

---

State of Michigan  
**QDRO Administration**

State of Michigan Deferred Compensation Plan I / 457  
State of Michigan Deferred Compensation Plan II / 401(k)

Model Language and Procedures

---

## TABLE OF CONTENTS

1. DEFINITION OF A DOMESTIC RELATIONS ORDER .....	2
2. QUALIFICATION REQUIREMENTS.....	2
2.1. General Qualification Requirements .....	2
2.2. Additional Requirements .....	3
1. Earnings (Gains and Losses).....	3
2. Loans.....	3
3. Distribution Options .....	3
4. Designation of Alternate Payee’s Beneficiaries .....	3
3. TAXES.....	4
4. PRE-QUALIFICATION OF AN ORDER.....	4
5. THE QDRO DETERMINATION PROCESS .....	4
5.1. Notice of Receipt .....	4
5.2. Restriction of Benefits .....	4
3. Removing Benefit Restrictions.....	5
4. Notification of Determination.....	5
5. Address .....	5
6. MODEL LANGUAGE.....	6

---

## **1. DEFINITION OF A DOMESTIC RELATIONS ORDER**

A Domestic Relations Order ("DRO") is a court order, judgment, or decree issued under a state's domestic relations law that recognizes the right of a spouse, former spouse, child, or other dependent of a Participant in an employee benefit plan to receive all or part of the Participant's benefit in the plan.

A Qualified Domestic Relations Order ("QDRO") is a DRO that has met the specific requirements mandated by federal law and the provisions of the Plan as determined by the Plan Administrator. A QDRO requires a qualified plan to pay all or any part of a Participant's benefits to an Alternate Payee. An Alternate Payee is a spouse, former spouse, or dependent of the Participant who is entitled to a portion of the Participant's benefits.

## **2. QUALIFICATION REQUIREMENTS FOR A QDRO**

### **2.1. GENERAL QUALIFICATION REQUIREMENTS**

The following list represents a synopsis of the requirements of IRC Section 414(p) as they apply to the State of Michigan Deferred Compensation Plan(s).

1. The order must clearly specify the name of the plan. The order must identify the name of the Plan as the State of Michigan Deferred Compensation Plan I / 457 or State of Michigan Deferred Compensation Plan II / 401(k).
2. Orders that require the State of Michigan to make a distribution to an Alternate Payee will be rejected. The order must specifically require the Plan to make distribution to an Alternate Payee. Orders that merely obligate the Participant cannot be accepted as a QDRO.
3. The order must specify an ex-spouse, spouse, child, or other dependent of the Participant as the Alternate Payee. Orders that require payments to be issued in the name of an attorney or official agency, or to any party other than a bona fide Alternate Payee, will be rejected.
4. The order must have been issued pursuant to state domestic relations law.
5. The order must contain the last known mailing address of the Participant and the Alternate Payee.
6. The order must clearly define the Alternate Payee's award. The order must award the Alternate Payee a dollar amount or percentage of the Participant's total vested account balance as of a specified current date of division.
7. The order cannot award benefits to an Alternate Payee in excess of the Participant's account balance as of the specified date of division. Nor can the order result in a distribution to the Alternate Payee of an amount exceeding the Participant's *vested* account balance as of the date of such distribution.
8. The order cannot award benefits to an Alternate Payee which have already been awarded to another Alternate Payee under a prior Qualified Domestic Relations Order.
9. The order cannot award a portion of any non-vested account balances.

10. The order cannot require the Plan to make a form of distribution to an Alternate Payee, or to take any other action not provided for by the Plan or permitted by law.

## **2.2. ADDITIONAL REQUIREMENTS**

### **1. Earnings (Gains and Losses)**

The order must clearly state whether or not the Alternate Payee's benefit will be adjusted for gains and losses from the effective date of the award through the date of distribution. If the order does not explicitly assign earnings, the Alternate payee's benefit will **not** be adjusted for gains and losses.

