DIVISION OF
LOCAL GOVERNMENT
SERVICES

Local Finance Notice

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Local Unit Deferred Compensation Plans

This Local Finance Notice reviews the various requirements for establishing and amending local unit deferred compensation plans, along with related reporting and compliance matters. The Notice further examines the impact of recent federal and state legislation on plan requirements and allowances.

Overview

N.J.S.A. 43:15B-1 through 43:15B-10 authorizes local units to establish employee deferred compensation plans and governs the implementation and administration of such plans in conjunction with the federal Internal Revenue Code. Relevant regulations have been adopted as N.J.A.C. 5:37-1.1 et seq.

N.J.A.C. 5:37-3.1 and 3.2 allow local units to offer their employees a deferred compensation plan either on a self-administered basis or through a "prototypical plan" prepared by a third party. Employers choosing a prototypical plan must also form a contract, known as a "prototypical service agreement", with a third party to administer the plan.

Key Terms

N.J.A.C. 5:37-1.1 defines multiple terms frequently used throughout the notice.

"Contractor" means a person or entity, other than the employer, authorized to do business in New Jersey, that provides investments or services or both regarding an employer's deferred compensation plan.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Employer" means a local unit that is either a municipality, a county, an authority created by one or more counties or municipalities, a fire district or a joint meeting.

"Prototypical plan" means a deferred compensation plan prepared by a contractor [in part or totality] and approved by the Director.

"Prototypical service agreement" or "service agreement" means a contract between the employer and a third party for the administration of the employer's deferred compensation plan, the form and content of which have been approved by the Director.

"Joinder agreement" means the agreement signed by an employee to become a participant in the deferred compensation plan.

"Local plan administrator" means the person or group of local public officials or employees, including the local governing body, appointed by the governing body of the local unit to act as the plan representative with respect to the contractor and to perform the plan duties, if any, that are not to be performed by the contractor under the terms of a service agreement.

"Plan manager" means the person or group of local public officials or employees, including the local governing body, appointed by the governing body of the local unit as fiduciary responsible for the administration of the employers self-administered deferred compensation plan and for the investments and the accounting of funds maintained under the plan.

"Self-administered plan" means a deferred compensation plan prepared and administered by the local unit and approved by the Director.

The current list of approved plan providers and their contact information can be found on the Division's Deferred Compensation Program webpage. While contractors include plan providers, the term "contractor" also encompasses other third-party entities that solely provide investments, accounting, or other singular services.

Director Approval of Local Unit Deferred Compensation Plans

N.J.A.C. 5:37-2.1 requires the Director to approve or reject any deferred compensation plan and service agreement, **including any amendments thereto**, prior to implementation. The contractor(s) must submit the prototypical plan or service agreements, and any proposed amendments, to the Director for approval. Conversely, the employer is responsible for submissions associated with a self-administered plan. The Division assigns an identifier for each approved prototypical plan and service agreement, as well as any subsequent amendments, which must appear prominently on each plan document and service agreement offered to a local unit employer.

Approval or rejection determinations are made within 20 business days of the Division receiving a complete application package. The Division requires a complete application package to include the following:

New Deferred Compensation Plans and Service Agreements (Prototypical)

(1) A DLGS Registration Form (The Division will not begin its review until submission of all required documentation);

(2) A proposed deferred compensation plan document;

(3) A proposed service agreement; and

(4) The appropriate employer resolution model language based on the request.

Amendments to Existing Deferred Compensation Plans or Service Agreements (Prototypical)

(1) A redlined copy of the previously approved plan document with all requested amendments clearly incorporated and distinguished from the original text;

(2) A clean copy of the amended prototypical plan document;

(3) An amended Registration Form, including updated required attachments;

- If required by the Director or under federal law, a novel IRS Private Letter Ruling;
- Evidence of Bonding and Insurance;
- Promotional Material;
- Model Employer's Joinder Agreement; and
- Rule Compliance Reference.

