because of this limitation by statute, the disability or survivorship benefit payment for the alternate payee may be zero.

D. DROP

HPORS or MPORS participants may elect DROP, therefore a FLO must specify the Alternate Payee's rights to the DROP account, if any. If the rights are not specified, the Alternate Payee will not receive a portion of the DROP account.

E. INCREASES

All payments to the Alternate Payee <<shall OR shall not>> include the above specified percentage of any cost of living or other future increases.*

*Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage to the alternate payee only if the existing benefit is paid as a percentage. The adjustments must be paid as a percentage in the same ratio as the existing benefit payments, but if increases in the Alternate Payee's benefit is not intended, the FLO must specify that payments to the Alternate Payee *shall not* include cost of living or other future increases.

Note: If Participant is in more than one retirement system or is eligible for multiple monthly benefits from the same retirement system, the FLO must specify which benefit or benefits to which the FLO applies. If it is not included in the FLO, it is not subject to distribution to the FLO. This applies to all FLOs created after February 29, 2020.

3. DESIGNATION OF BENEFICIARIES

[NAME OF RETIREMENT SYSTEM] statutes allow Payee to choose a beneficiary*. Payee is required to designate the Alternate Payee as a beneficiary.** Such designation cannot be changed except by legally recognizable modification of this Order.***

*The designation of the beneficiary is important for different reasons in different contexts.

Before retirement, the FLO may require the payee to designate the alternate payee as a designated beneficiary to receive a proportion of any death payments or as the designated beneficiary to receive 100% of any death payments. The MPORS, FURS and HPORS have statutory beneficiaries (current spouse or dependent children). In a FLO for these systems, the payee may be required to designate the alternate payee as a beneficiary before and/or at retirement. The alternate payee will only receive a lump sum payment, if available **and if there is no surviving statutory beneficiary to receive the survivorship benefit.

Statutory Beneficiaries are either the surviving spouse or dependent child or children of a member of the MPORS, FURS, or HPORS who are statutorily designated to receive benefits upon the death of the member. The system cannot split the benefit of a statutorily designated beneficiary (the ex-spouse or dependent children in the FURS, MPORS, and HPORS).

Survivors in the MPORS, FURS, and HPORS are the statutory survivors (current spouse or dependent children) who receive a survivorship benefit before and after retirement. In the absence of statutory survivors, the designated beneficiary will be paid the remaining accumulated contributions in the members' account.

Designated Beneficiaries may be natural persons, charitable organizations, the estate of the benefit recipient, or trusts for the benefit of natural living persons to receive any survivorship benefits or lump-sum benefits upon the death of the member or benefit recipient, provided there are no surviving statutory beneficiaries.

The FLO cannot disregard the statutory designation of a recipient of post-death survivorship payments for those systems with such a designation (HPORS, MPORS, and FURS).

***Once approved as a Family Law Order by the Public Employees' Retirement Board, a FLO may only be modified by another FLO.

4. DEATH OF ALTERNATE PAYEE

This section could state limitations, if any, pursuant to 19-2-907(7), MCA, regarding the alternate payee's death before the payee's or before receiving any payment(s). Unless a family law order specifies the alternate payee's rights and interests revert to the participant upon the alternate payee's death, the alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance or by designation of a beneficiary.

In the event the Alternate Payee predeceases Payee:
Alternate Payee's rights and interests survive his/her death; OR
Alternate Payee's interest shall revert to payee.

5. EFFECT

This order is subject to review by the Montana Public Employees' Retirement Board and is only effective upon the Board's approval.* Alternate Payee's rights and interests established in this Order may be modified only by a subsequent Family Law Order amending this one.

*The FLO may not be effective any earlier than the date the FLO is received by the MPERA. A FLO cannot be made retroactive. If the participant is a retired member receiving a benefit, the FLO cannot be effective earlier than the first of the month following receipt by the MPERA. Also, as per the IRS, MPERA is required to separately account for the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a FLO. MPERA will separate the alternate payee's share as defined in the FLO until the FLO is approved.

Each FLO establishing a final obligation concerning payments by MPERA must contain a statement that the order is subject to review and approval by the Public Employees' Retirement Board. The Order will only be a Family Law Order on approval by the Public Employees' Retirement Board.

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Appendix A

FAMILY LAW ORDER REQUIREMENTS SAMPLE CHECKLIST

To be approved as a Family Law Order (FLO), the judgment, decree or order must incorporate the following information:

Type of Disposition:

- Statement that the FLO is a disposition of:
 - child support;
 - parental support;
 - spousal maintenance; or
 - marital property
- under Title 40 of the Montana Code and in compliance with 26 USC 414(p).

