

Domestic Relations Orders (DRO) Questions & Answers for **FPPA** Administered Pension Plans

For your convenience, FPPA has compiled a listing of the most frequently requested information. We hope this information answers many of your questions and assists you in completing the DRO process.

For forms and brochures please visit the FPPA website at www.FPPAco.org.

Overview

A public employee's retirement benefit constitutes marital property that must be taken into account when property is divided in a marital dissolution in Colorado. Colorado law permits a domestic relations order (DRO) to be used to divide a retirement benefit of a member of a pension plan administered by FPPA, if both parties to the dissolution can agree to a DRO. Any DRO must comply with all of Colorado's requirements for a DRO and must comply with all of the requirements of the public employee's plan.

Plans

What plans are administered by FPPA?

FPPA administers defined benefit and defined contribution plans, a death and disability plan and a 457 deferred compensation plan. It is important to understand how a particular member's plan provides benefits and how those provisions impact the timing and nature of any payment pursuant to the DRO.

continued

FPPA Statewide Plans

Defined Benefit Plans	Defined Contribution Plans	Combination Plans
Statewide Defined Benefit	Statewide Money Purchase Plan	Statewide Hybrid Plan • Defined Benefit & Money Purchase Component
Colorado Springs New Hire Pension Plan • Fire Component • Police Component		

Local Plans

- DRO's for local plans must be approved by the local pension board.
- Old Hire Pension Plans (Defined Benefit Plans)
- Affiliated Money Purchase Plans (Defined Contribution Plans)

What is a Defined Benefit Plan?

Defined benefit plans are the traditional retirement plans. The plans promise a retirement benefit based on age and total years of service. The member gets a flat monthly benefit upon retirement. Under these plans, the employers make the contributions and FPPA (or your local plan) is entirely responsible for ensuring that assets are available to provide the pension that each member is promised.

What is the Separate Retirement Account (SRA)?

The SRA is part of the Statewide Defined Benefit Plan and the CSNHPP. An SRA is established for each member and is made up of excess employer contributions. This account accrues earnings at the same rate as FPPA's Members' Benefit Fund and is available to any member who is approved for a retirement benefit and has separated service. This account is in addition to the normal, early, vested or deferred retirement pension. It is also payable upon payment of benefits from the Statewide Death and Disability Plan.

What is the Deferred Retirement Option Plan (DROP)?

The DROP is part of the Statewide Defined Benefit Plan, the CSNHPP and the SWH. The DROP is available to members who wish to work beyond the requirements for normal retirement. This is funded by the member's retirement benefit and pension contribution. The DROP accrues earnings at the same rate as the total pension fund unless self-directed through FPPA's recordkeeper, Fidelity Investments. The balance in the DROP is available to the member when he/she separates service from the department. This account is in addition to the normal retirement and SRA for those who elect to participate. (Some "old hire" plans also offer the DROP. Percent of pension contributions may vary.)

What is a Defined Contribution Plan?

Defined contribution plans are increasingly popular as supplements or alternatives to defined benefit plans - in part because they are generally simpler, more flexible, and less costly to administer. Under this type of plan, the member would not be promised a set benefit or pension at retirement. Rather, an individual account would be established in the member's name, and his or her final benefits would depend on how much is contributed and the rate of return earned by the account's investments. Members typically direct the investment of the account.

What is a 457 Deferred Compensation Plan?

An eligible 457(b) plan is a deferred compensation plan that is maintained by an eligible employer - a state or local government or a nonchurch, nongovernmental tax-exempt organization - that meets statutory requirements of IRS Code Section 457. Any individual who performs services for the employer who has adopted a 457 Deferred Compensation Plan may defer compensation and participate under the plan. Contributions are voluntary. Some employers make matching contributions to encourage employees to participate and save more of their money for retirement.

NOTE: Some departments may have 457(b) plans which are not administered by FPPA. The FPPA forms are only designed to affect 457(b) plans administered by FPPA.

What is the Statewide Death and Disability Plan?

This plan covers all full-time firefighter and police officer employees in participating fire or police departments in Colorado for death or disability coverage. It provides 24-hour coverage, both on and off duty. Generally the benefits are available for covered members who are not eligible for normal retirement or unless their department has withdrawn from the Statewide Death and Disability Plan. On-duty disability benefits are free from state and federal taxes.

General Questions***Who do I contact for information regarding the benefits payable under each of these plans?***

First, please carefully read the information provided to you. They should answer most of your benefit questions. If you still need assistance, review the list below to see what information FPPA staff can and cannot provide to you:

- FPPA staff can provide benefit information for members of the FPPA Statewide Plans and the Statewide Death and Disability Plan. Contact FPPA's Retirement Coordinator.
- FPPA staff cannot provide benefit information for "old hire" plans, local defined contribution plans or any other type of local governmental pension plan which is affiliated with FPPA for record keeping and investment purposes. You should directly contact the local pension authority for information regarding benefits under the pertinent plan.
- FPPA staff cannot provide benefit information on local 457 deferred compensation plans. You should directly contact the local pension authority for the information regarding benefits under the pertinent plan.

