

**CHAPTER 37**

**MUNICIPAL, COUNTY AND AUTHORITY  
EMPLOYEES DEFERRED COMPENSATION PLANS**

**Authority**

N.J.S.A. 43:15B-1 et seq.

**Source and Effective Date**

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

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, was extended by gubernatorial directive from April 15, 2013 to April 15, 2014. See: 45 N.J.R. 1245(a).

**Chapter Historical Note**

Chapter 37, Municipal and County Employees Deferred Compensation Programs, was adopted as emergency new rules by R.1980 d.456, effective October 16, 1980. See: 12 N.J.R. 633(b). Pursuant to Executive Order No. 66(1978), Chapter 37 expired on October 16, 1985.

Chapter 37, Municipal, County and Authority Employees Deferred Compensation Programs, was adopted as new rules by R.1985 d.598, effective November 18, 1985. See: 17 N.J.R. 1960(a), 17 N.J.R. 2749(b). Pursuant to Executive Order No. 66(1978), Chapter 37 expired on November 18, 1990.

Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, was adopted as new rules by R.1991 d.19, effective January 7, 1991. See: 22 N.J.R. 3076(a), 23 N.J.R. 57(c).

Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, was repealed and Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, was adopted as new rules by R.1994 d.578, effective November 21, 1994. See: 26 N.J.R. 2708(a), 26 N.J.R. 4600(a). Pursuant to Executive Order No. 66(1978), Chapter 37 expired on November 21, 1999.

Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, was adopted as new rules by R.2000 d.108, effective March 20, 2000. See: 31 N.J.R. 4163(a), 32 N.J.R. 1064(a).

Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, expired on September 16, 2005 and Chapter 37, Municipal, County, and Authority Employees Deferred Compensation Plans was adopted as new rules by R.2005 d.349, effective October 17, 2005. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, was scheduled to expire on April 15, 2011. See: 42 N.J.R. 1453(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 37, Municipal, County and Authority Employees Deferred Compensation Plans, was scheduled to expire on April 15, 2013. See: 43 N.J.R. 1203(a).

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. DEFINITIONS**

5:37-1.1 Definitions

**SUBCHAPTER 2. THE DIRECTOR**

5:37-2.1 Approving plans and service agreements  
5:37-2.2 Review investments

**SUBCHAPTER 3. DEFERRED COMPENSATION PLAN**

5:37-3.1 Prototypical plans and service agreements  
5:37-3.2 Self-administered plan  
5:37-3.3 Uniform system of accounting  
5:37-3.4 Certification of Internal Revenue Service compliance  
5:37-3.5 Alternative certification of Internal Revenue Service compliance

**SUBCHAPTER 4. AMENDMENTS OF PLAN**

5:37-4.1 Reasons for amendment  
5:37-4.2 Notification of amendment  
5:37-4.3 Plan amendment  
5:37-4.4 (Reserved)

**SUBCHAPTER 5. THE EMPLOYER**

5:37-5.1 Institution of plans  
5:37-5.2 Plan and service agreement adoption  
5:37-5.3 (Reserved)  
5:37-5.4 Responsible for administration  
5:37-5.5 Exclusive benefit  
5:37-5.6 Conflict of interest  
5:37-5.7 Non-collusion  
5:37-5.8 No personal liability  
5:37-5.9 Administrative expenses  
5:37-5.10 Minimum amounts  
5:37-5.11 Terminated plan or service agreement

**SUBCHAPTER 6. THE LOCAL PLAN ADMINISTRATOR  
AND PLAN MANAGER**

5:37-6.1 Responsibilities of the local plan administrator  
5:37-6.2 Responsibilities of the plan manager  
5:37-6.3 Bonding and evidence of insurance—self-administered plan  
5:37-6.4 Document retention  
5:37-6.5 Quarterly report—self-administered plan  
5:37-6.6 Credit to accounts—self-administered plan

