

SUBCHAPTER 2. THE DIRECTOR

5:37-2.1 Approving plans and service agreements

(a) The Director shall approve or reject any deferred compensation plan or service agreement or amendment thereto prior to its implementation by an employer.

(b) The Director shall approve or reject a self-administered plan or prototypical plan or service agreement or any amendment thereto within 20 working days of receipt of a complete application package. The Director shall explain in writing, the reasons for rejection. Any modifications required by the Director shall be made within 60 days from the time of notification. Failure to submit the modifications within the time provided shall result in the plan being disapproved.

5:37-2.2 Review investments

Any investments made pursuant to an approved deferred compensation plan are subject to review by the Director. With the exception of investments made by domestic insurance companies licensed to sell life insurance and annuities in this State and subject to review by the Commissioner of the Department of Insurance pursuant to Chapter 20 of Title 17B of the New Jersey Statutes, the Director may review and reject any such investment. In making such determinations, the Director shall utilize the standards applicable to the prudent investor as provided in Sections 1 through 12 of P.L. 1997, c. 26 (N.J.S.A. 3B:20-11.1 through 11.12).

SUBCHAPTER 3. DEFERRED COMPENSATION PLAN

5:37-3.1 Prototypical plans and service agreements

(a) A contractor shall submit to the Director for approval a prototypical plan or service agreement and any amendment thereto to be made available to employers. The plan and service agreement shall contain, but not be limited to, the policies and procedures to be used in operating a deferred compensation plan as set forth in these rules.

(b) The Director shall assign a separate identifier to each approved prototypical plan and service agreement and any amendment thereto. This identifier shall appear in a prominent position on each plan and agreement offered to an employer.

(c) The approval of a prototypical plan or a service agreement by the Director shall not constitute an endorsement of the plan or service agreement.

5:37-3.2 Self-administered plan

The employer may prepare and administer a deferred compensation plan. The plan shall contain, but not be limited to, the policies and procedures to be used in operating a deferred compensation plan as set forth in these rules. Such a

plan may be prepared in consultation with representatives of the potential participants.

5:37-3.3 Uniform system of accounting

The plan shall provide for a uniform system of accounting for each participant and for the investment of the deferred compensation funds.

5:37-3.4 Certification of Internal Revenue Service compliance

The resolution of an employer adopting a self-administered plan or a prototypical plan shall certify that an application has been filed with the Internal Revenue Service for a private letter ruling that the plan meets the requirements of Section 457 of the Internal Revenue Code, as amended, and that such ruling will be forwarded to the Director when received.

5:37-3.5 Alternative certification of Internal Revenue Service compliance

As an alternative to the Internal Revenue Service private letter ruling required pursuant to N.J.A.C. 5:37-3.4, the resolution of an employer adopting a prototypical plan shall certify that the employer is adopting a plan substantially similar to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained, except for provisions added by reason of the Small Business Job Protection Act of 1996 (United States Public Law No. 104-188), the Taxpayer Relief Act of 2001 (United States Public Law No. 105-34), and the Economic Growth and Tax Relief Reconciliation Act of 2001 (United States Public Law No. 107-16), and that all such provisions are stated in the plan in terms substantially similar to the text of those provisions in the Internal Revenue Code §457. The certification shall also indicate the use of the ruling is for guidance only and the realization that for Internal Revenue Service purposes, the ruling of another employer is not to be considered precedent.

Amended by R.1997 d.371, effective September 2, 1997.
See: 29 N.J.R. 2743(a), 29 N.J.R. 3805(a).

In the first sentence, added the exception for provisions added by reason of the Small Business Job Protection Act of 1996.

Amended by R.2005 d.349, effective October 17, 2005.
See: 37 N.J.R. 1278(a), 37 N.J.R. 3975(b).

Added “, the Taxpayer Relief Act of 2001 (United States Public Law No. 105-34), and the Economic Growth and Tax Relief Reconciliation Act of 2001 (United States Public Law No. 107-16),”.

