

Notice Number

Date

LOCAL FINANCE NOTICE

CHRISTINE TODD WHITMAN
GOVERNOR

JANE M. KENNY
COMMISSIONER

ULRICH H. STEINBERG, JR.
DIRECTOR

LOSAP Rules Adopted

The Length of Service Award Program Rules were published for adoption in The New Jersey Register of January 16, 2001. They were adopted in substantial form as proposed and as outlined in Local Finance Notice Number LOSAP 2000-1. Please review that Notice for the details of the adopted rules. A copy of that Notice is also enclosed.

A copy of the Rules as they appear in the Register is attached to this Local Finance Notice. The Rules and related LOSAP information is also available from the Length of Service Award Program link on the Division's web site — www.state.nj.us/lgs.

On December 12, 2000, the Division approved a second LOSAP provider. Therefore, the Division no longer entertains requests for waivers from the requirement to solicit proposal form two or more providers of LOSAP services.

As additional providers are approved, the names will be posted on the Division's website. Listed below are the two companies currently approved to provide LOSAP services:

Name of Company	Lincoln National Life Insurance Company	The Variable Annuity Life Insurance Company (VALIC)
Contact Name	Sy Green or Bruce Linger	Carole Perrotta
Contact Phone	973-472-7700	732-596-1600

The Division is currently developing a set of "frequently asked questions" about LOSAPs. Once completed, the list of questions and responses will be available at the LOSAP web site and in print form. For the present, questions should be directed to Nelson S. Silver at 609-292-2524 or by e-mail at nsilver@dca.state.nj.us. Recipients of this Notice are asked to share it with their elected and other officials as appropriate.

Ulrich H. Steinberg

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

Distribution: Chief Financial Officers

EMERGENCY SERVICES
VOLUNTEER LENGTH OF SERVICE
AWARD PROGRAM RULES
(I osap)

ADOPTED 16 JANUARY 2001

DIVISION OF LOCAL GOVERNMENT SERVICES
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
PO BOX 803
TRENTON NJ 08625-0803

5:30-14.1 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 sponsoring agency provides an accounting of its length of service award agreement and appraises all participants of the value of their accounts.

"Active volunteer member" means a person who has been so designated by the governing board of a duly created emergency service organization and who is faithfully and actually performing volunteer service in that organization.

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

"Complete application package" means the documentation to be submitted to the Director by a contractor for approval of a prototypical length of service award plan agreement which may include other supporting documentation as required.

"Contractor" means any person or entity, other than the sponsoring agency, authorized to do business in New Jersey, that provides investments or services or both regarding the sponsoring agency's length of service award plan agreement.

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

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

"Emergency service organization" means a fire or first aid organization, whether organized as a volunteer fire company, volunteer fire department, fire district or duly incorporated emergency service squad.

"Emergency service squad" means a duly incorporated volunteer first aid, emergency or volunteer ambulance or rescue squad association.

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

"Joinder agreement" means the document signed by a participant to authorize participation in a length of service award program.

"Length of service award program" or "LOSAP" means a system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization.

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

"Participant" means an active volunteer member who is eligible for benefits under a length of service award program.

"Prototypical length of service award plan," "LOSAP plan" or "plan" means a length of service award plan prepared by a contractor and approved by the Director.

"Sponsoring agency" means the governing body of a municipality or fire district.

"Vesting" means the length of time a bona fide volunteer must serve in order to secure the right to receive the benefits of participation in a length of service award program.

"Year of active emergency service" means a 12-month period during which an active volunteer member participates in the fire or first aid service and satisfies the minimum requirements of participation established by the sponsoring agency on a consistent and uniform basis.

5:30-14.2 Creating LOSAPs: Determining the sponsoring agency for volunteer fire organizations

(a) LOSAPs shall be created by voluntary action of a sponsoring agency, which shall be a municipality or fire district. If the sponsoring agency is a municipality, the LOSAP shall be created by ordinance. If the sponsoring agency is a fire district, the LOSAP shall be created by resolution.

(b) In determining the sponsoring agency and creation process for volunteer fire organizations, the following shall apply:

1. A LOSAP shall be created by municipal ordinance for volunteer fire organization(s) in a municipality that is not served by a fire district.

2. A LOSAP shall be created by resolution of a Fire District Board of Fire Commissioners in a municipality that is served by one or more fire districts.

3. Where there is more than one fire district in a municipality, each district may have its own LOSAP for its fire companies.

4. The municipality or fire district may have only one LOSAP for each emergency service, regardless of how many fire companies or first aid organizations operate within their jurisdiction.

5. If a volunteer fire organization serves more than one municipality, the sponsoring agency shall be the municipality where the fire company is located, unless otherwise agreed to, as per the terms of an interlocal services agreement.