Section 1: The Parties

A. Participant:

- Name of the Participant and their retirement system

Status of the Participant:

- active member
- inactive member
- benefit recipient
- potential benefit recipient
- survivor
- contingent annuitant

Participant's Demographics:

- Address of Participant
- Social Security Number of Participant - can be sealed
- Birth Date of Participant - can be sealed

B. Alternate Payee:

- Name of the proposed Alternate Payee
- Address of Alternate Payee
- Social Security Number of Alternate Payee - can be sealed
- Birth Date of Alternate Payee - can be sealed

Section 2: Rights to Monetary Payments

Optional delineation of rights transferred to the Alternate Payee may be no greater than member's rights under the retirement system.

A. Refund of accumulated contributions (upon Participant's termination from the system) apportioned to alternate payee as a:

- percentage of accumulated contributions; or
- dollar sum certain (equal to or less than accumulated contributions)

B. Monthly allocation of payments of retirement benefits (must be limited to life of participant(s) receiving benefits):

- percentage of payment; or
- apportioned dollar amount; or
- Sum certain (no post-retirement adjustments or cost of living adjustments.)

C. Disability or Survivor Benefit payments:

- The maximum amount of disability or survivorship benefits that may be apportioned to an alternate payee is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. (Include this statement in FLO for clarification where pertinent.)
- The FLO provides direction for the payment of benefits to the Alternate Payee in case the member's service is terminated on account of disability or death before retirement.

D. HPORS or MPORS participants may elect DROP, therefore FLO must specify the Alternate Payee's rights to the DROP account, if any.

NOTE: Specify if member should return to work and earn a second retirement in the same system, whether the Alternate Payee will receive a proportion of second retirement.

E. Increases:

- If the Alternate Payee is entitled to a percentage of the Participant's benefit, the FLO specifies whether payments include any cost of living or future increases.

SECTION 3: Designation of Beneficiary(ies) for receipt of any available death payments or lump sum payments:

- Upon the death of the participant before retirement
- After retirement when no benefit continues to another under law or by the participant's election

SECTION 4: Death of Alternate Payee:

- This section could state the limitations, if any, pursuant to §19-2-907(7), MCA, regarding alternate payee's death before payee's or before receiving any payment(s)

SECTION 5: EFFECT

States that the order is subject to review by the Board and is only effective upon the Board's approval. Also states that the Alternate Payee's right and interests in this order may be modified only by a subsequent FLO amending this one.

Appendix B

FAMILY LAW ORDER STATUTE

19-2-907. Alternate payees -- family law orders -- rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p); and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) Except as provided in subsection (6)(a), a family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(5), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments unless the family law order specifies that the alternate payee is not entitled to benefit adjustments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. The alternate payee's portion must be totally disbursed to the alternate payee as soon as administratively feasible upon the board's approval of the family law order.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. Unless a family law order specifies the alternate payee's rights and interests revert to the participant upon the alternate payee's death, the alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance or by designation of a beneficiary.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders.

Appendix C

FAMILY LAW ORDER ADMINISTRATIVE RULES

2.43.3001 FAMILY LAW ORDERS -- GENERAL REQUIREMENTS (1) Upon request, MPERA will provide a checklist of mandatory and optional family law order (FLO) provisions.

(2) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.1405, and policies adopted by MPERA and the board.

(3) Except with respect to the DCRP, an account cannot be established for an alternate payee in a retirement system or plan.

(4) A FLO may not force a member to:

- (a) terminate employment;
- (b) retire from employment; or
- (c) belong to a specific retirement system or plan.

(5) Upon receipt of a certified copy of a stay from the issuing court or the Montana Supreme Court, MPERA and the board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, MPERA will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant's full benefit. MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, MPERA will proceed with consideration, approval, and implementation procedures.

(6) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a FLO. If a proposed FLO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(7) The administrative cost, if any, of a FLO will be billed to the party filing the proposed FLO with the board, unless another party is designated in the FLO to pay the cost. Amounts owing may be offset against payments to be received by the appropriate party.

(8) An alternate payee may receive monthly benefit payments by electronic fund transfer upon submission of a properly executed form required by MPERA.

(9) An alternate payee must promptly inform MPERA of any change of name or address.

2.43.3008 FAMILY LAW ORDERS – CONTENTS AND DURATION FOR DEFINED BENEFIT PLANS

(1) Pursuant to this rule and ARM 2.43.3009, the board will accept and apply family law orders (FLOs) in the PERS DBRP, and the JRS, SRS, GWPORS, HPORS, MPORS, and FURS.

(2) Specific designations of a participant(s) in a FLO may include:

- (a) for all systems and plans listed in (1), an individual "member" (active, inactive, or retired);
- (b) for the PERS DBRP, or JRS, SRS, and GWPORS, "primary" and "contingent beneficiaries" eligible to receive a lump sum payment and "contingent annuitants"; and
- (c) for HPORS, MPORS, and FURS, "survivors" and "designated beneficiaries" who are eligible to receive lump sum payments.