Is a DRO appropriate for everyone?

No. A DRO should not be used automatically in every dissolution that involves a public employee. Instead, counsel should evaluate with the client whether a DRO is appropriate based upon the client's own particular facts and circumstances. If the public employee's retirement benefits constitute a substantial portion of the marital property, a DRO may be appropriate.

Alternatively, if such retirement benefit constitutes merely one of many different marital properties, the public employee may keep all of that asset while the former spouse receives a different asset of comparable value. Death of either the participant or the alternate payee (former spouse) may result in the alternate payee receiving no payments from FPPA based on the designation as an alternate payee in a DRO. Before deciding whether a DRO is appropriate, understanding the type of plan and the plan's specifics are necessary.

How can I make sure the DRO I submit is valid?

To be valid, a DRO must satisfy all laws, rules and procedures applicable to the plan. It must provide a form and type of payment permissible under the plan.

The DRO cannot require payment of any benefit, benefit amount, or distribution option not otherwise permitted by the plan.

The DRO cannot require FPPA to pay any amount already required to be paid to another alternate payee or already subject to a child support assignment or a federal tax lien.

A court may later modify the DRO, but only if the parties have agreed in writing to the modification.

How much time do I have to file a DRO and Agreement with FPPA after my divorce?

To be effective, the written agreement which is the subject of a DRO must be filed with FPPA within ninety (90) days after entry of the decree and permanent orders regarding property distribution in the domestic relations proceeding. This is a statutory requirement. See Section 14-10-113 (6)(c)(I) C.R.S., as amended.

When does the DRO become effective?

No DRO becomes effective until at least thirty (30) days after FPPA receives a valid, certified order.

Can FPPA help me fill out the DRO Agreement and determine the method of division?

No. FPPA cannot provide legal, tax, or other advice to the parties or their attorneys. Furthermore, the parties are responsible for assuring consistency between the DRO and any previous court order(s).

FPPA staff members do not hold the qualifications necessary to advise you on how to calculate the division of benefits or testify as expert witnesses regarding such actuarial valuations of benefits. Parties may need to hire an actuary or other professional to determine how to allocate benefits.

How and when do I submit my DRO and Agreement?

A DRO for a FPPA-administered plan (Statewide Defined Benefit Plan, SWH CSNHPP, the Statewide Money Purchase Plan, FPPA's 457 Deferred Compensation Plan, or the Death & Disability Plan) must be completed on the FPPA approved form. The parties' written agreement on such form should be submitted for FPPA's review to determine whether FPPA can comply, before court approval of the DRO is sought. Submit the proposed DRO to FPPA's Legal Department.

A DRO for members of a locally administered plan (Old Hire Plans, Exempt & Withdrawn Money Purchase Plans, and 457 Deferred Compensation Plans other than FPPA's plan) must be completed on a form received from your local pension authority. Please contact them for the appropriate form. The parties' written agreement on such form should be submitted to your local pension authority for approval. FPPA cannot decide for the local plan whether to honor a domestic relations order. FPPA will take direction from the local plan as to how benefits are paid.

Under the law, both parties to the dissolution enter a written agreement that must be approved by the court as a DRO. If the parties cannot reach a written agreement, the court cannot order a DRO.

What is the difference between a DRO and a QDRO?

To clarify, the pension plans administered by FPPA are "governmental plans" and are specifically exempt from the provisions of the Employee Retirement Income Security Act (ERISA) governing qualified domestic relations orders (QDROs). Thus ERISA's QDRO provisions do not apply here. Instead, a DRO for FPPA-administered plans is governed by Colorado law. Section 14-10-113 (6), C.R.S., as amended.

Will I be eligible for a Social Security Benefit?

Police officers and firefighters in the State of Colorado who meet the definition of member and are covered under an FPPA-administered plan are exempt from Social Security coverage. They will not receive a Social Security benefit

based on this service. They may be eligible for a Social Security pension from “outside” employment. However, they will likely receive a significant reduction from the Social Security benefit for that employment. Note: different rules apply for members in the FPPA Social Security Supplemental Plan.

Answers to Commonly Asked Benefit Payment Questions

A DRO can direct payment only to an “alternate payee” who is the participant’s former spouse.

If a DRO is used and is valid and enforceable, FPPA will pay the former spouse directly. The plan will deduct the amount for the former spouse before it pays the FPPA member.

What is paid to the alternate payee?

Under a defined benefit plan:

The member’s selection of monthly benefits or a refund (assuming the plan permits a refund) controls what the alternate payee receives. Payment to the alternate payee shall be in the same manner selected by the member, i.e. as a refund in a lump sum amount or as a monthly payment.

The parties may specify payment to an alternate payee by selecting any one of the methods for dividing the pension set forth in Section 14-10-113 (6) (c) (III), C.R.S., as amended. Any formula selected by the parties must conform to state law and enable FPPA to calculate the payment to the alternate payee with certainty. FPPA will not make any assumptions for the parties in administering any formula.

