



**NYS DEFERRED
COMPENSATION
BOARD**
www.nysdcp.com

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October 19, 2011

Dear Model Plan Sponsor:

I am writing to update you on the status of the Model Plan document. In a letter addressed to you on January 7, 2011, I informed you that the New York State Deferred Compensation Board (the "*Board*") amended the plan document for the Deferred Compensation Plan for Employees of the (Locality) (the "*Model Plan*").

That letter also informed you that:

- The December 1, 2010 version of the Model Plan is the only version sponsored by the Board.
- The Board will be submitting the Model Plan to the IRS requesting a letter of determination that administering a deferred compensation plan in accordance with the terms of the Model Plan would constitute an eligible deferred compensation plan within the provisions of Section 457(b) of the Internal Revenue Code.
- You may administer your plan in reliance with the Model Plan beginning on January 1, 2011 without formally adopting this document or meeting the filing instructions required by the Board's Rules.
- The Board would adopt any technical and conforming amendments required by the IRS prior to their issuing a letter of determination.

I am very pleased to inform you that Board recently received a determination letter from the IRS that concludes that the "Model Plan, as amended and restated through August 26, 2011 and approved by the Board, constitutes an eligible deferred compensation plan as defined in Section 457(b)."

The IRS required a few technical and conforming amendments that the Board approved at its August 26, 2011 meeting. Those amendments clarify that:

- No initial Enrollment Application or a modification to an Enrollment Application will be effective before the first payroll date in the calendar month following the month in which the Participation Agreement is filed (Section 2.1(a)). An exception is permitted for a new employee who submits an Enrollment Application on or before the person's first date of employment.
- No deferral change (increases, decreases, or suspension of deferrals) will be effective before the first payroll date in the calendar month following the month in which the deferral change is requested. (Section 3.1(a), (b), and (d)).
- The initiation of Roth contributions or any subsequent change to a deferral rate where the deferral includes contributions to a Roth account will not be effective before the first payroll date in the calendar month following the month in which the deferral rate change is requested (Section 3.1(c)).
- In regard to an incoming rollover distribution, the Administrative Service Agency may require documentation from the distributing plan that a rollover is in compliance with federal law (Section 5.2).
- In regard to an Unforeseeable Emergency Distribution, the plan participant is to designate the amount of this distribution that is to be made from his or her pre-tax account and/or Roth account (Section 7.1).

The Model Plan, as amended through August 26, 2011, is the only version sponsored by the Board and for which a determination letter has been received from the IRS. A copy of the amended Model Plan document may be obtained from the Board's Web site (www.goer.ny.gov/nysdcp). If you wish the Model Plan document to be e-mailed to you or transmitted via an alternate media, please let us know.

In order to maintain an eligible deferred compensation plan in accordance with Section 457(b) and the Board's Rules and Regulations, you are strongly urged to formally adopt and administer your deferred compensation plan in accordance with the Model Plan document, as amended through August 26, 2011, as soon as practicable. Completion of Schedule A, that is part of the Model Plan document, will ensure that your locality has made appropriate decisions related to optional provisions of Section 457(b).

A description of the changes to the Model Plan document is enclosed.

Section 9002.2(a) of the Board's Rules requires each local employer that adopts a deferred compensation plan to file a notice of adoption with the President of the New York State Civil Service Commission. Such filing shall include:

- A copy of the plan document.
- A copy of the trust agreement.
- The name of each trustee, independent consultant, financial organization, public accountant, and administrative service agency and a certification by the chief executive officer or chief legal officer that each such service provider was selected in accordance with the Board's Rules.

- Evidence that bonding and insurance have been secured in accordance with the Board's Rules.
- Evidence that each trustee, independent consultant, administrative service agency and financial organization selected by the deferred compensation committee will act as a fiduciary and will indemnify the plan as a result of any cause of action brought against the plan as a result of acts of omissions.

It is not necessary to file documentation of the foregoing that has not changed since your locality's most recent filing with the President of the New York State Civil Service Commission. A form certifying that there have not been changes to one or more of the required filings may be obtained from the Board's Web site (www.goer.ny.gov/nysdcp). The mailing address is:

New York State Department of Civil Service
Employee Benefits Division – J. Hennessey
Alfred E. Smith Office Building
Albany, NY 12239

If you are unable to access the documents on the Board's Web site or have questions regarding the Model Plan document, please contact me or David Fischer, Deputy Executive Director, at (518) 473-6619.

Very truly yours,



Edward Lilly
Executive Director

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Enclosure