(3) FLOs for participants who are in more than one retirement system, choose to be in a DROP, or are eligible for multiple monthly benefit payments from the same retirement system must specify the benefit or benefits to which the FLO applies. If a benefit is not included in a FLO, it is not subject to distribution pursuant to the FLO.

(4) A FLO may specify a future effective date provided:

- (a) a FLO may not be effective any earlier than the date the FLO is received by MPERA;
- (b) if the participant is a benefit recipient, the first monthly benefit payment that may be divided is the first

benefit payment following the month MPERA receives the FLO; and

(c) a FLO may not provide for payments to an alternate payee prior to the date on which the participant first receives a payment from the retirement system or plan.

(5) Unless otherwise specified in the FLO, payments to an alternate payee will continue only while the participant is receiving payments. The FLO may further limit payments to:

- (a) the life of the participant whose payment rights are being transferred;
- (b) a specified maximum time;
- (c) the life of the alternate payee; or
- (d) the life of a designated participant.

(6) The two basic types of payments allowed to alternate payees are:

(a) A "defined sum" must designate a specific total dollar amount to be paid to the alternate payee in the form of a fixed dollar amount payable for a designated maximum number of months. If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid until the alternate payee receives the specific total dollar amount. If the defined sum cannot be divided evenly by the number of payments or monthly amount, any odd amount will be paid in the first payment. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events. Payments will cease when the defined sum is paid or when payments from the account end.

(b) A FLO may order "proportionate payments" by designating either a fixed percentage or a formula describing how to calculate the percentage. The fixed percentage must be expressed as a specific percentage or as a fraction for which the numerator and denominator are indicated. A formula calculating a fixed percentage may use months, years, or dollar amounts to establish a proportionate benefit.

2.43.3009 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION FOR DEFINED BENEFIT PLANS

(1) A participant or alternate payee must submit a certified copy of a family law order (FLO) to the MPERA for board approval. The board has delegated authority for approval to the executive director of MPERA.

(2) All FLOs must be applied prospectively and may only allocate future payments. However, a FLO may include procedures for collecting retroactive amounts from future payments.

(3) For purposes of allocating a lump sum payment, the FLO must be received before the payment is mailed or otherwise conveyed to the participant.

(4) If a member requests a refund, the MPERA will notify the alternate payee. The alternate payee may request a direct payment or may roll the payment over to another eligible plan. Within 60 days of the date of notification, the alternate payee must inform MPERA of his or her choice and if necessary, provide any information for a rollover to MPERA. Otherwise a direct payment will be made to the alternate payee after 60 days.

(5) Beginning on the effective date, payments to the participant, if any, will be adjusted as directed in the FLO and payments to the alternate payee(s), if any, will be retained by the MPERA. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant.

(6) The board's decision to approve or not approve a FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within 10 days from the date the MPERA sends notice of the decision. If an administrative hearing is properly requested, the board must make the final administrative decision after receiving the hearing examiner's proposed decision.

2.43.4018 DISTRIBUTION OF DROP BENEFIT PURSUANT TO FAMILY LAW ORDER (1) A family law order (FLO) may distribute all or a portion of a DROP participant's DROP benefit to an alternate payee. To do so, the FLO must specifically reference distribution of a DROP benefit and provide a specific method for determining the amount of the DROP benefit to be paid to the alternate payee.

(2) The alternate payee named in the FLO is entitled to the same distribution options available to the participant and as allowed by the IRS.

(3) A FLO may distribute all or a portion of a DROP participant's DROP benefit even if the participant joined the DROP subsequent to approval of the FLO.

(4) A FLO that does not specifically address a DROP benefit will not be considered to distribute any portion of the payee's DROP benefit to an alternate payee.

2.43.4618 DISTRIBUTION OF DROP BENEFIT PURSUANT TO FAMILY LAW ORDER (1) A family law order (FLO) may distribute all or a portion of a DROP participant's DROP benefit to an alternate payee. To do so, the FLO must specifically reference distribution of a DROP benefit and provide a specific method for determining the amount of the DROP benefit to be paid to the alternate payee.

(2) The alternate payee named in the FLO is entitled to the same distribution options available to the participant and as allowed by the IRS.

(3) A FLO may distribute all or a portion of a DROP participant's DROP benefit even if the participant joined the DROP subsequent to approval of the FLO.

(4) A FLO that does not specifically address a DROP benefit will not be considered to distribute any portion of the payee's DROP benefit to an alternate payee.

(5) A FLO cannot specifically require or forbid that the payee participate in the DROP.

(6) To distribute any portion of a participant's DROP benefit, a FLO approved prior to the enactment of the DROP legislation (May 1, 2001) must be amended to specifically address the DROP benefit.

(7) A DROP benefit cannot be distributed pursuant to a FLO until the DROP participant terminates employment.