5:30-14.3 Creating LOSAPs: Determining the sponsoring agency for emergency service squads .

(a) If there is no fire district, and one or more emergency service squads serve a single municipality, the LOSAP shall be created by the municipality. The provisions at N.J.A.C. 5:30-14.15 shall apply if the squad(s) serve(s) multiple municipalities.

(b) If an emergency service squad serves an entire municipality that is served by multiple fire districts, the municipality shall serve as sponsoring agency.

(c) A fire district shall serve as sponsoring agency for an emergency service squad whose jurisdiction is limited to, or is within the boundaries of a fire district, provided that the squad is organizationally affiliated with, or receives permitted financial support from the district.

(d) If an independent emergency service squad serves an entire municipality which is served by a single fire district, the sponsoring agency shall be the jurisdiction that provides the greater amount of financial support or has an organizational or operational support relationship.

(e) In a municipality that has multiple fire districts, if there are several emergency service squads that are independent of fire district organizations, or whose coverage areas overlap district boundaries, the municipality shall serve as sponsor.

(f) If an emergency service squad serves more than one municipality, the sponsoring agency shall be the municipality where emergency service squad is located, unless otherwise agreed to, as per the terms of an interlocal services agreement.

(g) If an emergency service squad serves more than one sponsoring agency, the rules at N.J.A.C. 5:30-14.15 shall apply.

(h) Where an emergency service squad has unique operating relationships (other than those enumerated in (a) through (g) above), the Director shall be contacted for a determination on whether a fire district or municipality would be considered the sponsoring agency.

5:30-14.4 LOSAP ordinances/resolutions: public disclosure sites and filing requirements

(a) The enabling ordinance or resolution and a copy of the LOSAP law (N.J.S.A. 40A:14-183 et seq.) shall be made available to the public in a public library that serves the jurisdiction (if there is one), and at the office of the municipal clerk. In the case of a fire district, in lieu of the municipal clerk, if the fire district maintains an office that is accessible to the public during normal business hours, the resolution creating the LOSAP shall be placed in that office.

(b) Copies of all approved LOSAP ordinances/resolutions shall be filed with the Division within 30 days of the date of the referendum.

5:30-14.5 Ballot questions

(a) All ballot questions that are required pursuant to N.J.S.A. 40A:14-185(c) shall be accompanied by an explanatory statement which shall include the following:

1. A general description of the program, including the point system to be utilized in determining eligibility for benefits;
2. The name of the sponsoring agency;
3. The name of the emergency service organization receiving the LOSAP;
4. The amount of the contribution;
5. The allowance of crediting for prior year service, if applicable; and,
6. The location where the program documents are available for public view.

(b) Fire districts shall be responsible for preparing and scheduling their own LOSAP referendum as part of their annual election.

(c) In the case of municipalities, the municipal clerk shall coordinate the printing of the question on the ballot with the County Board of Elections.

(d) All election results shall be certified by either the County Board of Elections or the fire district and copy of such certification shall be filed with the Division within 30 days of the date of certification.

5:30-14.6 LOSAP budget provisions

(a) Once approved by the voters, appropriations for a LOSAP shall be included in the budget of the sponsoring agency as a separate line item. Municipal budget appropriations shall be treated as exceptions to the budget cap (N.J.S.A. 40A:4-45.3).

(b) Fire districts anticipating the creation of a LOSAP at their annual election shall provide for the first year's cost of the program in the district's annual budget.

(c) If a fire district referendum on the public question to create a LOSAP is defeated, the appropriation provided in the district's annual budget shall be removed from the budget, along with an equivalent decrease adjustment to the tax levy that is certified by the Municipal Tax Assessor.

5:30-14.7 Restrictions on the number of LOSAPs

(a) No municipality or fire district shall have more than one program that provides cash payments for volunteers based on length of service.

(b) Other authorized compensation programs for emergency service volunteers, such as stipends and uniform allowances, shall not be affected by the restriction set forth in (a) above.

5:30-14.8 Abolishing or amending LOSAPs

Pursuant to N.J.S.A. 40A:14-187, a LOSAP may be abolished or amended in the same way by which it was created, except in the case of minor amendments. Minor amendments include those that do not materially affect the elements of the LOSAP that was originally approved by the voters. Such amendments shall be approved by a majority vote of the governing body (in the case of municipal sponsors), or by a majority vote of the Board of Fire Commissioners (in the case of fire districts). In either case, the requirements for a referendum shall not apply.

5:30-14.9 LOSAP benefits

In October of each year, the Director shall adjust the maximum contribution for each LOSAP member in accordance with changes in the consumer price index

(CPI). Sponsoring agencies shall be informed of the adjusted amount through the issuance of a Local Finance Notice and publication of a public notice in the New Jersey Register.

