

**NEW YORK CITY DEFERRED COMPENSATION PLAN
(NYCDCP)**

**DOMESTIC RELATIONS ORDER
PROCEDURES**

Effective December 8, 2015

This booklet is designed to assist the parties involved in a divorce, separation or dissolution of marriage and their attorneys or Domestic Relations Order (DRO) preparers in dispositions of marital property and interests in the plans described below. The New York City Deferred Compensation Plan (“the Plan”) is governed by the applicable plan documents and by the Internal Revenue Code of 1986, as amended (the “Code”) Sections 457(b), 401(k), 401(a), 408(q) and 414(p). The information provided is not intended to provide legal or tax advice. This booklet applies to the following plans:

- The 401(a) Plan for Employees of the City of New York and Related Agencies and Instrumentalities;
- The 401(k) Plan for Employees of the City of New York and Related Agencies and Instrumentalities; and
- The Deferred Compensation Plan for Employees of the City of New York and Related Agencies and Instrumentalities (457 Plan)

A DRO cannot require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan. At times, retirement benefits do not have to be split due to a divorce. For instance, retirement benefits do not have to be divided if the Participant and spouse agree to exchange other assets instead of splitting the retirement benefits. Since the dividing of marital assets takes many forms, there is no requirement that Plan benefits be split upon divorce.

Please Note: This booklet does not constitute the offering of investment, financial, tax or legal advice or other expert advice. The material contained in this booklet is for informational purposes only. You may wish to consult an investment advisor, legal counsel or other expert before reaching any decisions.

This booklet will be periodically updated as necessary.

You may reach the NYCDPCP at:

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Bowling Green Station
P.O. Box 93
New York, NY 10274-0093

Street Address: New York City Deferred Compensation Plan
Customer Service Center
22 Cortlandt Street
12th Floor
New York, NY 10007

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I. DOMESTIC RELATIONS ORDER OVERVIEW

A. What is a Domestic Relations Order?

A Domestic Relations Order (“DRO”), also known as a Conforming Equitable Distribution Order (“CEDO”), is a court order, judgment, or decree issued under a state's domestic relations law. It recognizes the right of the following individuals (referred to as "Alternate Payees") to receive all or part of the Participant's account balance or accrued benefit in an employer retirement plan:

1. Spouse
2. Former spouse
3. Child
4. Other dependent of the Participant

In order for the Plan to separate a Participant’s assets in the event of a divorce, it is necessary for the Plan to receive a **certified DRO** (a court order that is signed by a judge and certified by the clerk of the court) detailing how the Participant’s assets are to be separated. The Plan will separate the assets in the manner described in the DRO, provided that the Plan is able to comply with the order. The assets that the Alternate Payee is entitled to will be transferred into a separate account established under the Plan in the Alternate Payee’s name (see page 3).

Judgments of Divorce (JODs) and Stipulations of Settlement are insufficient in and of themselves to separate the assets. The Plan can only separate a Participant’s assets when it is served with a certified DRO.

B. Release of Plan Information or the Participant's Specific Benefit Information

Prior to drafting a DRO, it may be necessary to obtain the Participant's specific account balance information, or provisions of the Plan (e.g. distribution options, beneficiary provisions, etc.). Specific information regarding the Participant's benefits can be released to a party involved in a domestic relations matter provided that the Plan receives:

1. A signed statement from the Participant authorizing the Plan to release the information;
OR
2. A court document that legally requires the Plan to provide a party with the Participant’s account information (e.g. subpoena, joinder).

II. DRO CREATION

A. Introduction: Steps for Creating a DRO

Dividing retirement benefits in domestic relations proceedings involves complex matters such as marital rights, legal issues, and tax consequences. You may first want to consult with an attorney or DRO preparer to best handle your case.

There are many ways to draft the terms of a DRO. Refer to the steps below (using the model language form as a guide) to complete a draft DRO that meets the Plan's requirements. The Plan's model language form is acceptable for a DRO, if the required information is accurately completed by the DRO preparer.

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B. DROs: Requirements and Sample Language

The following guidelines are designed to assist the DRO preparer in creating a domestic relations order that would be acceptable to the Plan. Attached as **Exhibit A** is sample language for a DRO. The sample language provided may need to be revised to align with a particular agreement's specifications. Please note that, if the Participant has more than one account with the Plan, (e.g. a 401(k) and a 457 account), then a separate DRO is required for **each** account.