(4) The appropriate employer resolution model language based on the request;

(5) A separate written summary of all amendments and revisions, identifying whether each provision is mandatory or optional under State or federal law;

- If amendments are subject to federal law or recently enacted state legislation, for which insufficient guidance or model language is available, please indicate the impacted amendments and related temporary "placeholder" provisions, and a conditional approval may be given.
- A "Conditional Approval" may be given if provisions submitted and reviewed require additional amendments, optional provisions, or model language arising from pending or anticipated Internal Revenue Service or United States Department of the Treasury guidance—including clarifying guidance concerning the SECURE 2.0 Act—that will require separate submission and written approval by the Director or a designee. Contractors are required to submit only the updates and documentation explicitly requested within the letter. A conditional approval will remain in effect until the earlier of (1) the expiration of the applicable federal remedial amendment period established by the Internal Revenue Service for amendments under Section 457(b), or (2) 90 days after the date of the letter, unless all submissions are promptly transmitted or an extension is granted in writing by the Division.

(6) A written certification from the contractor's legal counsel attesting that the amendments being proposed comply with Section 457(b) of the Internal Revenue Code and all other applicable federal statutes and regulations; and

(7) Such other documentation as the Division may require, to make an informed determination.

The Division's review is limited to determining compliance with applicable State statutory and regulatory requirements and will not evaluate for compliance with Federal law.

A rejection will be accompanied by a written explanation. Any required modifications shall be made within 60 days of the notification. Failure to submit required modifications within 60 days will result in disapproval of the plan.

Establishing a Plan; Governing Body Resolution

The decision whether the plan will be self-administered or prototypical is at the discretion of the local unit employer. Prototypical and self-administered plans, as well as prototypical service agreements, must contain, at a minimum, the policies and procedures to be used in operating the deferred compensation plan.

Employers who self-administer their plan may prepare the plan documents only in consultation with representatives of potential participants, pursuant to N.J.A.C. 5:37-3.2. An employer may consult with labor unions representing local unit employees; however, the employer cannot rely upon standard language templates or consultative drafts from a contractor.

Employers instituting prototypical plans may solicit assistance from contractors in preparing their plans. N.J.A.C. 5:37-7.1(a) requires an employer seeking to award a prototypical service agreement to solicit written proposals from two or more contractors, which is required regardless of whether an employer already has one or more service agreements with other contractors. After reviewing the proposals, the award of a service agreement must be made through a governing body resolution. This resolution must describe the method used to solicit proposals, identify the responding vendors, and state the rationale for selecting a specific contractor.

A governing body resolution is prerequisite to establishing a local unit deferred compensation plan. N.J.A.C. 5:37-5.2 specifies certain required content for a resolution to adopt a self-administered plan and a prototypical plan. The requisite resolution for a prototypical plan must include, at a minimum:

(1) a formal adoption of the plan;

(2) a description of the method used to solicit proposals pursuant to N.J.A.C. 5:37-7.1;

(3) an identification of a local plan administrator pursuant to N.J.A.C. 5:37-5.4;

(4) an authorization to execute a service agreement with the contractor;

(5) a statement of non-collusion pursuant to N.J.A.C. 5:37-5.7;

(6) certification of plan compliance with the rules of the IRS pursuant to N.J.A.C. 5:37-3.4 or 3.5 for a prototypical plan adoption; and

(7) the identification of the contractor, plan identifier, and service agreement identifier.

For both plan types, the employer must forward a certified copy of the resolution to the Director. Contractors may not forward a certified copy on the local unit employer's behalf unless the resolution seeks to adopt an updated or amended plan and/or service agreement. If a local unit permits a contractor to forward a certified copy of the resolution on their behalf, the communication must contain, at a minimum, the email, phone number, and other relevant contact information of any local unit personnel or office tasked with remedying any potential deficiencies. Employers should utilize the sample resolutions made available on the Division's website. Local unit employers seeking to adopt a resolution should maintain proactive, frequent communication with the Division when drafting their resolutions to ensure appropriate content and proper formatting prior to adoption. To avoid non-compliance or delay in Division approval, local unit employers are recommended to submit a draft resolution for review prior to adoption.