5:30-14.10 LOSAP award process

(a) Pursuant to N.J.S.A. 40A:14-191, emergency service organizations participating in a LOSAP shall annually certify to the sponsoring agency a list of all volunteer members who have qualified for credit under the LOSAP program for the previous year. The certification shall be based on records maintained by the emergency service organization in accordance with the sponsoring agency's adopted point system. The required certification shall be presented to the sponsor within 30 days of the plan anniversary date.

(b) Upon receiving the certified list from an emergency service organization, the sponsoring agency shall, within 30 days, review it and, if necessary, request any records or other such back-up that it deems necessary in order to substantiate the information provided. Upon finding that the list is accurate, approval by the sponsoring agency shall then be conveyed by resolution of its governing body. Upon approval, the list shall be returned to the emergency service organization for posting.

(c) The emergency service organization shall post the certified list for a period of 30 days to allow sufficient time for membership review. The list shall be posted at the office of the municipal clerk, and at the emergency service squad facility. In the case of fire districts, the list shall be posted in the firehouses of the sponsoring agency.

5:30-14.11 Appeals

(a) Appeals filed pursuant to N.J.S.A. 40A:188(f) shall be investigated by the sponsoring agency.

(b) Appeals shall be mailed to the municipal clerk, in the case of municipal sponsors, or to the secretary of the Board of Fire Commissioners, in the case of fire district sponsors.

(c) Appeals must be received by the sponsoring agency within 30 days of the posting date of the certification list, or within 30 days of the date of denial of past service credit, as determined pursuant to the certification list required at N.J.A.C. 5:30-14.10(a).

(d) In conducting its investigation, the sponsoring agency shall give due consideration to evidence submitted by the active volunteer member in support of the appeal, and evidence submitted by the emergency service organization in support of its decision. All such

evidence shall be in the form of records or other written materials which clearly substantiate the reasons for filing an appeal by the active volunteer member, and the reasons for denying certification or credit for prior service, as determined by the emergency service organization.

(e) Upon receiving an appeal, and prior to conducting its own investigation, the sponsoring agency may, at its discretion, and within 10 days, refer the matter back to the emergency service organization in an effort to settle the dispute internally.

(f) If the appeal and all written documentation is referred back to the emergency service organization, and the emergency service organization fails to settle or take action on the issue within 30 days, the sponsoring agency shall then investigate the appeal, as set forth in section (d) above.

(g) If an appeal is not referred back to the emergency service organization, or within 30 days of receiving an unresolved appeal from the emergency service organization, the sponsoring agency shall conduct its own investigation, as set forth in (d) above, and shall submit a non-binding recommendation to the emergency service organization with respect to the matter. The emergency service organization shall either accept, modify or deny the sponsoring agency's recommendation, and thereby, decide the matter.

(h) The final decision by the emergency service organization shall be subject to appropriate judicial review.

5:30-14.12 Depositing LOSAP contributions

Following the 30-day period for filing an appeal, and subject to holding the payment of any members being appealed, payment shall be made by the sponsoring agency to the approved contractor for deposit into the LOSAP account in the deferred income program.

5:30-14.13 Pre-existing LOSAP programs

(a) Benefit programs, such as annuities, which are similar to LOSAPs and which were offered to members of volunteer emergency service organizations prior to enactment of N.J.S.A. 40A:14-183 et seq. (January 19, 1998), may be continued subject to the following requirements:

1. Participants of pre-existing benefits programs who were vested at a level in excess of \$750.00 per month as of January 19, 1998, may continue to receive benefits at that level.

2. Participants of pre-existing benefit programs who vest after January 19, 1998, shall not receive a benefit in excess of \$750.00 per month, except that the level may be adjusted annually pursuant to N.J.S.A. 40A:14-185(f) and N.J.A.C. 5:30-14.9.

5:30-14.14 Prior service credit

(a) If a sponsoring agency allows credit for prior service, such credit shall only be granted to active volunteer members.

(b) If a sponsoring agency allows credit for prior service, such credit shall be limited to not more than 10 years of active emergency service periods preceding the creation of the program by the sponsoring agency.

(c) Calculations of prior year service credit shall be based on the point schedule adopted by the sponsoring agency, and the 12-month time frame that is used to define a year of active emergency service.

(d) The combined amount of the LOSAP award, including the current year benefit and payment for prior years service, cannot exceed \$1,150 annually, except that this amount shall be adjusted annually, pursuant to N.J.S.A. 40A:14-185(f) and N.J.A.C. 5:30-14.9.