SUBCHAPTER 4. AMENDMENTS OF PLAN

5:37-4.1 Reasons for amendment

The employer may amend the plan to accommodate changes in the Internal Revenue Code, Federal statutes, State laws or rules or operational experience.

5:37-4.2 Notification of amendment

The employer shall notify all participants in writing prior to making any amendment to the plan. The notice shall state that an amendment will be made, what the amendment will be, why the plan is being amended, and what the impact, if any, will be on the participants. The participants shall have the right to modify the joinder agreement to reduce or eliminate any adverse impact on their accounts.

5:37-4.3 Plan amendment

(a) Any amendment to a deferred compensation plan whether or not it is necessary to maintain the plan as an eligible deferred compensation plan within the meaning of the Internal Revenue Code shall be submitted for review and approval by the Director prior to implementation.

(b) The documentation submitted to the Director shall identify the regulatory authority for the amendment and the specific language of the change.

(c) The employer shall adopt the amendment by resolution of the governing body. A certified copy of the resolution shall be forwarded to the Director.

Amended by R.1999 d.58, effective March 1, 1999.
See: 30 N.J.R. 3989(a), 31 N.J.R. 673(b).
Rewrote (a); and added (c).

5:37-4.4 (Reserved)

Repealed by R.1999 d.58, effective March 1, 1999.
See: 30 N.J.R. 3989(a), 31 N.J.R. 673(b).
Section was "Non-Internal Revenue Service amendment".

SUBCHAPTER 5. THE EMPLOYER**5:37-5.1 Institution of plans**

(a) The employer shall decide whether to institute a deferred compensation plan for its employees.

(b) An employer may at its option exclude certain classes or types of employees from participation in the plan.

5:37-5.2 Plan and service agreement adoption

(a) The employer shall adopt a self-administered plan by resolution. A certified copy of the resolution shall be forwarded to the Director. The resolution shall include, but shall not be limited to:

1. Formal adoption of the plan; and
2. Identification of a plan manager pursuant to N.J.A.C. 5:37-5.4.

(b) The employer shall adopt a prototypical plan by resolution of the governing body. The resolution shall include, but not be limited to:

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 Internal Revenue Service pursuant to N.J.A.C. 5:37-3.4 or 3.5 for a prototypical plan adoption only; and
7. The identification of the contractor, the plan identifier and the service agreement identifier.

(c) The Director shall make available a sample resolution for use by employers.

(d) A certified copy of the resolution shall be forwarded to the Director.

Amended by R.1999 d.58, effective March 1, 1999.
See: 30 N.J.R. 3989(a), 31 N.J.R. 673(b).
In (a), added a third sentence in the introductory paragraph, and added 1 and 2.
Amended by R.2005 d.349, effective October 17, 2005.
See: 37 N.J.R. 1278(a), 37 N.J.R. 3975(b).
In (b)7, substituted "," for "and" and "identifier and the" for "or".

5:37-5.3 (Reserved)

Amended by R.1997 d.371, effective September 2, 1997.
See: 29 N.J.R. 2743(a), 29 N.J.R. 3805(a).
In (a), substituted "deferred compensation plan which has been approved by the Director" for "prototypical plan".
Repealed by R.2007 d.214, effective July 16, 2007.
See: 39 N.J.R. 819(a), 39 N.J.R. 2631(a).
Section was "Additional service agreement(s)".

5:37-5.4 Responsible for administration

The employer shall ensure the sound and proper administration of the plan, which shall include, but not be limited to, the proper, accurate and adequate accounting and reporting of all funds by appointing a local plan administrator for a prototypical plan or a plan manager for a self-administered plan by resolution.

Amended by R.1999 d.58, effective March 1, 1999.
See: 30 N.J.R. 3989(a), 31 N.J.R. 673(b).
Substituted "local plan administrator for a prototypical plan or a plan manager for a self-administered plan" for "plan administrator" following "appointing a".