The Plan recommends that the DRO preparer submit a draft DRO to the Plan **prior to** submitting the DRO to the court for certification. Please note that a Participant's account will be restricted upon receipt of a draft DRO by the Plan (see pg. 4). In the event that the Plan cannot comply with a certified DRO, the certified DRO may be returned to the DRO preparer for revision due to noncompliance with the Plan's requirements.

- Note: The term "qualified" should not be used to describe a domestic relations order that is directed toward the Plan or any section thereof. Since the Plan is a governmental plan, it is not subject to the "qualified domestic order" provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

In order for a DRO to meet the Plan's requirements, it must contain all of the following:

1. Name of the Plan

The DRO preparer must clearly identify the Plan's name in the DRO itself.

- The following language must serve as the **opening** paragraph of the order:

This order is directed to the Deferred Compensation Plan & NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities.

- The following language must serve as the **second** paragraph of the order:

The Deferred Compensation Plan & NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities is hereinafter referred to as "the Plan."

2. Participant/Alternate Payee Information

- The order must include the account holder's name. The account holder shall be referred to as "Participant."
- The order must include the name of the individual who is entitled to the participant's assets. This individual shall be referred to as the "Alternate Payee."
- The order must include the current and last known mailing address, the Social Security number and the date of birth for each party named in the order.
- The order must include a statement asserting that neither the Participant nor the Alternate Payee are currently members of the military in this country or any other country or territory. (See **Exhibit A**)

3. Award Paragraph

In order to establish a separate account under the Plan for the Alternate Payee, the order must contain specific language specifying how the amount that is to be transferred from the Participant's account into the separate account established for the Alternate Payee should be calculated. This language must be contained in the award paragraph.

Based on the award paragraph contained in the order, the Plan will establish a separate account under the Plan for the Alternate Payee in his/her own name, using proceeds from the Participant's account. The award proceeds will only be transferred into the Alternate Payee's separate account under the Plan.

The award paragraph must include the following:

- Award language must include a determinable portion of the Plan Participant's account payable to the Alternate Payee (expressed as either a dollar amount or percentage) as of a specified date. See **Exhibits A and B**.
- Award language must specify that a separate account must be established under the Plan for the Alternate Payee. See **Exhibits A and B**.

The award paragraph may include the following:

- Inclusion of language pertaining to market fluctuations or investment gains and losses is optional per the stipulated agreement or settlement. Acceptable award paragraph language is attached as a sample in **Exhibit B**.
- Acceptable loan language is included in **Exhibit B**. Any language referring to loans taken by a Participant against a 457 or 401(k) account may be included in the award paragraph per the guidelines in **Exhibit B**.

If the Alternate Payee is entitled to an award from a Participant's 457 account, the Plan can only establish a 457 account for the Alternate Payee with proceeds from that account. Similarly, if the Alternate Payee is entitled to an award from a Participant's 401(k) account, the Plan can only establish a 401(k) account for the Alternate Payee with proceeds from that account.

Alternate Payees will not be required to withdraw their funds from the Plan, or to transfer funds to another employer plan or IRA upon receipt of the award. Alternate Payees will be able to maintain their account with the Plan at their option and will be allowed flexibility with respect to withdrawing funds in accordance with the Plan's rules. Alternate Payees will also have the option of rolling over their award proceeds into their own employer plan or IRA, but only after their separate account is established under the Plan.

4. Required Ordered Paragraphs

All orders submitted to the Plan must contain the following paragraphs at the end of the DRO (see **Exhibit A**):