### **2. Loans**

When the order awards the Alternate Payee a specified percentage of the Participant's account balance, the order must indicate whether the percentage awarded includes or excludes any outstanding loan balance as of the date of division. For example, assume that a Participant's account balance as of the specified date of the award is \$12,000 and that there is an outstanding loan balance of \$8,000.

If the order awards the Alternate Payee 50% of the Participant's account balance *including* any outstanding loan balance, the Alternate Payee's award is \$10,000, 50% of (\$12,000 + \$8,000). Please note: The order cannot assign any obligation to pay the loan to the Alternate Payee.

Given the same balance information, if the order awarded the Alternate Payee 50% of the Participant's account balance *excluding* the outstanding loan balance, the Alternate Payee would receive a payment of \$6,000, (50% of the \$12,000 account balance.)

Also, at the date of distribution, the Alternate Payee's award may not exceed the Participant's current available account balance, excluding loan balances.

The order must explicitly state how any loans as of the date of division, if applicable, are treated. If the order does not explicitly state how the loans are to be treated, **the loans will be included.**

### **3. Distribution Options**

Upon determination that an order meets the requirements of a QDRO, a separate account in the name of the Alternate Payee will be established, and the Alternate Payee will be mailed a Personal Identification Number (PIN) in order to access the account.

### **4. Designation of Alternate Payee's Beneficiaries**

The Alternate Payee shall designate, on a form provided by the Plan Administrator, the person(s) to whom the Alternate Payee's benefit is to be paid in the event of the Alternate Payee's death.

## **3. TAXES**

If the Alternate Payee is the spouse or former spouse of the Participant, the Alternate Payee will be responsible for any taxes on the distribution. However, if the Alternate Payee is a child of the Participant, the Participant is responsible for taxes on the Alternate Payee's awarded benefit, when paid.

The Participant and the Alternate Payee may seek the advice of a tax advisor, financial advisor or attorney to discuss the tax ramifications of any distributions or assignments. QDRO Administration will not provide personal tax advice.

#### **4. PRE-QUALIFICATION OF AN ORDER**

It is recommended that an order be submitted in draft form to QDRO Administration prior to its execution by the court to save the parties the time and expense of having an order executed by the court that may be unacceptable to the Plan. By using the Model Language, it is more likely that the order will be acceptable to the Plan; however, it is still recommended that the order be submitted for review before it is executed by the court.

To determine whether your order complies with the administrative requirements of the State of Michigan Deferred Compensation Plan(s), please submit each order for review, *preferably before entry with the court*, to:

State of Michigan QDRO Administration  
Post Office Box 57328  
Jacksonville, FL 32241-7328  
Fax: (904) 791-2328

#### **5. THE QDRO DETERMINATION PROCESS**

The following sets forth the procedures which will be followed by the Plan Administrator (or the duly-appointed delegate of the Plan Administrator) in determining whether an order is a QDRO within the meaning of IRC Section 414(p) and ERISA Section 206(d), and in administering distributions under a QDRO.

##### **5.1. NOTICE OF RECEIPT**

QDRO Administration will upon receipt of a domestic relations order, including a divorce or alimony order, separation agreement, or support order ("order"), notify the Participant and the Alternate Payee(s) named in the order, of receipt of the order. Notice will be mailed to the address(es) specified in the order, or if no such address is given, to the last address known by the Plan Administrator.

##### **5.2. RESTRICTION OF BENEFITS**

Upon receipt of an initial draft order (or a written notice of intent to obtain a Qualified Domestic Relations Order), QDRO Administration will place a hold on the Participant's account.

Upon receipt of a court certified order, the Plan Administrator will place a hold on the Participant's account.

The hold will prevent the Participant from taking any distributions from the Plan, but the hold will not prevent the Participant from making investment elections.

Any certified order that is received by the Plan after an initial hold period has expired will only apply to such balance as may remain in the Participant's account when a new hold is placed

following receipt of such order. And this subsequent hold will be maintained only for such time as is needed to determine the acceptability of the order as a QDRO.

