

# **SHEET METAL WORKERS LOCAL UNION NO. 218(S) PENSION PLAN QUALIFIED DOMESTIC RELATIONS ORDER PROCEDURES**

## **Introduction**

By adopting these Qualified Domestic Relations Order (“QDRO”) procedures, the Board of Trustees of the Sheet Metal Workers Local Union No. 218(S) Pension Plan (“Fund” or “Plan”) revokes all previous rules and regulations relating to QDROs. The Board of Trustees also allocates to the Fund’s Third-Party Administrator the administrative/ministerial duties and responsibilities for implementing and maintaining these procedures, reviewing domestic relations orders and processing QDROs according to these procedures. This allocation is made pursuant to and in accordance with the provisions of the Fund. The Board of Trustees, however, retains the final authority regarding these QDRO procedures.

The Fund is a multiemployer, defined benefit plan administered by the Board of Trustees consisting of two (2) Employer Trustees and two (2) Union Trustees. Applicable law generally provides that a Participant’s benefits are not subject to assignment or alienation, whether voluntary or involuntary; however, a qualified domestic relations order creates or recognizes the existence of an “Alternate Payee’s” right to, or assigns the right to, receive all or a portion of the Participant’s benefits under a plan. The federal statutory requirements for a QDRO may be found both in the Employee Retirement Income Security Act (“ERISA”) (29 U.S.C. §1056(d)) and in the Code (26 U.S.C. §414(p)).

The Fund will comply with the terms of a domestic relations order only if the order meets the requirements for a QDRO, as established by law and explained in these procedures. Parties seeking a QDRO may not rely on the Fund’s Third-Party Administrator for advice on which type or form of QDRO is most appropriate under any particular factual situation. The Fund will provide only factual information concerning a Participant’s benefits. The parties should consult with their legal advisors regarding specific legal requirements for a QDRO.

## **Procedures for Reviewing Domestic Relations Orders**

These written procedures are established and maintained in accordance with the Employee Retirement Income Security Act of 1974 as amended by the Retirement Equity Act of 1984. These procedures are used to assist in determining whether a domestic relations order is qualified and to provide basic notice and information to affected parties.

1. An Alternate Payee may designate a representative for receipt of notices with respect to the domestic relations order affecting the Alternate Payee.
2. A Participant, Alternate Payee, or legal counsel must advise the Fund of the identity and addresses of all attorneys involved in the domestic relations matter.
3. Upon receipt of a proposed or entered court order (“Order”), the Fund shall send the Participant and the Alternate Payee (or their designated representatives) a notice stating that it has received the Order and a copy of these procedures.

4. The Fund will determine the “qualified” status of the Order. An Order will only be qualified as a QDRO if it meets the following criteria:

- a. The Order, or a confidential supplement to the Order, clearly states the name, date of birth, Social Security number, and mailing address of the Participant and each Alternate Payee covered by the Order. The Fund encourages the parties to include dates of birth and Social Security numbers in a confidential supplement to the Order.
- b. The Order clearly specifies the amount or percentage of the Participant’s benefits to be paid by the Fund to each such Alternate Payee, or the manner in which such amount or percentage is to be determined (and the period of marriage if the amount or percentage of benefit relates thereto). Further, the Order must clearly specify whether it is a separate interest or shared payment Order, or be readily identifiable as either a separate interest or shared payment Order.
- c. The Order clearly specifies the number of payments or period of time to which such order applies.
- d. The Order clearly specifies that the Order applies to the Sheet Metal Workers Local Union No. 218(S) Pension Plan.
- e. That the Order does not require:
  - i. The Fund to provide any type or form of benefit, or any option not otherwise provided for in the Plan Document;
  - ii. The Fund to provide increased benefits (determined on the basis of actuarial value); or
  - iii. The payment of benefits to any Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a QDRO.
- f. That the Fund is authorized to recover any overpayments made to an Alternate Payee because the Alternate Payee, or the Alternate Payee’s heirs or estate, failed to notify the Fund of a change of circumstance which affects his or her entitlement, which provision shall be binding upon the Alternate Payee and his or her heirs, and/or estate.

5. In the event that the Fund receives a court-entered order pertaining to a Participant who is in pay status, the Fund will withhold from the Participant’s benefit and segregate the amounts that the Order states shall be awarded to the Alternate Payee for up to 18 months from the date the first payment would be required to be made under the Order pending determination of the qualified status of the Order and, if necessary, subsequent receipt of a QDRO. The Fund, however, will only withhold and segregate amounts that can be reasonably ascertained from the Order and the segregation of which would not violate the terms of the Fund’s Plan Document or applicable law. The Participant and the Alternate Payee, or their designated representatives, shall be advised of this action on the initial notice provided for in paragraph 3 of these procedures. If the Order is determined to be a QDRO, the withheld amounts will be released to the Alternate Payee upon qualification and after receipt of a certified copy of a QDRO. If the Order, or any subsequent Order

submitted by the parties within 18 months of the date on which the first payment would be required to be made under the Order, does not satisfy the requirements to constitute a QDRO, then any amounts withheld pursuant to this paragraph will be released to the Participant. Any Order that is determined to be a QDRO after the expiration of the 18-month period set forth shall be applied prospectively only.