(e) The executive board of the respective emergency service organization shall provide the sponsoring agency with a certified list of volunteers that are eligible for prior year service credit. The list shall be appropriately documented to support eligibility, and shall be subject to appeal pursuant to N.J.S.A. 40A:14-188(f) and N.J.A.C. 5:30-14.11.

(f) Credit for prior year service shall be awarded at the discretion of the current sponsoring agency.

5:30-14.15 Special circumstances governing multiple sponsors

In instances where there is more than one sponsoring agency of an emergency service organization:

(a) No individual shall receive more than the maximum annual benefit amount established in N.J.S.A. 40A:14-189(b), regardless of the number of sponsoring agencies served, except that the amount may be adjusted annually pursuant to N.J.S.A. 40A:14-185(f) and N.J.A.C. 5:30-14.9.

(b) Each agency shall adopt an enabling LOSAP ordinance or resolution, as appropriate, and the point system that each agency establishes shall be identical. The number of points awarded for services provided by

the volunteer shall be accounted for in the aggregate, and shall not be based on services provided to individual municipalities or fire districts. The amount of benefit that a volunteer receives from each sponsoring agency may differ, and it may be prorated among the agencies served, but it shall not be greater than the maximum annual benefit established pursuant to N.J.S.A. 40A:14-189(b) and N.J.A.C. 5:30-14.9.

(c) Each agency shall adopt identical LOSAP plans and shall have a common contractor.

(d) If the agencies opt to coordinate the LOSAP program through an interlocal services agreement, such agreement shall be approved in a separate resolution following adoption of the LOSAP.

(e) If the LOSAP is managed individually rather than through an interlocal services agreement, the annual certification list that is required pursuant to N.J.S.A. 40A:14-191 shall be reviewed and approved by each individual sponsoring agency.

N.J.A.C. 5:30-14.16 Length of service award programs: multiple sponsors

(a) When more than one local governmental unit sponsors a single emergency service organization that implements a length of service award program, the sponsoring agencies shall adopt similar length of service award plan agreements which have the same contractor and local plan administrator. The contractor shall be selected pursuant to N.J.A.C. 5:30-14.37.

(b) Two or more sponsoring agencies of a single length of service awards program, established in accordance with (a) above, may agree to delegate the administration of program activities to a single sponsoring agency acting as the lead agency. Such delegation shall be conveyed through an interlocal services agreement.

(c) An interlocal services agreement entered into pursuant to (b) above shall be sent to the Director for review and approval pursuant to (d) below.

(d) The Director shall review and approve an interlocal services agreement provided:

1. The agreement complies with the requirements set forth at N.J.S.A. 40:8A-1 et seq.;

2. The agreement is approved by the sponsoring agency's governing body, either by ordinance or resolution, as the case may be, as prescribed by N.J.S.A. 40:8A-3 and 4;

3. The services being provided, in accordance with the Interlocal services agreement, are eligible services as prescribed in N.J.S.A. 40:8A-5; and

4. The agreement contains the appropriate provisions for addressing the contractual requirements set forth in N.J.S.A. 40:8A-6.

N.J.A.C. 5:30-14.17 Approving length of service award plan

(a) A sponsoring agency shall not implement a LOSAP plan until it is first approved by the Director pursuant to (b) below.

(b) The Director shall approve a LOSAP plan provided that the plan contains the following:

1. A statement of sponsoring agency and contractor duties and responsibilities;

2. A statement of the policies and procedures to be used in operating and maintaining a length of service award plan;

3. The identification of the types of investments options that will be offered pursuant to N.J.S.A. 43:15B-3c and N.J.A.C. 5:30-14.19;

4. Documentation of compliance as provided for in N.J.A.C. 5:30-14.55.

5. Evidence that the contractor has posted a bond to protect the plan and the employees from any loss resulting from fraud or dishonesty by the contractor pursuant to N.J.A.C. 5:30-14.46, and has provided evidence of appropriate liability insurance and errors and omissions insurance;

6. A copy of all promotional material that is provided to prospective sponsoring agencies and volunteers, and a statement of any applicable fees and charges;

7. A copy of the agreement to be executed by the employee in order to participate in the Length of Service Award Plan; and

8. Contractor's certification that the investment opportunities offered by the contractor comply with the investment requirements established pursuant to N.J.S.A. 43:15B-3c.

(c) The Director shall approve or reject a prototypical length of service award plan or any amendment thereto within 45 working days of receipt of a complete application package. The Director shall explain in writing, any 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.

N.J.A.C. 5:30-14.18 Participant agreement

(a) An eligible active volunteer member may enroll in the plan by executing a participant agreement.

(b) The amount to be awarded shall be specified in the participant agreement.

(c) Once a participant agreement is signed, the participant and beneficiary waive all claims and rights to commute, sell, assign, or otherwise use or transfer rights to receive any payments under the plan, which payments and rights are expressly declared to be nonassignable and nontransferable.