N.J.A.C. 5:37-3.4 requires a resolution adopting a deferred compensation plan to certify that the employer (self-administered) or contractor (prototypical) has filed an application with the IRS for a private letter ruling that the plan meets the requirements of 26 U.S.C. §457 of the Internal Revenue Code, and that such ruling will be forwarded to the Director when received. However, as an alternative to the IRS private letter ruling, the resolution of an employer adopting a prototypical plan may contain a certification pursuant to N.J.A.C. 5:37-3.5 certifying that the employer is adopting a plan substantially similar to one on which a satisfactory IRS private letter ruling has been obtained. Employers seeking to self-administer their own plans may not prepare their resolutions with an N.J.A.C. 5:37-3.5 certification. However, if an employer has had their plan document prepared by a contractor or is developing the plan in conjunction or consultation with a contractor but intends to administer the plan thereafter without the aid of a contractor, the employer may prepare their resolution with an N.J.A.C. 5:37-3.5 certification, subject to the Division's determination of their plan type.

For prototypical plans proceeding with an N.J.A.C. 5:37-3.5 certification, a private letter ruling will not be considered precedent for another contractor, except when the new contractor is stepping into the shoes of a contractor it has acquired. This includes plan providers that have merged with a contractor contracted to an employer, as well as those that have acquired a contractor's accounts through a partial or complete acquisition. Please note that an N.J.A.C. 5:37-3.5 certification may not be accepted if the Division determines that the plan requires a novel IRS private letter ruling.

Participation

Employers enroll participants in the plan by executing a joinder agreement and must specify the amount being deferred within each joinder agreement. Participants may subsequently change the deferral amount agreed to in their joinder agreement at specified times designated by the employer, with prior notice to the local plan administrator or plan manager. The deferral amount cannot be lowered below the minimum deferral amount established by the employer in accordance with N.J.A.C. 5:37-5.10. Employers should therefore inform eligible employees of specified time periods and deferral amounts prior to execution of the joinder agreement. N.J.A.C. 5:37-4.2 allows participants the right to modify their joinder agreement to reduce or eliminate any adverse impacts on their accounts. Participants and beneficiaries waive all claims and rights to commute, sell, assign, or otherwise use or transfer rights to receive any payments under the plan upon signing the joinder agreement. Only one joinder agreement may be executed per calendar year, with the agreement expiring upon termination of service or upon revocation of deferrals. In establishing a deferred compensation plan, the local unit employer may exclude certain classes or types of employees from participation. See N.J.A.C. 5:37-5.1(b).

P.L. 2025, c.358, effective as of January 20, 2026, allows local unit employers to adopt a provision in their deferred compensation plans that permits automatic enrollment and deferral of employees unless the employee affirmatively elects otherwise. Pursuant to N.J.S.A. 43:15B-1(b), as amended, the automatic enrollment arrangement must establish a default deferral percentage and provide an employee with notice and a reasonable opportunity to terminate deferrals or to defer at a different percentage. Employers may provide for periodic increases of deferral percentages and for the periodic default reenrollment of employees who are not participating in the plan or are participating at less than the default percentage. N.J.S.A. 43:15B-1(c), as amended, requires local unit employers whose eligible employees are represented by a union to negotiate the terms of the deferred compensation plan with such union, including all the components permitted under N.J.S.A. 43:15B-1(b). Absent a written agreement between the employer and the union, employees represented by the union must affirmatively elect to participate in the deferred compensation plan.

