



Date: July 12, 2011
To: Pam Captain
From: Brenda Taubel *Brenda*
Subj: Section 457(b) Deferred Compensation Plan/Nationwide Retirement Solutions
Re: Amendments to Plan Document

Changes in federal legislation and regulations require the City to update the plan document for the deferred compensation program.

Nationwide drafted the amendments to be consistent with the final 457(b) regulations and IRS model amendments which incorporate provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, final regulations and other pertinent IRS rules and related legislation.

The amendments affect portions of the plan document relating to definitions, deferrals, contributions, distributions, transfers, domestic relations orders and investments. An explanation of the changes is attached.

Nationwide has implemented all requested changes to be in compliance with the current law and regulations.

Explanation of Substantive Changes

The IRS issued model amendments incorporating the provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the final regulations, and other pertinent IRS rulings and related legislation. Although the model amendments are for guidance only and do not have the effect of law, they have been incorporated into your 457(b) governmental Plan to the extent applicable.

The following is a brief description of modifications to the Plan document consistent with the final 457(b) regulations, the 457(b) model amendments, subsequent IRS guidance, proposed regulations, and other pertinent legislation. The specific Plan section is included so that you can refer to the Plan document. The Plan Document will be effective January 1, 2006.

ARTICLE I

Definitions

Account Balance – Account balance is a new term adopted by the IRS in the model amendments. The account balance is defined as the bookkeeping account maintained for each participant in the Plan. Within the account balance are sub-accounts, such as Plan Sponsor contributions, eligible rollover account(s), and plan-to-plan transfers into the Plan. Beneficiaries and alternate payees have separate account balances. [Section 1.01(b)]

Alternate Payee – An alternate payee is a person entitled to receive a benefit through a Domestic Relations Order (DRO). DROs are now a standard feature of your Plan. [Section 1.01 (c)]

Includible Compensation – This Plan adopts the model amendments' definition of includible compensation, to determine 100% of includible compensation contribution limit. Includible compensation is defined as W-2 compensation adjusted for elective deferrals. [Section 1.01 (j)]

Normal Retirement Age – The normal retirement age has not been modified and remains age 65, unless otherwise designated. However, the Plan now includes the special rule for determining normal retirement age applicable to police and firefighters. The final 457 regulations permit qualified police and firefighters to use an earlier normal retirement age, but no earlier than age 40. [Section 1.01 (m)]

Definition of Spouse – The Plan adopts the definition of spouse under the federal Defense of Marriage Act (DOMA), which is a person of the opposite sex who is a husband or wife. [Section 1.01 (u)]

ARTICLE II

Election to Defer Compensation

Deferrals During Leaves of Absence and Disability – Participants on leave of absence and participants who are disabled may continue to make deferrals to the extent that compensation continues to be paid. Disability benefits do not constitute a continuation of compensation. [Section 2.07 and 2.08]

ARTICLE III

Limitations on Amounts Deferred

Aggregation with Other 457(b) Plans – The 2003 final regulations require aggregation of 457(b) governmental plan contributions whether or not the plans are related. If the participant is contributing to an unrelated 457(b) governmental plan as well as to your 457(b) Plan and the contributions cause the participant to exceed the limits, the plans will not lose their tax-favored status. The Plan places the responsibility on the participant to provide participation information to the Plan Sponsor to monitor annual deferral limits. [Section 3.04]

Correction of Excess Deferrals – The model amendments permit the Plan to unilaterally correct excess deferrals during the plan year. Nationwide will distribute the excess deferrals at your direction as soon as administratively practicable. [Section 3.05]

Deferrals from Certain Sick Pay, Vacation Pay, and Back Pay – The proposed regulations recently issued by the IRS regarding Internal Revenue Code, as amended, Section 415 include a proposed amendment to Treasury Regulations 1.457-4(d) regarding deferrals of sick, vacation and back pay for former employees. Such deferrals may be made within 2 ½ months following severance from employment. This applies also to compensation paid to participants who are permanently and totally disabled, and compensation paid to participants relating to qualified military service under IRS Code section 414(u). [Section 3.06]

ARTICLE IV

Plan Sponsor Contributions

Plan Sponsor Contributions – Although not included in the model amendments, the Plan continues to permit the Plan Sponsor to make contributions should it desire to do so. [Section 4.01]

ARTICLE V

Distribution of Benefits

Benefit Distributions under Annuity – The model amendments assume that there is a trust for an eligible 457(b) governmental plan is a trust. However, this Plan permits the use of a trust, custodial agreement and/or an annuity contract.

