

LOCAL FINANCE NOTICECHRISTINE TODD WHITMAN
GOVERNORJANE M. KENNY
COMMISSIONERULRICH H. STEINBERG, JR.
DIRECTOR**IMPORTANT – LOSAP IMPLEMENTATION INSTRUCTIONS**

This Notice reviews the final rule proposal and provides information on how program providers and how municipal and fire district sponsoring agencies that have had voters approve their plans can act now to start the process to implement their Length of Service Award Programs (LOSAP) at the earliest possible time.

Current Status Of The LOSAP Rules

The Division has resolved the outstanding issues related to the adoption of the Length of Service Award Program Rules that were originally published in the *New Jersey Register* for comment in December 1999.

The receipt of an Opinion from the Office of the Attorney General and consultation with the Internal Revenue Service resolved the questions that were raised regarding the taxability of the LOSAP awards and program administration. The proposed *Rules* have been redrafted accordingly and have been approved by the Local Finance Board for publication in the *New Jersey Register*. The scope of the changes, while affecting only a few sections of the *Rules*, are substantive in nature and require a 30-day comment period following republication.

Publication in the *New Jersey Register* is anticipated for October 16, and if there are no delays, adoption scheduled for December 18.

Changes To The Rules

The substantive change made to the proposed *Rules* is deals with the manner in which the funds awarded are held and thereby their taxability. The original proposed *Rules* has the funds awarded to the volunteers held in trust for the exclusive benefit of the volunteers and their beneficiaries. In simple terms, this might possibly result in the constructive receipt of the funds at the conclusion of the vesting period and thereby make the award taxable at that time. The revised *Rules* now require that the funds remain an asset of the sponsoring agency until they are distributed. As such they are subject to the claims of the agency's general creditors.

Despite the sound of this, rest assured that no New Jersey local governmental unit has filed for bankruptcy since 1929. Unit the 1994 bankruptcy of Orange County in California, funds in a governmental deferred compensation program were considered the asset of the sponsoring agency. In New Jersey between the enactments of the Deferred Compensation enabling statute in 1977, until 1994 when the Internal Revenue Code was changed, the deferred funds were the same: the asset of the sponsoring agency.

The State's comprehensive fiscal oversight system of municipalities and fire districts, and statutory requirements requiring State approval of any local unit bankruptcy action, render any risk that might be associated with this provision negligible. Thus, New Jersey's fiscal control laws provide a substantial

regulatory framework for municipalities and fire districts that prevents incidents similar to Orange County occurring in New Jersey. This structure was also highlighted in the Attorney General opinion.

Among the minor changes to the *Rules* was the addition of specific time frames for actions related to appeals from the certification process. A specific subsection was added to clarify “vesting.” The amended *Rules* makes it clear that a volunteer may be allocated an award, but may not received a distribution of yearly contributions until the completion of the five year vesting period. In addition, language has been added to affirmatively state that the funds awarded to a volunteer revert to the sponsoring agency should the volunteer terminate association with the sponsoring agency prior to the conclusion of the five year vesting period.

Finally, the legal review confirmed that the general approach to administering LOSAPs, the State’s 457 (Deferred Compensation) model is appropriate, even though LOSAPs are not considered as 457 programs.

Where To Do Next

In anticipation of the final adoption of the Rules (in November) without substantial amendments to the proposal it is appropriate for the Division to facilitate the adoption of Length of Service Award Plans and the investment of the funds award to volunteers. To this end, the Division has developed the following model which takes effect immediately.

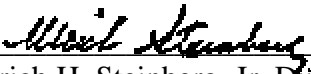
- The rules require any contractor (provider) seeking to manage the investment of LOSAP awards to volunteers to be approved by the Division prior to entering into contracts. The Division has contacted potential LOSAP providers and explained the registration and approval process to them. The Division will do its best to expedite the approvals without compromising and of the mandated requirements. Since the *Rules* require that a sponsoring agency solicit proposals from two or more providers of LOSAP services. It is therefore important to check with the Division for a current list of providers. In the event there are not two providers at any time, the rules allow the Division to waive this provision on a case-by-case basis.
- The governing body of the municipality or fire district must pass a resolution to implement its Length of Service Award Plan. The Plan is the document that details the responsibilities of both the sponsoring agency and the contractor and must be based on a “prototypical” plan approved and assigned a number by the Division. The same document serves as a contract with the contractor provider administering the investment of the funds awarded to qualified volunteers. A sample resolution is provided to each registered contractor. Each contractor may tailor the resolution to meets is needs, but it will contain the basic elements required by the *LOSAP Rules* for adoption of the plan document and authorization to execute an agreement with the contractor who will administer the investments.
- When adopted by the governing body, a certified copy of the resolution must be mailed to the Division for review and approval. A formal Division approval will be returned and will be noted as “approved, pending adoption of the rules.” If this activity takes place before the adoption of the *Rules*, a contract with the contractor may be executed (which should also be contingent on adoption of the rule), but **no funds may be transferred for investment pending the formal adoption of the *Rules*.**
- In the event final adoption of the rule is delayed and not be adopted prior to the end of the year, plan sponsors may deposit the funds in the sponsor’s trust fund and temporarily invest them pursuant to normal local government investment law (N.J.S.A. 40A:5-15.1). Once the plans are officially in place, funds may be allocated accordingly, with the interest earned allocated proportionately.

Direct Your Questions Here

Inquiries and questions should be made to Nelson S. Silver at (609) 292-2524 or by e-mail at nsilver@dca.state.nj.us. Information is also available on the Division's web site at www.state.nj.us/dca/lgs/pages/dcadlgs.htm. Written questions should be directed to:

LOSAP Questions
Division of Local Government Services
PO Box 803
Trenton NJ 08625-0803

We thank all participants in LOSAPs for their patience while the rules have been reviewed and amended. The Division is confident that the challenges to the rules have been resolved at that local officials can act with confidence in implementing the program.



Ulrich H. Steinberg, Jr, Director
Division of Local Government Services

Enclosures

Distribution: Chief Financial Officers of Sponsoring Municipalities
President of Sponsoring Fire Districts
Potential Plan Sponsors