Amending Plans

N.J.A.C. 5:37-4.1 requires contractors (prototypical plans) or local unit employers (self-administered plans) to submit any proposed deferred compensation plan amendments to the Director or designee for approval. If the plan is prototypical, the assigned identifier must be present on the documents for which amendments are being proposed. N.J.A.C. 5:37-4.1 authorizes an employer to amend its plan to accommodate changes in the Internal Revenue Code, Federal statutes, State laws or rules, or operational experience; however, such amendments must still be submitted for review and approval. The documentation submitted to the Director must include the specific language of the proposed amendment(s) and identify the statutory or regulatory authority.

N.J.A.C. 5:37-4.2 requires employers to notify all participants in writing prior to making amendments to the plan. The notice must state what the amendment is, the reason for the amendment, and any impact on participants. If the Director approves the amendment, the employer must adopt the amendment by resolution of the governing body and forward a certified copy of the resolution to the Director in accordance with N.J.A.C. 5:37-4.3. Beginning after the transmission of this Notice, local units and contractors will be required to certify that they have not and will not implement or take any premature action to adopt any amendments to their plan documents and service agreements without prior approval by the Director or prior notification to participants.

If an employer elects to terminate a plan or service agreement, the local unit must adopt a resolution and submit a copy to the Director. N.J.A.C. 5:37-5.11. The termination resolution must include, at a minimum, the name of the contractor(s) and the plan or service agreement identifier. Terminated plans or service agreements that are not properly communicated to the Division in the required form and procedure may adversely affect local units' ability to obtain approval for a new plan or service agreement.

Permitted Investments

Local unit deferred compensation plan funds must be invested in one or more of the following types of investments as the contractor or plan manager deems prudent, to the exclusion of all others:

- Interest bearing accounts or securities, in which savings banks of New Jersey are authorized to invest their funds;
- The State of New Jersey Cash Management Fund;
- Individual or group annuity contracts, whether fixed or variable;
- Mutual fund shares;
- Life insurance contracts; or

- Collective investment trusts (authorized by P.L. 2023, c.43).

A collective investment trust is a trust administered by a bank or trust company that combines assets for multiple investors. Its trustees are considered fiduciaries under the Employee Retirement Income Security Act (ERISA). Collective investment trusts are regulated by the federal Office of the Comptroller of the Currency and subject to the IRS. In contrast, mutual funds are regulated by the Securities and Exchange Commission (SEC). N.J.A.C. 5:37-7.4 requires that any entity offering a mutual fund or other type of security as part of a plan be registered with the SEC and submit to the Director a copy of a "Certification of Good Standing" from the New Jersey Secretary of State.

Except for individual annuities and life insurance contracts, the plan shall allow for investments in authorized investment options by pooling the amounts deferred. The return on investments shall be apportioned on a prorated basis among all participants in the plan after deductions for reasonable administrative costs. N.J.A.C. 5:37-9.4 requires all funds from amounts deferred other than those needed to pay benefits to be invested by the plan manager or contractor responsible for investments within 72 hours, exclusive of Sundays and holidays, from the time the plan manager or contractor receives the funds or is notified that the funds are available for investment or is in any other manner aware that the amounts deferred have been made and are available for investment.

If a local unit employer includes an automatic enrollment arrangement in its plan, the fiduciary must designate a default investment for an employee's deferred compensation in the absence of a participant's affirmative investment election.

Neither employers nor contractors can be held personally liable for any returns on investment of plan funds that are less than any participant or group of participants expected. N.J.A.C. 5:37-5.8. Service agreements must include a "hold harmless" provision indemnifying the employer against any cause of action arising from the contractor's acts or omissions, including the reasonable costs of litigation.

Any investments made pursuant to an approved deferred compensation plan are subject to Director review. Except for investments made by domestic insurance companies licensed to sell life insurance and annuities in New Jersey and subject to review by the Commissioner of the Department of Banking and Insurance, the Division may review and reject any such investment utilizing the standards applicable to the prudent investor as provided in N.J.S.A. 3B:20-11.1 through 11.12. On an annual basis, contractors for prototypical plans or the chief financial officer of any local unit with a self-administered plan must certify that the investments offered under the plan comply with subsection c. of N.J.S.A. 43:15B-3.