Annual cost of living increases, if awarded under the pension plan, after the payment starts will be applied to the payment to the alternate payee.

All payments to the alternate payee, like payments to the member, reduce the member contribution account. Consequently, this reduces the amount that may later be paid as a single payment or refunded, if such a payment were to happen in the future.

If payment to a retiree of an FPPA-administered plan ceases because the retiree no longer qualifies for benefits under state law, payment to the alternate payee also stops. Unless the severed payment option is elected.

Under a defined contribution plan or a 457 deferred compensation plan:

An alternate payee may roll over the distribution to another eligible plan. Each individual should seek his/her own advice on the tax consequences.

All payments to the alternate payee, like payments to the member, reduce the member contribution account. Consequently, this reduces the amount that may later be paid as a single payment or refunded, if such a payment were to happen in the future. In this case, at the time the member commences receiving a defined benefit, the alternate payee’s portion of the defined benefit will be severed from the member’s benefit and will be adjusted based on actuarial factors such as the alternate payee’s life expectancy and will be paid over the lifetime of the alternate payee. The alternate payee’s portion will terminate upon the death of the alternate payee and will not revert to the member or member’s survivor.

When does the alternate payee begin to receive payments?

Under a defined benefit plan:

Payment to an alternative payee will be made when payments commence to the member after separation from service. They cannot begin earlier. Benefits are based on salary, years of service, and age at retirement. The actual amount of the benefit is not determinable prior to retirement. The plan makes monthly payments upon retirement of the member and may permit the member to select a single life or a joint life annuity, although under some circumstances a single lump sum payment may be made.

Under a defined contribution plan or a 457 deferred compensation plan:

Payment to an alternate payee will be made in a lump sum within one hundred twenty (120) days after FPPA's receipt of a valid court order and application for payment. The alternate payee may roll over said lump sum into a non-FPPA sponsored eligible plan.

What happens when the alternate payee dies?

When the alternate payee under a defined benefit plan dies, no further payment is made based on that designation. Unless a severed option benefit is elected, the portion of the benefit paid to the alternate payee reverts back to the member. No payment is made to any beneficiary, heir, or estate of the alternate payee.

What happens when the member dies?

Under a defined benefit plan:

If the member dies prior to eligibility for retirement and while actively employed as a firefighter or police officer, the provisions of Section 31-31-801, et seq., C.R.S., as amended, apply. Under this law, survivor benefits are paid to the current spouse and/or dependent children in amounts as specified by statute in lieu of pension benefits. The alternate payee would not be eligible for any payment.

If the member is retired and receiving a single-life benefit prior to death, the payment to the alternate payee stops when the participant dies, unless the severed benefit option is elected.

If the member is receiving a joint-life benefit prior to death, the payment to the alternate payee based on that designation stops when the member dies. Subsequent benefit payments are made to the co-beneficiary (co-annuitant). The alternate payee may or may not be designated as the co-beneficiary (co-annuitant). If the alternate payee is designated as the co-beneficiary, the alternate payee payment will stop and the new co-beneficiary payment will begin to be paid; the amount paid could be more or less than the alternate payee was receiving prior to the death of the member.

Under a defined contribution plan or a 457 deferred compensation plan:

Payment to an alternate payee under a deferred compensation plan will be made in a lump sum within one hundred twenty (120) days after FPPA's receipt of a valid court order and application for payment.

Is the alternate payee's distribution taxable?

FPPA will report payments to alternate payees to the Internal Revenue Service as taxable income. The amount paid to the alternate payee will be reported in the name of the alternate payee, not the member. If after-tax contributions were made to the plan, cost-recovery of them is prorated between the alternate payee and the member. Each individual should seek his or her own advice on the tax consequences.

Complete the following items before you submit your Domestic Relations Order For The Division Of Pension Benefits to FPPA

- The Agreement for Division of Pension Benefits and the Order, in the approved forms, without modification, must be used to complete the DRO. Do not change or modify the form in any way. Complete all applicable blanks on the form.
- Ensure that a notary has certified the signatures of the member and alternate payee. Court personnel will not generally provide this notarization.

- It is advised that FPPA receives the completed form and draft order for review to determine whether
- FPPA can comply, before court approval of the DRO is sought.
- Ensure that FPPA receives a certified copy of the DRO and Agreement and that the judge and all parties have signed it.
- Receipt of the certified DRO is not the “request” for payment. Each party to the DRO must “apply” to FPPA before any payment can commence. The alternate payee is responsible for providing a current address and informing FPPA that payment to the alternate payee should commence.

**Submit the completed Domestic Relations Order
For The Division Of Pension Benefits to the following.**

Fire & Police Pension Association of Colorado
Attn: DRO Processing
5290 DTC Parkway, Suite 100
Greenwood Village, CO 80111-2721

Phone (303) 770-3772 in the Denver Metro area or
Toll Free (800) 332-3772 nationwide.

Fax (303) 771-7622

Complete information on the DRO process is also available for viewing and
downloading from the FPPA web site at www.FPPAco.org.