(d) The sponsoring agency and a participant may execute only one participant agreement for purposes of enrolling in a plan during any one calendar year. The participant agreement expires upon termination of service or a revocation of awards.

N.J.A.C. 5:30-14.19 Eligible investments

(a) The funds awarded shall be invested in one or more of the following types of investments to the exclusion of all others:

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

N.J.A.C. 5:30-14.20 Choice of investments

It shall be at the option of the sponsoring agency to include in the length of service award plan as many of the investment choices identified in N.J.A.C. 5:30-14.19 as deemed prudent.

N.J.A.C. 5:30-14.21 Investment certification

(a) As part of the application package, each contractor shall certify on a form provided by the Director that the

investments being offered comply with N.J.S.A. 43:15B-3c.

(b) When a new investment option is offered, the contractor shall certify in writing to the Director that the new investment complies with N.J.S.A. 43:15B-3c.

N.J.A.C. 5:30-14.22 Timing of investments

All funds awarded shall be invested by the contractor within 72 hours, exclusive of Sundays and holidays, from the time the contractor receives the funds or is notified that the funds are available for investment.

N.J.A.C. 5:30-14.23 Prototypical length of service award plan

(a) A contractor shall submit a prototypical LOSAP plan to the Director for approval pursuant to N.J.A.C. 5:30-14.17. The plan shall serve as the contract between the local government unit and a third party for the administration and investment of the funds awarded to participating active volunteers.

(b) The Director shall assign a separate identifier to each contractor's approved prototypical length of service award plan. The contractor shall ensure that the identifier shall appear in a prominent position on each plan offered to a sponsoring agency.

(c) The approval of a prototypical length of service award plan by the Director shall not constitute an endorsement thereof.

N.J.A.C. 5:30-14.24 Uniform system of accounting

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

N.J.A.C. 5:30-14.25 Adoption of a length of service award plan

(a) The sponsoring agency shall adopt a prototypical length of service award plan by resolution of the governing body. The resolution shall include, but not be limited to:

1. A formal adoption of the length of service award plan;
2. A description of the method used to solicit proposals pursuant to N.J.A.C. 5:30-14.37;
3. Identification of a local plan administrator pursuant to N.J.A.C. 5:30-14.35;

4. An authorization to execute a length of service award plan with the contractor;

5. A statement of non-collusion pursuant to N.J.A.C. 5:30-14.29;

6. The identification of the contractor and the prototypical length of service award plan identifier; and

7. A statement that the plan being adopted complies with the requirements set forth in N.J.A.C. 5:30-14.55.

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

N.J.A.C. 5:30-14.26 Sponsoring agency retaining assets

All amounts awarded under a length of service award plan shall remain the asset of the sponsoring agency; the obligation of the sponsoring agency to participating volunteers shall be contractual only; and no preferred or special interest in the awards made shall accrue to such participants. Such money shall be subject to the claims of the sponsoring agency's general creditors until distributed to any or all participants.

N.J.A.C. 5:30-14.27 Responsibility for administration

The sponsoring agency shall by resolution appoint a local plan administrator to ensure the sound and proper administration of the length of service award program, which shall include, but not be limited to, the proper, accurate and adequate accounting and reporting of all funds.

N.J.A.C. 5:30-14.28 Conflict of interest

In undertaking any activities related to the establishment or administration of a length of service award plan, including, but not limited to, any activities related to contracting for the administration of such plan, local government officers and employees shall be governed by and subject to the requirements of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., and any county or municipal code of ethics promulgated pursuant thereto.

N.J.A.C. 5:30-14.29 Non-collusion

There shall be no collusion, or evidence or appearance of collusion, between any official or participant of the sponsoring agency and any official or participant or representative of the contractor, vendor, insurance company, bank, consultant, brokerage firm, or any other

profit making or nonprofit firm in solicitation or award of a length of service award plan with the sponsoring agency. The sponsoring agency shall so certify to the Director in the resolution implementing each length of service award plan.

N.J.A.C. 5:30-14.30 No personal liability

Neither the sponsoring agency nor local plan administrator shall be held personally liable for any returns on investment of plan funds which are less than any participant or group of participants expected. The sponsoring agency shall require a hold harmless provision in the plan with contractors which includes an indemnification of the sponsoring agency from any cause of action, together with the reasonable costs of litigation from acts or omissions by the contractor.

N.J.A.C. 5:30-14.31 Termination of LOSAP a plan

When a sponsoring agency terminates a length of service award plan with a contractor, such action shall be by resolution. The resolution shall include the name of the contractor and the plan identifiers. A single certified copy of the resolution shall be filed with the Director.