Plan Administration

Regardless of plan type, local unit employers remain responsible for ensuring the sound and proper administration of the plan including, but not limited to, the proper, accurate, and adequate accounting and reporting of all funds in accordance with N.J.A.C. 5:37-5.4.

Subchapter 6 of N.J.A.C. 5:37 sets forth various responsibilities of a local plan administrator or, for a self-administered plan, a plan manager. The governing body of a local unit employer must adopt a resolution appointing a local plan administrator or a plan manager. A local plan administrator is responsible for employee deductions and for transferring deferred funds to the contractor for investment. In contrast, a plan manager for a self-administered plan is responsible for all functions of the plan, including employee enrollment, deductions, and the transfer of deferred funds to the contractor for investment, accounting, reporting, and the distribution of compensation. Plan managers are also required to produce a quarterly report available to participants which indicates the value or balance of each participant's account and that of the entire plan, as well as credit to the plan and to each participant's account, the return or loss on investment at least once per month, except for annuity programs.

N.J.A.C. 5:37-6.4 requires local plan administrators and plan managers to retain the original policies, contracts, or other legal documents executed by the employer and the contractor in a safe location, in accordance with record retention requirements. Pursuant to N.J.A.C. 5:37-10.8, all records that concern participation, amounts deferred, account balances, withdrawals, and other information regarding a participant's account must also be held confidential by the local plan administrator, plan manager, and the contractor. However, N.J.A.C. 5:37-10.9 requires all records, reports, or other information relating to the plan, including, but not limited to, cash flow analysis, investment reports, audits, and quarterly reports, to be made available by the local plan administrator, plan manager, or contractor upon written request from a participant or the Director.

Bonding and Evidence of Insurance

The plan manager, or a contractor who provides a prototypical service agreement, must post a bond issued by a duly authorized and licensed organization to protect the plan and employer from any loss resulting from the plan manager's or contractor's fraud or dishonesty. N.J.A.C. 5:37-6.3 and 7.9. Evidence of this bond or the ability to obtain such a bond—in the case of prototypical service agreements, the ability to obtain the bond if the service agreement is awarded—must be provided to the employer and the Director. The bond amount shall be at least 100% of the funds being managed. For prototypical service agreements, a contractor must also provide the employer and Director with evidence of appropriate liability insurance and errors and omissions insurance.

Compliance and Enforcement

Prototypical plans must comply with the requirements set forth in N.J.A.C. 5:37-10.3. Contractors are required to make available, upon the employer's request, the details of all transactions for each employee and to retain the transaction information in accordance with the record retention requirements. Upon receipt of this information, employers are also required to adhere to the record retention requirements. Additionally, contractors must annually provide to the Director and local plan administrator of each contracted local unit a copy of the contractor's Statement on Standards for Attestation Engagements (SSAE) No. 18 SOC 1 Report, as defined by the American Institute of Certified Public Accountants (AICPA).

Contractors are further required to provide local unit employers with a summary statement of financial data that provides a full accounting of all plan transactions occurring during the employer's fiscal year, in accordance with the requirements contained in subsection a of N.J.A.C. 5:37-10.3. The contractor must certify to the Director the accuracy and completeness of this annual accounting date and an independent auditor of the employer is thereafter required to evaluate the employer payroll records and joinder agreements against the information transmitted by the contractor. N.J.A.C. 5:37-10.4 requires employers to conduct an audit of all plan funds in accordance with N.J.S.A. 40A:5-4 or N.J.S.A. 40A:5A-15 if the plan is self-administered. A copy of each audit report must be provided to the Director.

For 2026, local units and contractors will have until September 30th to submit both certifications to the Division.

