

960 CMR: OFFICE OF THE STATE TREASURER
AND RECEIVER GENERAL

960 CMR 3.00: DEFERRED COMPENSATION

Section

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3.01: General Regulations

Authority for the promulgation of 960 CMR 3.00 is derived from St. 1981 c. 731, § 7.

3.02: Definitions

As used in 960 CMR 3.00, the following terms shall have the following meanings:

Deferred Compensation means the funds withheld from the employees' wages or salary and paid on behalf of each employee participant into the deferred compensation program. Such deferral shall, in each year, not be greater than the lesser of \$7,500 or 33 $\frac{1}{3}$ % of the participant's includible compensation for the taxable year.

Deferred Compensation Committee shall mean the committee in the office of the State Treasurer, consisting of three members, one of whom shall be appointed by the governor and shall be chairman, one of whom shall be appointed by the commissioner of insurance and one of whom shall be appointed by the state treasurer, all in accordance with the provisions of M.G.L. c. 29, § 38B. This committee shall be known as the Oversight Committee.

Deferred Compensation Program means the program authorizing the tax deferral of public employee's compensation in accordance with M.G.L. c. 29, § 64, pursuant to section 457 of the Internal Revenue Code.

Employee shall have the same meaning as "employee" in M.G.L. c. 32, § 1, and shall include State Police temporarily assigned to the Massachusetts Turnpike Authority and/or any other board, agency, commission or authority to which they may be temporarily assigned and by which they are paid, and consultants and independent contractors who are natural persons paid by the commonwealth.

Hardship Withdrawal means that withdrawal will be permitted for unforeseen emergencies including, but not limited to, personal bankruptcy, unreimbursed medical expenses, disability, major property loss and unbudgetable catastrophies.

Lockbox Account means the account in a bank into which employees' deferred compensation is paid prior to transmittal to the entity selected to manage and invest funds in accordance with the deferred compensation program.

Plan Coordinator means the person or company selected by the state treasurer who shall publicize and market the deferred compensation program.

State Treasurer means the Treasurer and Receiver General duly elected in accordance with the Constitution of the Commonwealth of Massachusetts and M.G.L. c. 10, who shall be known as the Plan Administrator.

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3.03: Deferred Compensation Committee

The deferred compensation committee (Oversight Committee) shall meet from time to time, and shall oversee the day-to-day operation of the deferred compensation program. The members of said committee shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

3.04: Deferred Compensation Program

- (1) The state treasurer, on behalf of the commonwealth, may contract with an employee to defer a portion of that employee's compensation and may, for the purposes of funding a deferred compensation program for said employee, established in accordance with the U.S. Internal Revenue Code, invest the deferred portion of the employee's income in a life insurance or annuity contract, mutual fund, or a bank investment trust.
- (2) The treasurer shall solicit bids from insurance companies authorized to do business within the commonwealth, pursuant to M.G.L. c. 175, mutual fund managers and banks, before investing deferred compensation.
- (3) Any bid submitted by an insurance company, mutual fund, or bank investment trust seeking investment or the IRA contribution shall, where applicable, clearly indicate the interest rate which shall be paid on the invested funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, expected payouts, tax implications for participating employees and such other information as the treasurer may require.
- (4) The deferred compensation program shall be in addition to, and not a part of, the retirement program or pension system under M.G.L. c. 32. Compensation deferred under this program shall continue to be included as regular compensation for the purposes of computing retirement and pension benefits, but shall not be included in the computation of any taxes withheld on behalf of the employee.
- (5) At the request of the state treasurer, the state auditor or an independent auditing firm chosen by the state treasurer may perform an audit of the accounts of the deferred compensation program for any fiscal or calendar year selected by the said treasurer.
- (6) The treasurer may select and contract with a natural person or persons or a company to coordinate the deferred compensation program (called the Plan Coordinator). Said plan coordinator shall be selected in accordance with the public bidding laws and shall meet with the Oversight Committee on a regular basis, and shall advise said committee regarding the day-to-day operations of the deferred compensation program.
- (7) All amounts deducted from employees salary or wages will be forwarded to a custodian bank and placed in a lockbox. The plan coordinator is responsible for the allocation of said funds to the proper bank, mutual fund or insurance company for investment and/or purchase of mutual fund shares or fixed or variable annuities or life insurance contracts in accordance with the employee-participant requests for disposition of funds and products offered under the plan.

3.05: Lockbox Account

- (1) Funds placed in the lockbox during transmittal to the bank, mutual fund or insurance company shall accrue interest which shall be used for the benefit of all participants in the deferred compensation program.
- (2) Accumulated interest may be expended for the benefit of the program participants in a manner deemed to be appropriate by the Oversight Committee with the approval of the plan administrator and shall include, but not be limited to, the following services:
 - (a) Studies and evaluations to measure performance of products offered and services delivered to participants.

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- (b) Independent audits of the program.
 - (c) Services to support functions of the Oversight Committee.
- (3) The Oversight Committee may recommend that the interest accrued in the lockbox account be audited and may use said interest to pay for said audit.

3.06: Hardship Withdrawals

- (1) Upon proper proof of an unforeseen emergency, hardship withdrawals will be permitted in the following manner:
- (a) For an amount less than \$3,500, the Plan Coordinator has the authority to approve the withdrawal.
 - (b) For amounts greater than \$3,500, the approval of the Plan Administrator is necessary.
- (2) Where applicable, the participant will be subject to the surrender charge.

3.07: Fund Transfers

- (1) Any deferred compensation program adopted hereunder shall provide for transfers of employee funds to and from other such plans upon separation of an employee's service and employment with another employer having a deferred compensation program hereunder.
- (2) Any transfers as described in 960 CMR 3.07(1) may be invested in any investment option available under another such plan, at the direction of the employee.
- (3) To the extent permitted by the terms of any contract between the treasurer and any funding provider in the deferred compensation program, participants may elect to transfer funds from one investment option to another within a given plan.

3.08: Life Insurance Provisions

Should any employee participating in the deferred compensation plan apply for life insurance protection to be purchased with deferred funds, and thereafter be refused such protection, or if such life insurance is thereafter canceled, the insurer shall remain in possession of such funds deferred for this purpose until the employee makes another election for investment of such funds.

REGULATORY AUTHORITY

960 CMR 3.00: St. 1981 c. 731, § 7.