N.J.A.C. 5:30-14.32 Reasons for amendment

The sponsoring agency may amend the length of service award plan to accommodate changes in the Internal Revenue Code, Federal statutes, state laws or rules.

N.J.A.C. 5:30-14.33 Notification of amendment

The sponsoring agency 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 participant agreement to reduce or eliminate any adverse impact on their accounts.

N.J.A.C. 5:30-14.34 Plan amendment

(a) Any amendment to a length of service award plan shall be submitted for review and approval by the Director pursuant to (d) below 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 sponsoring agency shall adopt the amendment by resolution of the governing body. A certified copy of the resolution shall be forwarded to the Director.

(d) The Director shall approve a proposed amendment provided:

1. The information required in (b) and (c) above is satisfactorily provided;
2. The amendment complies with the notification requirements of N.J.A.C. 5:30-14.33; and
3. The amendment does not cause any adverse impact on the plan participants.

N.J.A.C. 5:30-14.35 Responsibilities of the local plan administrator

The sponsoring agency shall appoint a local plan administrator for a prototypical length of service award plan who shall have responsibility for the transfer of awarded funds to the contractor for investment.

N.J.A.C. 5:30-14.36 Document retention

The local plan administrator shall retain in a safe place the original policies, contracts or other legal documents executed by the sponsoring agency and the contractor. Such documents shall be retained in accordance with the State of New Jersey record retention requirements as found in N.J.A.C. 15:3.

N.J.A.C. 5:30-14.37 Award of length of service award plan

(a) In seeking a contractor, the sponsoring agency shall solicit written proposals from two or more contractors offering prototypical length of service award plans. After reviewing the proposals, an award shall be made by resolution of the governing body of the sponsoring agency. The resolution shall include a written identify the responding vendors and state the rationale for selecting description of the method used to solicit proposals, a specific contractor.

(b) The term of the length of service award plan shall be determined by the sponsoring agency and the contractor.

(c) Until more than one contractor has been approved by the Director, a sponsoring agency shall submit a written request to the Director for a waiver from the requirement for soliciting proposals from two or more contractors offering prototypical length of service award plans as set forth in (a) above.

N.J.A.C. 5:30-14.38 Ban on solicitation prior to award of contract

A contractor seeking to implement a contract with a local government unit shall not solicit an active volunteer member for participation in any length of service award plan or solicit an active volunteer member to support the efforts of the contractor to secure such a contract. A representative of a contractor under contract shall not communicate with any prospective participant without the expressed consent and knowledge of the sponsoring agency.

N.J.A.C. 5:30-14.39 Insurance companies

An insurance company offering a length of service award plan to local units shall be authorized by the Commissioner of Banking and Insurance to do business in the State of New Jersey. Documentation of the authorization to do business in New Jersey shall be submitted as part of the application process.

N.J.A.C. 5:30-14.40 Mutual fund companies

An entity offering a mutual fund or other type of security as part of a length of service award plan shall be registered with the Security and Exchange Commission and shall submit to the Director a copy of a "Certificate of Good Standing" from the Treasurer, State of New Jersey.

N.J.A.C. 5:30-14.41 Nonprofit corporations

A nonprofit, tax-exempt corporation offering length of service award plans to local units shall provide to the Director a copy of their Internal Revenue Service tax exemption certification.

N.J.A.C. 5:30-14.42 Banking institutions

A banking institution serving as a depository for a local unit's controlled program funds or offering a length of service award plan to local units shall be a New Jersey State-chartered bank, savings bank, or savings and loan or Federally-chartered bank, savings bank, or savings and loan located in New Jersey; hereinafter referred to as "banking institution." Such banking institution shall be in compliance with capital requirements for state-chartered banking institutions as set forth in N.J.A.C. 3:4, or capital requirements for Federally-chartered banking institutions as set forth in 12 CFR Part 325. Further, the bank must participate in the New Jersey Governmental Unit Depository Protection Act.

N.J.A.C. 5:30-14.43 Nondiscrimination

An organization, person, company, corporation, partnership, or other entity offering length of service award plans to local governments shall be in full compliance with all Federal and State laws regarding

discrimination in its employment or investment policies and practices and shall so certify to the Director.

N.J.A.C. 5:30-14.44 Contractor disclosure

- (a) A potential contractor shall disclose to the sponsoring agency and to the participants the fees charged, the fee and commission structure, the investment plan offered, and any other pertinent information which the sponsoring agency may need in evaluating the contractor's fee and service.
- (b) All length of service award plans shall contain termination clauses with respect to transfers of assets or responsibility under the plan.