Beginning in 2027, local unit employers and contractors will receive annual notice no later than 30 days prior to being required to submit their certifications under N.J.A.C. 5:37-9.3, attesting to local unit investments and N.J.A.C. 5:37-12.1 attesting to the list of local unit employers contracted to the provider. Certification forms will be emailed to the primary contact of record for each local unit and approved contractor at least 30 days before the submission deadline. Entities are required to submit their certifications and applicable lists to the Division no later than January 31st of each year.

Local units and contractors that have changed their primary contact information or personnel should provide the Division with the updated contact information promptly via email. Such updates must be transmitted to the Division no later than December 1st of each year unless otherwise requested.

Any local unit employer or contractor deemed by the Division to be in noncompliance with any regulations in N.J.A.C. 5:37 will be notified by certified mail and directed to appear before the Division. The notice shall be given at least 14 days prior to the date of appearance and will detail the nature of the alleged noncompliance. Within 10 days after the date of appearance, a written determination will be issued and a copy forwarded by certified mail to the employer or contractor, as applicable, pursuant to N.J.A.C. 5:37-11.2. A determination of noncompliance will trigger a 60-day grace period, during which time the employer or contractor must rectify all the noncompliant matters to the satisfaction of the Division. Failure to appear or satisfactorily address noncompliance will result in the immediate ineligibility of a contractor to qualify for Division approval of any additional deferred compensation plans, with the Director being able to take such other actions as provided for by law.

Major Federal Law Changes

Multiple statutory and regulatory changes have impacted local unit deferred compensation plans. The most significant amendments to the federal regulatory scheme occurred in 2003 via Treasury Decision 9075. The finalized regulations revised 26 C.F.R. Part 1 and incorporated multiple pre-2003 statutory changes. Shortly thereafter, the Division transmitted guidance on the actions contractors and local unit employers should take.

Congress has since enacted additional legislation impacting deferred compensation. In 2019, Congress passed Pub. L. No. 116-94, titled the Further Consolidated Appropriations Act, 2020. The appropriation bill contained the Bipartisan American Miners Act of 2019 (Miners Act) and the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), which both made substantial modifications to deferred compensation plans and benefits. Notably, Section 104 of the Miners Act changed the age at which plan participants or beneficiaries can be distributed deferred funds to age 59 ½ under government plans, effective January 1, 2020. Additionally, pursuant to Section 113 of the SECURE Act, plan participants are permitted to withdraw certain fund amounts penalty-free for "qualified birth or adoption distributions" (QBADs) subject to 26 U.S.C. §72(t)(2)(H). IRS Notice 2020-68 provides further guidance on provisions of the Miners Act and the SECURE Act that impact local unit deferred compensation plans.

Main Features of the SECURE 2.0 Act

In 2022, Congress passed the Consolidated Appropriations Act, 2023 which included as Division T the "SECURE 2.0 Act of 2022". The SECURE 2.0 Act built on changes made by the original SECURE Act and sought to incentivize and diversify retirement benefits, programs, and planning. A summary of each provision is available on the US Senate Committee on Finance's webpage. Pursuant to the SECURE 2.0 Act, updates have been made to contribution requirements and allowances for participants and employers. Notably, Section 603 of the SECURE 2.0 Act requires employer plans offering catch-up contributions to do so on a Roth basis instead of on a pre-tax basis when at least one participant within the plan has wages for the prior year exceeding $145,000(indexed). Please review IRS Notice 2023-62 for further guidance. Additionally, Section 109 increases the catch-up limit for participants ages 60-63 during the given calendar year to the higher of $10,000 or 150% of the regular catch-up contribution limit for 2025(indexed). Section 604 of the SECURE 2.0 Act also permits employers to provide matching contributions to participants on both a pre-tax basis (the only option previously) and a Roth basis.