- ORDERED, that nothing contained in this order shall, in any way, require the Plan to provide any form, type or amount of benefits not otherwise available by law; and it is further
- ORDERED, that the Plan shall have no obligation or responsibility as a consequence of this action apart from the specific direction contained in this order; and it is further
- ORDERED, that in the event of a change of address of said Alternate Payee, the Alternate Payee shall immediately notify in writing the Plan at 22 Cortlandt Street, 28th Floor, New York, New York 10007; and it is further
- ORDERED, that this order shall not require the Plan to pay any benefits to the Alternate Payee, including a spouse, which are required to be paid to another alternate payee; and it is further
- ORDERED, that this Order is applicable solely with respect to the interest of the Alternate Payee and Participant named herein under the Plan; and it is further
- ORDERED, that this order is deemed appropriate to effectuate division of the benefits earned by the Participant pursuant to his participation in the Plan; and it is further
- ORDERED, that taxes shall be withheld from any distributions to the Participant and the Alternate Payee, and reported for tax purposes, in accordance with the applicable laws in effect at the time of distribution; and it is further
- ORDERED, that the Court retains jurisdiction over this matter to enter such further orders as are necessary to enforce the assignment of benefits to the Alternate Payee as set forth herein; and it is further
- ORDERED, that the Alternate Payee has a marital property or equitable distribution interest in the Participant's contractual right to receive Deferred Compensation as provided by the Plan. In the event that the Participant makes any type of withdrawal that causes the account balance to fall below the amount awarded to the Alternate Payee, the Participant shall be responsible for reimbursing the Alternate Payee for any shortfall, directly to the Alternate Payee, from the Participant's own separate assets. In no event shall the Plan be responsible for reimbursing the Alternate Payee for any shortfall including, but not limited to, any shortfall arising out of market fluctuation.

C. Certified Copies of DROs

A court-certified domestic relations order is signed or stamped by a judge or other court official and has a stamp or seal from the clerk of the court stating that the order is a certified copy. The Plan must receive a certified copy of the DRO in order to separate a Participant's account and process the award for the Alternate Payee. A photocopy or a faxed copy of a court-certified order is not acceptable under the Plan's requirements.

III. DRO PROCESSING

A. Placement of Restrictions on a Participant's Account(s)

Upon receipt of a draft DRO, the Plan will automatically place a restriction on the Participant's account(s). The Plan will also place a restriction on a Participant's account if required to do so by a court order. None of the following account activities will be allowed by the Participant during the restriction period:

1. Distributions.
2. Loans.
3. Withdrawals.

However, during the restriction period, the Participant will be permitted to make contributions to the Plan, make investment changes, and change beneficiary designations.

B. Removal of Restrictions on a Participant's Account(s)

A restriction on a Participant's account will be removed if one of the following events occur:

1. If the Plan receives a certified DRO with which it is able to comply, the Plan will separate the account(s) for the Alternate Payee in accordance with the certified DRO and remove the restriction;
2. If the Plan receives a Stipulation of Settlement, which states that the Alternate Payee waives his/her rights to the Participant's account(s) under the Plan or that the Participant is entitled to 100% of his/her account(s) under the Plan;
3. If the Plan receives a waiver, signed by the Alternate Payee, stating that the Alternate Payee waives his/her rights to the Participant's account(s);
OR
4. If more than **twenty-four (24)** months have elapsed from the **date** that the Plan received the **initial draft DRO**, then the restriction will be removed at the **Participant's request**. This means that, if the DRO preparer does

not submit a certified order to the Plan within twenty-four (24) months of submitting the draft DRO, then the Participant may request to have the restriction removed from his/her account(s) after the twenty-four (24) months have elapsed.

C. Processing the Award Specified in the Certified DRO

Once the Plan receives the certified DRO, the Plan will separate the account according to the award paragraph. This process may take approximately 3-4 weeks. After the account is established for the Alternate Payee, confirmation letters will be sent to both the Participant and Alternate Payee stating the amount that was transferred into the Alternate Payee's account and that the Plan will no longer contact them regarding this matter. The parties may choose to contact the Plan on their own accord should they need assistance with managing their account, changing beneficiaries, changing addresses, etc.

D. Additional Information After the Plan Has Processed a DRO

If you are a **Participant**, please note the following:

- The division of the account is not a taxable event to the Participant.

If you are an **Alternate Payee**, please note the following:

- The division of the account is not a taxable event to the Alternate Payee, however, taxes shall be withheld from any distributions to the Alternate Payee, and reported for tax purposes, in accordance with the applicable laws in effect at the time of distribution.
- The Alternate Payee may maintain his or her newly established account with the Plan. The Alternate Payee may designate beneficiaries to the account and make investment changes. The Alternate Payee's account will incur any applicable administrative or investment management fees while funds remain in the Plan.
- The Alternate Payee cannot make contributions to any account, nor can the Alternate Payee take a loan from the account. However, the Alternate Payee can roll over their outside retirement assets into the Deferred Compensation Plan account that was established for them under the Plan.
- The Alternate Payee is not subject to early withdrawal penalties for the 401(k) account, if withdrawing funds prior to age 59 1/2, in accordance with Code Section 72(t)(2)(C).
- The Alternate Payee is not subject to early withdrawal penalties for the 401(a) account, if withdrawing funds prior to age 62, in accordance with Code Section 72(t)(2)(C).
- The Alternate Payee will not be subject to early withdrawal penalties for the 457 account.