**SUBCHAPTER 7. THE CONTRACTOR**

5:37-7.1 Award of service agreements  
5:37-7.2 Ban on solicitation prior to award of contract  
5:37-7.3 Insurance companies  
5:37-7.4 Mutual fund companies  
5:37-7.5 Non-profit corporations  
5:37-7.6 Banking institutions  
5:37-7.7 Non-discrimination  
5:37-7.8 Contractor disclosure  
5:37-7.9 Bonding and evidence of insurance—prototypical service agreement  
5:37-7.10 Provisions for rule to be part of service agreement  
5:37-7.11 Responsibilities of the contractor  
5:37-7.12 Quarterly report—prototypical plan  
5:37-7.13 Credit to accounts

**SUBCHAPTER 8. ENROLLMENT**

5:37-8.1 Joinder agreement  
5:37-8.2 Leave of absence

**SUBCHAPTER 9. INVESTMENT POLICIES**

5:37-9.1 Eligible investments  
5:37-9.2 Choice of investments  
5:37-9.3 Investment certification  
5:37-9.4 Timing of investments

**SUBCHAPTER 10. ACCOUNTING PROCEDURES**

5:37-10.1 Pooling of funds  
5:37-10.2 (Reserved)  
5:37-10.3 Compliance requirement—prototypical plan

- 5:37-10.4 Audit of a self-administered plan
- 5:37-10.5 Deferrals
- 5:37-10.6 (Reserved)
- 5:37-10.7 Return to participants
- 5:37-10.8 Participant records confidential
- 5:37-10.9 Plan records

**SUBCHAPTER 11. ENFORCEMENT**

- 5:37-11.1 Compliance
- 5:37-11.2 Director determination
- 5:37-11.3 Grace period
- 5:37-11.4 Penalties

**SUBCHAPTER 12. PLAN VERIFICATION**

- 5:37-12.1 Plan list

**SUBCHAPTER 1. DEFINITIONS**

**5:37-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Accounting date” means the annual date at the close of the fiscal year when the employer provides an accounting of its deferred compensation plan and appries all participants of the value of their accounts.

“Approved plan” means a deferred compensation plan which has been approved by the Director.

“Beneficiary” means the person, persons or legal entity designated by a participant to receive any undistributed deferred compensation which becomes payable in the event of the participant’s death.

“Complete application package” means the documentation to be submitted to the Director by an employer for approval of a self-administered deferred compensation plan or by a contractor for a prototypical deferred compensation plan which may include, but not be limited to, the deferred compensation plan document, service agreement and resolution.

“Contractor” means any 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.

“Deferred compensation” means future benefits for present services payable pursuant to a contract with an employee.

“Deferred compensation plan” or “plan” means a document consistent with the requirements of Section 457, as amended, of the United States Internal Revenue Code under which an employee may defer payment of a specified amount of compensation until the future receipt thereof.

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

“Employee” means any person, including elected, appointed and salaried persons working for the employer.

“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.

“Independent auditor” means a registered municipal accountant for a municipality or county pursuant to N.J.S.A. 40A:5-4 or a registered municipal accountant or a certified public accountant for an authority or fire district pursuant to N.J.S.A. 40A:5A-15.

“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.

“Participant” means a local unit employee who is participating in a deferred compensation plan.

“Pay period” means the period of time for which the employer computes compensation for the employee.

“Plan manager” or “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 employer’s self-administered deferred compensation plan and for the investments and the accounting of funds maintained under the plan.

“Prototypical plan” means a deferred compensation plan prepared by a contractor 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.

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

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

Deleted “Service agreement” and added “Prototypical service agreement”.

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

Deleted “Administrator”; rewrote “Contractor”; and inserted “Local plan administrator” and “Plan manager” or “manager”.

## 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 Section 13 of P.L. 1981, c.405 (N.J.S.A. 3B:20-13).

## 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 de-

ferred 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".