### **5.3. REMOVING BENEFIT RESTRICTIONS**

When a court order is on file, restrictions may be lifted from the plan upon the following:

- Qualification of a Domestic Relations Order
- Receipt of a court order, which clearly nullifies an Alternate Payee's rights to the Participant's interest in the plan
- Expiration of the hold period.

When a draft order is on file, restrictions may be lifted from the plan upon the following:

- Qualification of a domestic relations order
- Receipt of a notarized authorization signed by the Alternate Payee, which states that the benefits are relinquished to the Participant.
- Expiration of the hold period.

### **5.4. NOTIFICATION OF DETERMINATION**

Within a reasonable period of time, QDRO Administration will determine whether the order qualifies as a Qualified Domestic Relations Order ("QDRO"), in accordance with the applicable statutes and Plan provisions. Once the status of the Order is determined, QDRO Administration will notify the Participant and each Alternate Payee (or the designated representative of such payee) in writing of its determination. If the order does not qualify as a QDRO, the notification will describe the defects in the order and may include a copy of the Plan's Model Language.

### **5.5. ADDRESS**

It is the obligation of the Participant and Alternate Payee to keep the QDRO Administration office informed of any changes in address. The State of Michigan assumes no responsibility for locating and paying individuals not fulfilling such obligation.

## **6. MODEL LANGUAGE**

Model language is available to assist in the drafting of a QDRO that meets the requirements of federal law and each Plan's provisions. An order drafted using the model language must still be reviewed and formally approved by the Plan Administrator's agent, the State of Michigan QDRO Administration. QDRO Administration cannot represent that the use of the model language will be appropriate in any specific case. The model language has been designed solely as a guide to be used in drafting a QDRO and may be modified as necessary. It should not be relied upon to satisfy the laws of any particular state. It is strongly recommended that the drafter thoroughly familiarize themselves with the applicable law and the model language before deciding whether to utilize the model language.

**Model Order**

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_

DIVISION \_\_\_\_\_ COUNTY \_\_\_\_\_

**IN RE MARRIAGE/SUPPORT OF**

\_\_\_\_\_  
**PETITIONER,**

**V.**

**Case No.**

\_\_\_\_\_  
**RESPONDENT.**

**QUALIFIED DOMESTIC RELATIONS ORDER**

This order is intended to be a qualified domestic relations order (hereinafter referred to as a "QDRO"), as that term is defined in section 206(d) of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA") and section 414(p) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"). This QDRO is granted in accordance with **[insert the applicable state domestic relations law, statute or code section citations]**, which relate to marital property rights, child support, and/or spousal support between spouses and former spouses in matrimonial actions.

**I. PLAN**

The term "Plan" shall refer to:

**State of Michigan Deferred Compensation Plan I / 457 (the "Plan")**

**-and / or-**

**State of Michigan Deferred Compensation Plan II / 401(k) (the "Plan")**

(a) Any successor to this Plan shall also be subject to the terms of the order.

(b) **State of Michigan** is the sponsor of the Plan.

(c) The Plan Administration's address is as follows:

State of Michigan QDRO Administration  
Post Office Box 57328  
Jacksonville, FL 32241-7328

**2. IDENTIFICATION OF THE PARTICIPANT**

The name and last known mailing address of the Participant are as follows.

Name:

Complete Address:

The Participant's date of birth and Social Security Number have been provided under separate cover.

**3. IDENTIFICATION OF THE ALTERNATE PAYEE**

The name and last known mailing address of the Alternate Payee are as follows.

Name:

Complete Address:

The Alternate Payee's date of birth and Social Security Number have been provided under separate cover.

The Alternate Payee is the **[spouse, former spouse, child]** of the Participant.

**4. BENEFIT AWARDED TO THE ALTERNATE PAYEE**

This amount shall be separately accounted for under the Plan for the exclusive benefit of the Alternate Payee.