The SECURE 2.0 Act likewise made significant amendments to procedures impacting the administration of certain deferred compensation provisions and requirements. Crucially, Section 311 revises the QBAD distribution allowance permitted pursuant to the SECURE Act by amending the provision to restrict the recontribution period to three (3) years, thus allowing for participants who took a distribution for this purpose to amend their return later to receive a refund for the taxes that were paid in the year of the withdrawal. Additionally, Section 302 reduces the excise tax for failure to take Required Minimum Distributions (RMDs) from 50% to 25% and further lessens the penalty to 10% for taxpayers who take certain corrective actions within a timely manner, as prescribed under 26 U.S.C. 4974. Moreover, Section 325 eliminates the requirement for plan participants to receive RMDs for Roth accounts during their lifetime, bringing the pre-death RMD rules in line with those of Roth IRAs.

Further, the SECURE 2.0 Act created rules for distributions and withdrawals under unique circumstances. Section 312 permits participants to self-certify qualifying events for the purpose of taking a hardship withdrawal. Section 331 also established special rules regarding the use of plan funds in connection with qualified federally declared disasters, including distribution limits, repayment requirements, and permitted actions. The Act additionally established several exceptions and clarifying provisions for withdrawals that were previously restricted or subject to penalties. Section 323 expands the exception to the 10% tax for substantially equal periodic payments made over the account owner's life when there is a rollover of the account, exchange of the payment-providing annuity, or an annuity that satisfies the required minimum distribution rules. Sections 115 and 326 created exceptions to the 10% penalty on early distributions when related to a terminally ill individual and, respectively, in certain situations for distributions used for emergency expenses. Relatedly, Section 314 established rules for penalty-free withdrawals for participants who self-certify to experiencing domestic abuse. IRS Notice 2024-55 provides additional guidance for both Sections 115 and 314. The statutory authority and applicability of other exceptions to the 10% additional tax on early distributions are available on the IRS website.

The SECURE 2.0 Act made several other changes to deferred compensation plans. Starting January 1, 2027, Section 309 allows first responders to exclude service-connected disability-related payments from gross income after they reach retirement age. Pursuant to Section 304, the cash-out limit for plan sponsors seeking to transfer vested account balances of separated participants into IRAs has been increased from $5,000 to $7,000. Section 306 makes notable changes to deferral rate modifications. Under the previous law, participants in governmental plans were required to request changes in their deferral rate prior to the beginning of the month in which the deferral was made. However, participants are now permitted to make such elections at any time prior to the date on which the deferred compensation becomes available. In reconciling this change within their plan documents, local unit employers and contractors should note the discretion granted to allow such rate changes, subject to N.J.A.C. 5:37-8.1. Parties should also ensure that provisions and procedures comply with both Section 306 of the SECURE 2.0 and N.J.S.A. 43:15B-1(b) for plans in which the employer has elected to include an automatic enrollment arrangement.

Required Minimum Distribution Age (RMD) Updates

It is important for plan documents to reflect the series of changes to the RMD age. Passed in 1974, ERISA originally established the RMD age at 70 ½. Section 114 of the SECURE Act, which increased the RMD age to 72 for participants younger than 70 ½ as of January 1, 2020, was in turn superseded by Section 107 of the SECURE 2.0 Act which established the following threshold age scale:

(I) In the case of an individual who attains age 72 after December 31, 2022, and age 73 before January 1, 2033, the applicable age is 73.

(II) In the case of an individual who attains age 74 after December 31, 2032, the applicable age is 75.

Due to the above-referenced changes, plan documents approved between January 1, 2020, and December 31, 2022, containing language pursuant to the SECURE Act need to be revised to reflect the SECURE 2.0 Act's amendments to 26 U.S.C. 401(a)(9). Employers with prototypical plans should verify with their contractor that plan documents have been updated and applicable participants have received their distributions. Local unit employers self-administering deferred compensation plans must make appropriate amendments to their plan documents.