6. In order to commence receiving benefits after an Order has been entered by a court and qualified by the Fund, an Alternate Payee must request from and submit to the Fund an application for benefits.

7. An Alternate Payee must keep the Fund fully advised of any and all changes in name and mailing address.

8. Notwithstanding any of the foregoing, a QDRO may allow the Fund to make benefit payments to an Alternate Payee even though the Participant has not separated from service:

- a. On or after the date on which the Participant attains (or would have attained) the earliest retirement age at which he or she could elect to receive payments from the Fund; and
- b. As if the Participant had retired on the date on which such payment is to begin under the Order (but taking into account only the present value of benefits actually accrued).

9. Payments to the Alternate Payee may be made after the death of the Participant for the life of the Alternate Payee if:

- a. The QDRO provides that the former spouse of the Participant will be treated as a surviving spouse of such Participant for purposes of ERISA's joint and survivor rules. The QDRO must be specific in this regard and must state, in detail, the precise rights of the former spouse and the fact that benefits are actuarially reduced to recognize the fact that joint and survivor benefits are contemplated. To be eligible for a joint and survivor annuity, the spouse and the Participant must have been married for at least one year. Further, unless clearly specified, the Alternate Payee's entitlement to a joint and survivor annuity will be limited to the percentage interest the Alternate Payee is granted in the Participant's benefit. Finally, a QDRO shall not require the Fund to disregard a prior waiver of joint and survivor benefits consented to by the Alternate Payee; or
- b. The QDRO provides that the former spouse of the Participant will be entitled to an annuity based on the life expectancy of the former spouse, rather than that of the Participant. If a QDRO so provides, the former spouse's share of benefits is actuarially adjusted to reflect his or her own life expectancy.

10. If the Fund determines that the Order is qualified, it will notify the Participant and the Alternate Payee (or their designated representatives) of this determination and the manner in which the Fund will apply the QDRO.

11. If the Order is determined not to be a QDRO, the Fund shall notify both the Participant and the Alternate Payee (or their designated representatives) of this determination and the reason(s) why the Fund determined that the Order is not qualified.

12. If any interested person disputes the Fund's determination that a domestic relations order is not a QDRO or disputes the Fund's interpretation of the QDRO's provisions, such person must file a written request for review with the Fund within sixty (60) days of the date of the determination letter. The request for review should set forth the following:

- a. A statement of the ground(s) for the request for review;
- b. Specific reference to the pertinent provision or provisions of the Fund's Plan Document, ERISA, or the Code on which the request for review is based;
- c. A statement of the argument(s) and authority (if any) supporting each ground for the request for review; and
- d. Any other pertinent documents or comments which the person desires to submit in support of the request for review.

13. Within a reasonable time after an interested person files a timely request for review, the Fund shall notify all interested persons of the request.

14. During the sixty (60) day appeal period, the Alternate Payee will not be permitted to commence his/her benefits. Upon the expiration of the appeal period, if neither party (nor their representative) has disputed the interpretation of the QDRO in writing, the QDRO will be administered in accordance with the Fund's interpretation and the Alternate Payee may be eligible to commence benefits, to the extent he/she is eligible under the terms of the Fund's plan of benefits. If the parties chose to expedite the payment of benefits to the Alternate Payee, they may waive their appeal rights, in writing, by mailing or faxing a letter signed by each party indicating they waive their appeal rights and do not dispute the Fund's interpretation of the QDRO. Once the Fund receives a written waiver signed by both parties, the Alternate Payee will be entitled to apply for immediate commencement of benefits, assuming he/she is otherwise entitled to do so in accordance with the terms of the QDRO and the Fund's plan of benefits.

15. If, within the sixty (60) day appeals period set forth above, one or both of the interested persons disputes the Fund's determination that a domestic relations order is not a QDRO or disputes the Fund's interpretation of the QDRO's provisions, they will have ninety (90) days from the date the Fund issues its determination upon review to submit an amended QDRO that clarifies the intent of the interested persons. If an amended QDRO is not submitted by the end of the ninety (90) day period, or an agreement otherwise reached between the parties to extend the ninety (90) day period, the originally approved QDRO will be administered in accordance with its terms as set forth in the Fund's interpretation upon review. During this ninety (90) day period, the Alternate Payee will not be permitted to commence his/her benefits, to the extent otherwise eligible.

16. No Participant or Alternate Payee may commence legal action to challenge the determination of the status of domestic relations order, or the amount of benefits payable under the terms of the QDRO, until he or she has exhausted all review procedures provided in these QDRO procedures.