- The Alternate Payee may elect to leave his/her account(s) in the Plan up until the date that the Participant turns age 70 ½. At that point, the Alternate Payee would have to begin taking required minimum distributions.
- After a separate account is established for the Alternate Payee under the Plan, the Alternate Payee will have the option of rolling their account funds out of the Deferred Compensation Plan into their own separate employer plan or IRA.

Exhibit A

Note: This exhibit does not constitute the offering of investment, financial, tax or legal advice or other expert advice.

SAMPLE DOMESTIC RELATIONS ORDER
(This sample is effective December 1, 2015)

At an IAS Term Part _____ of the Supreme Court of the State of New York, held in and for the County of (county where divorce was issued), at the Courthouse thereof located (street address where the court is located) on _____, _____.

P R E S E N T:

Justice Supreme Court

-----X

Plaintiff,

-against-

Index No.

DOMESTIC RELATIONS ORDER

Defendant,

-----X

This order is directed to the Deferred Compensation Plan & NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities.

The Deferred Compensation Plan & NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities is hereinafter referred to as the "Plan."

John Doe is hereinafter referred to as "Participant".

Jane Doe is hereinafter referred to as "Alternate Payee".

The current and last known mailing address of the Participant is _____.

The Social Security number of the Participant is _____ and the Participant's date of birth is _____.

The current and last known mailing address of the Alternate Payee is _____.

The Social Security number of the Alternate Payee is _____ and the Alternate Payee's date of birth is _____.

The Alternate Payee is not in the military service in this country or in any other country or territory.

The Participant is not in the military service in this country or in any other country or territory.

Date of marriage

Date of commencement of divorce

Date of separation agreement (choose one) or stipulation of settlement

[Please select the applicable paragraph below, indicating either 457 or 401(k) where applicable. Separate orders are required if the Plan is to establish both a 457 and 401(k) account.]

ORDERED, that the Plan Administrator shall establish a separate 457 or 401(k) (choose one) account payable in the name of the Alternate Payee, in the amount of \$_____ of the Participant's 457 (choose one) 401(k) account balance or 100% of the account value, if the account value is less than \$_____ as of the date the account is established. The aforesaid amount shall be transferred to said account in the name of the Alternate Payee from the Participant's account under the Plan; and it is further

OR

ORDERED, that the Plan Administrator shall establish a separate 457 or 401(k) (choose one) account in the amount of _____% of the Participant's contributions to the 457 (choose one) 401(k) from _____ (date of marriage) to _____ (commencement of the action), together with earnings and/or losses, as determined by the Plan, from the date of marriage until such time as the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of the Alternate Payee from the Participant's account under the Plan; and it is further

OR

ORDERED, that the Plan Administrator shall establish a separate 457 or 401(K)(choose one) account in the amount of _____% of the participant's 457 or 401(K)(choose one) as of (the valuation date) together with earnings and/or losses from (the valuation date) until such time as the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of the Alternate Payee from the Participant's account under the Plan; and it is further

ORDERED, that nothing contained in this order shall, in any way, require the Plan to provide any form, type or amount of benefits not otherwise available by law; and it is further

ORDERED, that the Plan shall have no obligation or responsibility as a consequence of this action apart from the specific direction contained in this order; and it is further

ORDERED, that in the event of a change of address of said Alternate Payee, the Alternate Payee shall immediately notify in writing the Plan at 22 Cortlandt Street, 28th Floor, New York, New York 10007; and it is further

ORDERED, that this order shall not require the Plan to pay any benefits to the Alternate Payee, including a spouse, which are required to be paid to another alternate payee; and it is further

ORDERED, that this order is deemed appropriate to effectuate division of the benefits earned by the Participant pursuant to his participation in the Plan; and it is further

ORDERED, that taxes shall be withheld from any distributions to the Participant and the Alternate Payee, and reported for tax purposes, in accordance with the applicable laws in effect at the time of distribution.