**[Select the appropriate benefit assignment and delete any option that does not apply.]**

The Plan shall assign to the Alternate Payee an amount equal to **[insert percent or dollar amount]** of the Participant's **[insert name of plan]** account balance as of **[insert valuation date]**.

**OR...**

The Plan shall assign to the Alternate Payee an amount equal to **[insert percent or dollar amount]** of the Participant's, 457 account balance and **[insert percent or dollar amount]** of the Participant's 401(k) account balance as of **[insert valuation date]**.

The Alternate Payee's benefit **[will be / will not be]** adjusted for investment earnings and losses from the valuation date to the date a separate account is established for the Alternate Payee.

The Alternate Payee's award will **[include / exclude]** any outstanding loan balance, if applicable.

**5. COMMENCEMENT OF BENEFITS**

The Plan shall establish an account for the Alternate Payee as soon as administratively feasible after the Plan Administrator's acceptance of this order as a Qualified Domestic Relations Order.

**6. DEATH OF PARTICIPANT**

Payment of the Alternate Payee's separate interest shall not be affected by the Participant's death.

**7. DEATH OF THE ALTERNATE PAYEE PRIOR TO DISTRIBUTION**

The Alternate Payee shall designate, on a form provided by the Plan Administrator, a beneficiary (or beneficiaries) to whom the Alternate Payee's separate interest is to be paid in the event of the Alternate Payee's death.

**8. COMPLIANCE WITH APPLICABLE LAWS AND THE PLAN**

The parties to this order intend that it comply with the applicable provisions of ERISA and the

Code.

- (a) The Participant and Alternate Payee shall each be responsible for his or her own federal, state and local income taxes and any other taxes attributable to any and all payments from the Plan which are received by the Participant or the Alternate Payee, respectively. However, if the Alternate Payee is not the spouse or former spouse of the Participant, the preceding paragraph should be replaced by:

The Participant will be responsible for all taxes attributable to any and all payments from the Plan pursuant to this order.

- (b) The Participant and the Alternate Payee shall notify the Plan of any change of address.
- (c) No provision in this order requires the Plan to make any payment or take any action that is inconsistent with any federal law, rule, regulation or applicable judicial decision.
- (d) No provision in this order requires the Plan to provide any type or form of benefit, or any option, which is not otherwise available under the Plan.
- (e) No provision in this order requires the Plan to provide increased benefits.
- (f) No provision in this order requires the Plan to pay benefits to an Alternate Payee, which are required to be paid to another Alternate Payee under another order previously determined to be a QDRO.
- (g) The undertakings and obligations of the Plan as set forth in this order are solely those of the Plan. Neither State of Michigan, any of its affiliates, nor any officer, employee or agent of any such entities (other than the Plan Administrator acting as Plan Administrator) shall be deemed to have incurred any obligations under this order.
- (h) If any party makes any claim which the Plan Administrator determines to be inconsistent with this order, the Plan may cease making further payments to any person whose rights, in the sole judgment of the Plan Administrator, may be affected by such claim pending resolution of the claim or further order of this Court. The Plan may also take such further action or actions as may be permitted by law with respect to such claim.
- (i) The Participant is designated as a constructive trustee for any payments that are received by the Participant, but are due to the Alternate Payee. The Participant will remit any such payment to the Alternate Payee within five (5) days of receipt of such payment.

## **9. RESERVATION OF JURISDICTION**

This Court reserves jurisdiction over the parties and the Plan until such time as the obligations of the Plan to the Alternate Payee under this order have been fully paid and discharged. Further, this

**State of Michigan Deferred Compensation Plans  
Model Language and Procedures Guide**

---

Court reserves jurisdiction to amend this order to establish or maintain its status as a QDRO under ERISA and the Code.

IT IS SO ORDERED:

This date:

By the court:

\_\_\_\_\_  
Judge's Signature