Miscellaneous Permitted Plan Options

Local unit employers are permitted to include several other provisions within their plans to provide benefits and options for their participants pursuant to the SECURE Act, SECURE 2.0 Act, and recently enacted State law. Section 109 of the SECURE Act permits employers to transfer participants' lifetime income investments or distributions, in the form of qualified plan distribution annuities, to another employer-sponsored plan or IRA when the lifetime income investment is no longer authorized as an investment option under the plan. Section 120 of the SECURE 2.0 Act allows service providers to include automatic portability services within employer plans. It also permits the automatic transfer of a former participant's default IRA into the participant's new employer's deferred compensation plan unless the participant elects otherwise.

Section 127 of the SECURE 2.0 Act permits employers to offer non-highly compensated participants Pension-Linked Emergency Savings Accounts (PLESAs). See IRS Notice 2024-22 for additional background and guidance on the section. Section 334 of the Act also permits plans to distribute up to $2500 annually for the purchase and payment of long-term care insurance, subject to the requirements under 26 U.S.C. § § 401 and 6050Z. Section 110 further permits employers, after January 1, 2024, to make matching contributions in a §457(b) plan on account of employees' "qualified student loan payments" to assist employees in repaying these loans.

Section 316 of the SECURE 2.0 Act amends 26 U.S.C. §401(b) to permit discretionary amendments to plan provisions that increase participants' benefits to be adopted by the employers' tax return due date. In addition, Section 501 of the SECURE 2.0 Act amended several deadlines for deferred compensation plans to align with changes under the SECURE Act and the SECURE 2.0 Act, as well as with several other laws impacting other types of plans. For clarification and guidance on when plans must be updated, please review IRS Notice 2024-02.

Approved: Michael F. Rogers, Director

Document	Internet Address
N.J.A.C. 5:37-1.1 et seq.	https://www.nj.gov/dca/dlgs/programs/deferred_compensation/2025/njac_5_37_et_seq_oal.pdf
2025 Approved Providers	https://www.nj.gov/dca/dlgs/programs/deferred_compensation/2025/Deferred%20Comp%202025%20Providers.pdf
DLGS Deferred Compensation Webpage	https://www.nj.gov/dca/dlgs/programs/De_Compensation.shtml
Prototypical Plan or Service Agreement Registration Form	https://www.nj.gov/dca/dlgs/programs/deferred_compensation/Registration_form%20for%20Prototypical%20Deferred%20Compensation%20PAl%20and%20Prototypical%20Service%20Agreement.pdf
P.L. 2025, c. 358	https://pub.njleg.state.nj.us/Bills/2024/A5000/4562_R2.PDF
NJ Treasury Record Retention Requirements	https://www.nj.gov/treasury/revenue/rms/retentiondisposition.shtml
Memo on IRS Regulatory Updates (2003)	https://www.nj.gov/dca/divisions/dlgs/programs/de_docs/memo_re_401_a_9.pdf
Pub. L. No. 116-94	https://www.govinfo.gov/content/pkg/BILLS-116hr1865enr/pdf/BILLS-116hr1865enr.pdf
IRS Notice 2020-68	https://www.irs.gov/pub/irs-drop/n-20-68.pdf
Pub. L. No. 117-328	https://www.govinfo.gov/content/pkg/PLAW-117publ328/pdf/PLAW-117publ328.pdf
U.S. Senate Committee on Finance – SECURE 2.0 Section by Section Summary	https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
IRS Notice 2023-62	https://www.irs.gov/pub/irs-drop/n-23-62.pdf
IRS Notice 2024-55	https://www.irs.gov/pub/irs-drop/n-24-55.pdf
IRS webpage – Exceptions to tax on early distributions	https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-exceptions-to-tax-on-early-distributions

IRS Notice 2024-22	https://www.irs.gov/pub/irs-drop/n-24-22.pdf
IRS Notice 2024-2	https://www.irs.gov/pub/irs-drop/n-24-02.pdf