ORDERED, that the Alternate Payee has a marital property or equitable distribution interest in the Participant's contractual right to receive Deferred Compensation as provided by the Plan. In the event that the Participant makes any type of withdrawal that causes the account balance to fall below the amount awarded to the Alternate Payee, the participant shall be responsible for reimbursing the Alternate Payee for any shortfall, directly to the Alternate Payee, from the Participant's own separate assets. In no event shall the Plan be responsible for reimbursing the Alternate Payee for any shortfall including, but not limited to, any shortfall arising out of market fluctuation.

E N T E R:

J.S.C.

Exhibit B

Note: This exhibit does not constitute the offering of investment, financial, tax or legal advice or other expert advice.

Acceptable Award Paragraphs

Below are samples of award paragraphs that are acceptable to the Plan. Please note that these are only samples and that the below language is not the only language that is acceptable to the Plan.

ORDERED, that the Plan Administrator shall establish a separate 457/401(k) *[Specify one type of account only. Two separate orders will be required if the Participant has both a 457 and a 401(k) account to be divided]* payable in the name of the Alternate Payee, in the amount of \$_____ of the Participant's 457/401(k), together with earnings and/or losses from *[date of valuation]* until the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of Alternate Payee from the Participant's Plan account; and it is further

OR

ORDERED, that the Plan Administrator shall establish a separate 457/401(k) *[Specify one type of account only. Two separate orders will be required if the Participant has both a 457 and a 401(k) account to be divided]* payable in the name of the Alternate Payee, in the amount of \$_____ of the Participant's 457/401(k) as of the date the account is established, or if the account value is less than \$_____ as of the date the account is established, then 100% of the account value. The aforesaid amount shall be transferred to said account in the name of the Alternate Payee from the Participant's account under the Plan; and it is further

OR

ORDERED, that the Plan Administrator shall establish a separate 457/401(k) *[Specify one type of account only. Two separate orders will be required if the Participant has both a 457 and a 401(k) account to be divided]* in the name of the Alternate Payee, in the amount of _____% of the Participant's 457/401(k) as of *[date of valuation]*, together with earnings and/or losses until such time as the account is established in the name of Alternate Payee. The aforesaid amount shall be transferred to said account in the name of Alternate Payee from the Participant's account under the Plan; and it is further

OR

ORDERED, that the Plan Administrator shall establish a separate 457/401(k) *[Specify one type of account only. Two separate orders will be required if the Participant has both a 457 and a 401(k) account to be divided]* in the name of the Alternate Payee, in the amount of _____% of the Participant's 457/401(k) as of *[date of valuation]*, together with earnings and/or losses from *[date of valuation]* until such time as the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of Alternate Payee from the Participant's account; and it is further

OR

* For Orders involving premarital assets and marriages taking place after July 1, 1994*

ORDERED, that the Plan Administrator shall establish a separate 457/401(k) [*Specify one type of account only. Two separate orders will be required if the Participant has both a 457 and a 401(k) account to be divided*] in the name of the Alternate Payee, in the amount of _____% of the Participant's contributions 457/401(k) account from [*date of marriage*] to [*commencement of divorce/valuation date*], together with earnings and/or losses, from [*date of marriage*] until such time as the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of Alternate Payee from the Participant's account under the Plan; and it is further

OR

* PLEASE NOTE that the Plan cannot accept orders containing a marriage date prior to July 1, 1994. Any orders relating to parties married before that date must omit said date and read as follows*:

ORDERED, that the Plan Administrator shall establish a separate 457/401(k) [*Specify one type of account only. Two separate orders will be required if the Participant has both a 457 and a 401(k) account to be divided*] in the name of the Alternate Payee, in the amount of _____% of the Participant's contributions 457/401(k) account as of [*commencement of divorce/valuation date*], together with earnings and/or losses, until such time as the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of Alternate Payee from the Participant's account under the Plan; and it is further

Acceptable Loan Language
(to be included in the Award Paragraph)

If there were any loans outstanding against the Participant's account as of [*date of valuation*], the account balance shall be reduced by the outstanding loan balance prior to the calculation of the Alternate Payee's awarded amount under this Order.

OR

If there were any loans outstanding against the Participant's account as of [*date of valuation*], the account balance shall not be reduced by the outstanding loan balance prior to the calculation of the Alternate Payee's awarded amount under this Order.

If a Loan or Distribution was taken from the Account after the Valuation Date

Please include the following language in the Award Paragraph:

If the account value on the date that the account is separated is less than the amount awarded, then the Alternate Payee shall receive 100% of the account value.