N.J.A.C. 5:30-14.45 Bonding and evidence of insurance

(a) A contractor who provides a prototypical length of service award plan shall post a bond obtained from an organization duly authorized and licensed to provide such bond in the State of New Jersey, to protect the plan and the sponsoring agency from any loss resulting from fraud or dishonesty by such contractor. Evidence of such bond or ability to obtain such bond if the plan is awarded shall be provided to the sponsoring agency and to the Director.

(b) The amount of bond shall not be less than 100 percent of the amount of funds managed by such contractor.

(c) A contractor providing services in accordance with this subchapter shall provide the sponsoring agency and Director with evidence of appropriate liability insurance and errors and omissions insurance. A contractor who is self-insured for errors and omissions insurance shall submit documentation from their auditors attesting to the validity of the coverage.

N.J.A.C. 5:30-14.46 Provisions for rule to be part of plan

A length of service award plan entered into by a sponsoring agency shall provide that the plan is subject to the rules set forth in this subchapter and that said rules are made a part thereof.

N.J.A.C. 5:30-14.47 Annual report

The contractor shall make available annually a report to each participant which shall indicate the value or balance of each participant's account. The report shall indicate for each participant the balance of the participant's account as of the last accounting date, and any return on investment credited to the participant's account since the last report or accounting date. Information regarding the

value or balance of the entire plan shall be provided to the local plan administrator.

N.J.A.C. 5:30-14.48 Pooling of funds

Except for individual annuities and life insurance contracts, the plan shall provide for investments in authorized investment options by pooling the amounts awarded. 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. 5:30-14.49 Review

(a) The sponsoring agency shall have a review of the contractor administered prototypical length of service award plan as part of the annual audit of its books, accounts and financial transactions.

(b) The initial review of the plan shall cover the period from plan initiation to the end of the fiscal year for the local unit and thereafter, the fiscal year of the plan shall conform to the fiscal year of sponsoring agency.

(c) The review of a plan shall be made in accordance with the American Institute of Certified Public Accountant's (AICPA) Statements on Standards for Accounting and Review Services (Codification of Statements on Standards for Accounting and Review Services as of January 1, 1999, incorporated herein by reference, as amended and supplemented, subject to such qualitative inquiry and analytical procedures selected and performed, causing attention to questionable items, procedures or practices of a material nature, constituting a need for balances to be adjusted or creating a need for further auditing.

(d) The contractor shall transmit to the sponsoring agency a compilation of financial data in statement form providing a full accounting of all plan transactions occurring during the sponsoring agency's fiscal year, including beginning transactions and ending fund balance. The accounting for the transactions must reflect each volunteer's award and the date the funds were received, the beginning fund balance by investment option, earnings or losses incurred, administrative charges and fees assessed, any transfers made among funds, all deposits and withdrawals, and the ending fund balance, including any and all adjustments made to such plan. The contractor must also submit to the sponsoring agency applicable plan statements together with the opinion from its latest firm audit report prepared by its independent public accountant.

(e) The contractor shall furnish a letter to the Director from its independent accountant attesting to the adequacy of the contractor's internal controls.

(f) The contractor shall certify to the Director that the annual accounting data supplied to the sponsoring agency is accurate and complete.

(g) The independent auditor of the sponsoring agency shall then evaluate the sponsoring agency's records of the funds awarded to the volunteers and the joinder agreements against the information transmitted by the contractor.

(h) The independent auditor of the sponsoring agency shall make an appropriate statement and express limited assurances thereon. These assurances shall be made part of the sponsoring agency's annual audit, pursuant to N.J.S.A. 40A:5-4 or 40A:5A-15. The expense of the review shall be incurred by the sponsoring agency or contractor as agreed upon at the time the service agreement is drawn.

N.J.A.C. 5:30-14.50 Return to participants

Funds invested, less administrative expenses, including all amounts awarded and any and all return on investments shall be credited to the participants' accounts. Such credit shall be made in a manner that is prorated in a nondiscriminatory manner.

N.J.A.C. 5:30-14.51 Participant records confidential

All records regarding participation, amounts awarded, account balances, withdrawals, and any other information regarding a participant's account shall be held confidential by the local plan administrator and the contractor.

N.J.A.C. 5:30-14.52 Plan records

The local plan administrator shall make available upon a written request from a participant or the Director, all records, reports or other information relating to the plan as a whole, including, but not limited to investment reports, audits and annual reports.

N.J.A.C. 5:30-14.53 Status of funds

The amount awarded shall not be treated as compensation subject to Federal income tax withholding or New Jersey Gross Income Tax withholding.

N.J.A.C. 5:30-14.54 Plan list

(a) Each July the Director shall prepare and distribute to the appropriate contractor a list of its approved length of service award plans. The list shall clearly identify sponsoring agencies and the date of approval.

