

General Description of Recent Amendments to the Model Plan Document

The following is a description of the changes to the Model Plan document as amended and restated on August 26, 2011 and again on February 22, 2013.

Model Plan amendment and restatement of August 26, 2011:

Many of these proposed changes are reorganizational in nature or changes required by law.

Organizational and General Administrative Items

- 1. General Reorganization and Updating of Sections.** A primary objective of the amendments is to improve the overall readability and eliminate unnecessary numerical references (annual limits) from the Model Plan document. Footnotes (to be deleted in final printed version) provide helpful instructions to the employer. Sections dealing specifically with Qualified Domestic Relations Orders and Rollovers were created from existing sections.
- 2. Employer Elections Within the Plan Document.** A number of plan provisions, such as suspension of deferrals following an unforeseeable emergency withdrawal, automatic distributions from small and inactive accounts, loan design parameters and Roth deferrals and in-plan conversions are permissive. The Model Plan document includes a Schedule A where the employer may indicate the election of one or more of these provisions and replaces the need for separate documents.
- 3. Effective Date of Participation.** Clarifies the first date a participant may make deferrals in compliance with Code Section 457(b). No initial Enrollment Application or deferral change will be effective before the first payroll date in the calendar month following the month in which the Enrollment Application is filed or deferral change was requested. An exception is permitted for new employees who submit an Enrollment Application on or before their first date of employment.
- 4. Compensation Available for Deferral.** Clarifies the definition of compensation for purposes of calculating contributions and recognizes that employers use various methods in determining the order of deductions taken before a deferral percentage is applied.
- 5. HEART Act of 2008.** Includes provisions related to treatment of differential pay and qualifying distributions for active military service in compliance with the HEART Act, including suspension of deferrals for six months following distribution.
- 6. 2009 Waiver of Required Minimum Distributions (“RMDs”).** Makes technical recognition of the waiver of RMDs for 2009.
- 7. Beneficiary Election Good Order Requirement.** Clarifies the requirement that a beneficiary form must be received in good order to be considered valid.

8. **Rollover Clarification.** Clarifies that the Model Plan will only accept rollovers from Eligible Retirement Plans comprised of pre-tax amounts. The Model Plan may also require documentation from the distributing plan that the incoming rollover is in compliance with federal law. Amounts may be rolled in by participants, beneficiaries (other than inherited accounts) and alternate payees. Model Plans may roll account balances out to Eligible Retirement Plans that include post-tax amounts if the receiving plan separately accounts for them.
9. **Beneficiary Rollover to Roth IRA Account.** Clarifies that a beneficiary of a deceased participant may roll a distribution directly to a Roth IRA, in addition to plan participants.
10. **Electronic Delivery.** Includes language allowing for future delivery of participant communications through electronic means, where appropriate.
11. **Periodic and Lump Sum Payments Minimum of \$100.** Codifies that periodic and lump sum payments must be a minimum of \$100 per payment. The Committee may choose a different threshold amount and set a maximum annual number of partial distributions.
12. **Plan Loans.** Clarifies that the \$50,000 loan limit includes the highest loan value in the last twelve months from the Model Plan and other employer plans. Regarding participants who have defaulted on a Plan loan, subsequent loans would not be allowed until defaulted loan is repaid. Removes requirement that a participant must wait until the term of the original loan expires before applying for a new loan, assuming the defaulted loan is repaid.
13. **Removal of Power of Attorney Language.** The acceptance of a power of attorney is governed by State law and not required in the Model Plan document.
14. **Special Proceeds Procedures.** Provides guidance on the handling of the receipt of special proceeds such as SEC settlements payable to former participants.
15. **Public Meeting Requirements.** Clarifies the requirement that Committee actions must be taken at a public meeting in accordance with Article 7 of the Public Officers Law.

Plan Design Items

1. **Spousal Beneficiary Elections.** When the beneficiary of a Model Plan participant dies, any remaining account balance passes to his or her estate. The previous Model Plan document did not permit any beneficiary to select a subsequent beneficiary. The new Model Plan Document allows a surviving spouse beneficiary to name a beneficiary on their account.
2. **Addition of 5 Year Rule for Beneficiaries.** The previous Model Plan document required a non-spouse beneficiary to elect payments based on his or her life expectancy starting the year after the date of death. If the participant dies before age 70½, the RMD rules also allow an alternative whereby the account is distributed by no later than December 31 of the fifth anniversary of the participant's death. The new Model Plan Document includes this option and makes distribution rules consistent for pre- and post-age 70½ deaths.

3. **Modification of the 45-Day Waiting Period for Distributions.** The Model Plan document requires a 45-day waiting period before distributions can be made due to severance of employment or attainment of age 70½. The new Model Plan Document removes the limitation for age 70½ distributions and allows earlier distributions due to severance of employment as long as a balance of \$500 remains in the account for 45 days after a severance from employment.
4. **Unforeseeable Emergency Withdrawals.** Suspension of deferrals following an Unforeseeable Emergency withdrawal is an optional provision. The new Model Plan document permits the plan sponsor to elect to suspend deferrals for six months by indicating that election on Schedule A. The participant will designate the amount of this distribution to be made from his or her pre-tax account and/or Roth contribution account.
5. **457(b) Loan Transfers.** Provides that outstanding loans from another New York State 457(b) plan may be allowed to be transferred or rolled in with a full account transfer.
6. **Limit Indemnification to Committee Members Only.** The previous Model Plan document extended indemnification to service providers, which may not be appropriate and may be inconsistent with the Committee's contract with service providers. The new Model Plan document limits indemnification to the Committee members.

Newly Enacted Provisions

1. **Roth Designated Contributions.** The Small Business Jobs Act of 2010 authorizes plan sponsors to permit plan participants to make Roth (post-tax) contributions to a public employer sponsored deferred compensation plan. Model Plan sponsors may elect to allow participants to make both pre-tax deferrals and Roth designated contributions within the plan. The initiation of Roth contributions or any subsequent change to a deferral rate will not be effective before the first payroll date in the calendar month following the month in which the deferral rate change is requested. The combined maximum of pre-tax deferrals and Roth designated contributions may not exceed the limits of the plan. The Model Plan provides that loans may only be made from pre-tax assets.
2. **Roth In-Plan Conversions.** The Small Business Jobs Act of 2010 also authorizes plan sponsors to permit plan participants to convert some or all of their pre-tax assets to a Roth designated account within the plan. The plan must permit participants to make Roth designated contributions for a plan sponsor to elect the in-plan conversion option.

Model Plan amendment and restatement of February 22, 2013:

1. **Roth In-Plan Conversions.** The American Taxpayer Relief Act of 2012 expanded the ability of participants to convert all or a portion of their plan assets from a pre-tax account to an in-plan Roth account any time including while in employment. The new Model Plan document enables this expansion of availability.