In-Service Distributions from Eligible Rollover Accounts – IRS Revenue Ruling 2004-12 permits distributions of rollovers to the extent such rollovers are maintained in a sub-account. The Plan maintains separate accounting for rollovers into the Plan making such rollovers eligible for in-service distributions. [Section 5.08]

Unforeseeable Emergency Distributions – The 2003 final regulations permit participants and beneficiaries to take unforeseeable emergency distributions. The model amendments provide that only participants are eligible for unforeseeable emergencies. Presumably this is because beneficiaries are entitled to take distributions at any time. For this reason, the Plan refers only to participants being eligible for unforeseeable emergency distributions; beneficiaries are eligible for distributions at any time. [Section 5.09]

Due to emergency legislation enacted as a result of Hurricanes Katrina, Rita, and Wilma, a provision has been incorporated that permits the Plan to amend its criteria for unforeseeable emergency distributions accordingly without the need to further amend the Plan document.

Voluntary In-Service Distributions – The 457(b) regulations permit distribution of smaller accounts of \$5,000 or less be distributed if there have been no prior voluntary de minimis distributions and no deferrals made in the prior two years. The model amendments assume mandatory de minimis in-service distributions. However, the Plan does not adopt this provision and continues to permit de minimis in-service distributions on a voluntary basis. [Section 5.10]

ARTICLE VI

Eligible Rollovers and Plan-to-Plan Transfers

Sub-Account for Eligible Rollover Contributions – IRS Revenue Ruling 2004-12 permits distributions of rollovers to the extent such rollovers are maintained in a separate account. The Plan maintains separate accounting for rollovers into the Plan and such rollovers are eligible for in-service distributions. [Section 6.01 (b)]

Loans – The model amendments related to loans are not included in the Plan document. Loans continue to be an available feature that may be added on to your Plan. If your Plan currently offers loans, the loan amendment continues to be part of your Plan document and is incorporated in this Plan document accordingly.

ARTICLE VII

Domestic Relations Orders

Domestic Relations Orders – The Plan now includes the acceptance of DROs as a standard Plan feature. The previous DRO amendment has been incorporated into the Plan document. The Administrator will continue to review and process DROs submitted to the Plan. [Sections 7.01-7.05]

ARTICLE IX

Investment of Deferred Amounts

Limitations on Transfers and Exchanges – Although generally the Plan permits participants, beneficiaries, and alternate payees to self-direct its investment selections with minimum limitations, there are some investment options that have restrictions that will be imposed. In addition, the Plan provides for market timing restrictions in accordance with restrictions imposed by a funding provider, the Administrator, and/or a regulatory agency. [Section 9.04]

ARTICLE XII

Miscellaneous

Non-Assignability – 457(b) governmental plan assets remain non-assignable. With certain exceptions, such assets cannot be transferred. However, the model amendments permit the Plan to attach the assets of a participant, beneficiary, or alternate payee to pay a federal income tax levy. Under the Bankruptcy Abuse Protection and Consumer Protection Act of 2005, assets in an eligible 457(b) plan may be exempted from bankruptcy proceedings. [Sections 12.01 and 12.02]

Mistake of Fact Rule – The model amendments extends and adopts the mistake-of-fact rule found in IRS Revenue Ruling 91-4 applicable to ERISA qualified plans. Although not subject to ERISA, 457(b) governmental plans are permitted by the IRS to refund mistaken contributions within one year after the payment of the mistaken contribution. [Section 12.03]