(b) The contractor shall have 30 days from date of mailing of the list by the Director to confirm in writing that the list is accurate.

N.J.A.C. 5:30-14.55 Compliance

(a) A contractor shall provide to the Director appropriate documentation as more specifically described in this section that, under its proposed prototypical length of service award plan, funds contributed for the benefit of volunteers participating in the plan shall not be taxable for the purposes of the Internal Revenue Code until actual receipt of such funds by the volunteer due to retirement, termination after vesting, death or disability. The appropriate documentation to be submitted by the contractor shall consist of either a written opinion of legal counsel for the contractor or a Private Letter Ruling to this effect from the Internal Revenue Service pursuant to N.J.A.C. 5:30-14.56.

(b) The Director shall not assign a prototypical length of service award plan identifier to a contractor who fails to provide evidence of compliance as required in (a) above.

(c) The Director may at his or her discretion assign a prototypical identifier upon the receipt from the contractor of documentation consisting of a copy of the filing for a Private Letter Ruling and an acknowledgement of receipt of the filing from the Internal Revenue Service.

(d) The contractor shall provide the Director with a copy of the Private Letter Ruling when it has been issued by the Internal Revenue Service.

N.J.A.C. 5:30-14.56 Private letter ruling

A sponsoring agency adopting a prototypical length of service award plan may with the cooperation of a contractor file an application with the Internal Revenue Service for a private letter ruling for a determination that the plan meets the requirements of the Internal Revenue Code. A copy of the ruling shall be forwarded to the Director when received.

N.J.A.C. 5:30-14.57 Private letter ruling alternative

As an alternative to seeking a separate private letter ruling from the Internal Revenue Service pursuant to

N.J.A.C. 5:30-14.56, a sponsoring agency may adopt a contractor's prototypical length of service award plan which has already received a private letter ruling from the Internal Revenue Service. The private letter ruling shall be based upon the contractor's prototypical length of service award plan adopted by a New Jersey sponsoring agency. The resolution of a sponsoring agency shall certify that the sponsoring agency is adopting a plan identical to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained. 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 sponsoring agency is not to be considered precedent.

N.J.A.C. 5:30-14.58 Regulatory compliance

The sponsoring agency and contractor shall comply with the provisions of this subchapter. Any sponsoring agency or contractor deemed by the Director to be in noncompliance shall be notified by certified mail to appear before the Director, or designee. Notice shall be given at least 14 days prior to the date of the appearance and shall detail the nature of the alleged noncompliance. Failure to appear shall result in appropriate penalties pursuant to N.J.A.C. 5:37-14.61.

N.J.A.C. 5:30-14.59 Director determination

No later than 10 days after an appearance required by N.J.A.C. 5:37-14.58, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the sponsoring agency or contractor, as appropriate.

N.J.A.C. 5:30-14.60 Grace period

A Director determination of noncompliance shall result in the immediate commencement of a 60 day grace period. During this time, the sponsoring agency or contractor shall rectify all items of noncompliance to the satisfaction of the Director.

N.J.A.C. 5:30-14.61 Penalties

Failure to satisfactorily address noncompliance during the grace period shall result in the immediate ineligibility of a contractor to qualify for Division approval of any additional LOSAP plans. In addition, the Director may take such other actions as provided for by law.

N.J.A.C. 5:30-14.62 Vesting and awards

(a) Pursuant to N.J.S.A. 40A:14-188, a sponsoring agency may make a yearly contribution to the LOSAP

Account in the deferred income program for an active volunteer who has satisfied the requirements for receipt of an award, but the volunteer shall not be able to receive a distribution of the funds until the completion of a five year vesting period.

(b) Should a volunteer fail to vest or terminate association with a sponsoring agency prior to the completion of the vesting period, the funds placed in the LOSAP Account on behalf of the volunteer shall revert to the sponsoring agency, not to the volunteer.

LOSAP RULES ADOPTED 011601
NJR Version
21-12-00 text changes
04-01-01 cite change

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 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 re-publication.

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* deals with the manner in which the awarded funds are held and 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 in a bankruptcy action.

Despite the sound of this, rest assured that no New Jersey local governmental unit has filed for bankruptcy since 1929. Until the 1994 bankruptcy of Orange County in California, funds in a government 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

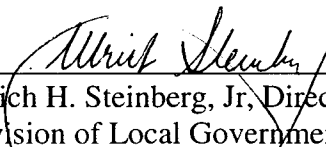
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Direct Your Questions Here

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. Written questions should be directed to:

LOSAP Questions
Division of Local Government Services
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We thank all participants in the LOSAP process for their patience while the rules have been reviewed and amended. The Division is confident that the challenges to the rules have been resolved and that local officials can act with confidence in implementing the program.



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

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