(C)

Gouveia, Susan

From: Masser, Michelle
Sent: Wednesday, February 03, 2016 1:40 PM
To: Gouveia, Susan
Subject: FW: LFN 2016-03: Guidance on LOSAPs

CORRESPONDENCE - (Please print out Local Finance Notice and other attachments - then scan) TY

Michelle Masser
Township Clerk
PO Box 450
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Budd Lake, NJ 07828
clerk@mtolivetwp.org
973-691-0900 X7291

-----Original Message-----
From: egg@dca.state.nj.us [mailto:egg@dca.state.nj.us]
Sent: Wednesday, February 03, 2016 1:34 PM
To: Masser, Michelle <clerkmichelle@mtolivetwp.org>
Subject: LFN 2016-03: Guidance on LOSAPs

Dear Municipal Clerk:

The "Emergency Services Volunteer Length of Service Award Program" (www.nj.gov/dca/divisions/dlgs/programs/losap_docs/losaplaw07-2002.pdf) (P.L. 1997, c.388) ("LOSAP") was signed into law in 1998 to support the recruitment and retention of fire and first aid volunteers by rewarding their service. The Division of Local Government Services adopted LOSAP Rules (www.nj.gov/dca/divisions/dlgs/programs/losap_docs/adopted_rules.pdf) on January 16, 2001 and amended on November 26, 2003.

In response to information received identifying concerns with the oversight of certain LOSAPs, the State of New Jersey Office of the State Comptroller ("OSC") conducted a review of several LOSAPs across the State. On June 30, 2015, then Acting State Comptroller Marc Larkins, issued an "Investigative Report: Emergency Services Volunteer Length of Service Award Program" (the "OSC Report" at www.nj.gov/comptroller/news/docs/losap_final_report.pdf).

Local Finance Notice 2016-03 (www.nj.gov/dca/divisions/dlgs/lfns/16/2016-03.pdf) provides Guidance on Administration of Length of Service Award Programs (LOSAPs).

THIS NOTICE HAS BEEN SENT TO THE FOLLOWING OFFICIALS: Municipal Clerk, Chief Financial Officer / County Freeholder Board Clerk, Chief Financial Officer / Fire District Officials

new jersey department of community affairs
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division of local government services | dlgs

Local Finance Notice

LFN 2016-3

February 3, 2016

Chris Christie, *Governor* | Kim Guadagno, *Lt. Governor* | Charles A. Richman, *Commissioner* | Timothy J. Cunningham, *Director*

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Distribution
Municipal & Freeholder Bd. Clerks
Municipal & County CFOs
Fire District Officials

Guidance on Administration of Length of Service Award Programs (LOSAPs)

The "Emergency Services Volunteer Length of Service Award Program" (P.L. 1997, c.388) ("LOSAP") was signed into law in 1998 to support the recruitment and retention of fire and first aid volunteers by rewarding their service. The Division of Local Government Services adopted LOSAP Rules on January 16, 2001 and amended on November 26, 2003.

In response to information received identifying concerns with the oversight of certain LOSAPs, the State of New Jersey Office of the State Comptroller ("OSC") conducted a review of several LOSAPs across the State. On June 30, 2015, then Acting State Comptroller Marc Larkins, issued an "Investigative Report: Emergency Services Volunteer Length of Service Award Program" (the "OSC Report").

The OSC Report concluded that there was "little to no oversight" of these LOSAPs and additionally found that many LOSAP contributions are not being made in compliance with applicable rules and regulations. Specific recommendations made by the OSC included the following:

- LOSAP contributions should be made only to those volunteers who satisfy the authorized requirements in the governing municipal ordinance or fire district resolution, volunteer organizations' bylaws and State statute.
- Administrators for LOSAPs should consider conducting an analysis of LOSAP contributions and, where violations are identified, seek to recover inappropriately allocated LOSAP contributions.
- Administrators for LOSAPs should perform an accounting of non-vested volunteers' dormant accounts and seek the return of all such dormant funds. All administrators should ensure that there is a documented procedure in place to prevent this from occurring in the future.
- Administrators should maintain only one LOSAP account for each volunteer and any funds in excess of the statutory maximum amount should be returned to the sponsoring agency.

In response to the OSC Report, the Division is issuing this Local Finance Notice to highlight OSC Report recommendations and to update existing guidance regarding overall administration of LOSAPs. Extensive information is available on the DLGS website including a Frequently Asked Questions section that addresses many questions that the Division receives regarding LOSAPs. Below is a summary of general information that LOSAP administrators may find useful to review, ensuring their plans are in compliance.

LOSAPs Generally

N.J.S.A. 40A:14-184 defines a LOSAP as "a system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization." An emergency service organization generally includes all forms of volunteer fire and first aid organizations. For the purposes of administering the law, this definition includes those volunteer first aid organizations that charge for their services.

The tax-deferred income benefits for emergency services volunteers come from contributions made solely by the governing body of the municipality or fire district, on behalf of those volunteers who meet the criteria of a plan created by the governing body. The contributions are deposited into a plan similar to deferred compensation plans permitted for county and municipal employees, either the governing body or the volunteer are permitted to direct the investment of funds in the different investment vehicles that may be permitted under the plan adopted by the governing body. Investment options may include different types of mutual funds or annuities; benefits are federally tax deferred to the volunteer until the volunteer withdraws them.

Creation of LOSAPs

LOSAPs are strictly voluntary. The programs are established by *a sponsoring agency*, which is the governing body of a municipality or fire district. While the law permits a county government to create them, virtually all volunteer emergency service organizations are municipally-based entities. The law applies equally to fire districts where they exist.

Who Creates LOSAPS?

The law provides that LOSAPs are created for emergency service organizations by the jurisdiction under which they operate. This jurisdiction for volunteer fire organizations LOSAPs is as follows:

1. By municipal ordinance for volunteer fire organization(s) in a municipality which is not served by fire districts.

2. By resolution of a Fire District Board of Fire Commissioners in a municipality where they operate.

3. Where there is more than one fire district within a municipality, each district may have its own LOSAP for its fire companies. If a fire company serves more than one district, special rules apply as detailed below.

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

Volunteer first aid, emergency or volunteer ambulance or rescue squad associations (squad), require additional explanation, as the concept of "operating under the jurisdiction" may not relate in all cases, as squads often work independently of, or concurrently with municipalities and fire districts. The following guidelines should be followed as general rules. Where a squad has unique operating relationships, the Division of Local Government Services should be contacted for a determination on whether a fire district or municipality would be considered the sponsoring agency.

1. If there is no fire district, and one or more squads serve a single municipality, the LOSAP is created by the municipality. If the squad(s) serve multiple municipalities special rules apply as detailed below.

2. If a squad serves an entire municipality that is served by multiple fire districts, the municipality would serve as the sponsoring agency.

3. A fire district would serve as the sponsoring agency for a squad whose jurisdiction is limited to, or is within the boundaries of a fire district, and, 1) is organizationally affiliated with, or 2) receives permitted financial support from the district. This determination is made without consideration to any contractual relationships the district has with other jurisdictions.

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

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

How Are LOSAPs Created?

The first step in creating a LOSAP is the adoption of the ordinance or resolution. However, the ordinance or resolution does not take effect until it is approved by the voters as a public question at the next general election (for a municipality), or the fire district's next annual election. Ordinances and resolutions creating a LOSAP must include the following items:

- A general description of the program, including the point system to be utilized in determining eligibility for benefits;

- A statement of the proposed estimated total amount to be budgeted for the program;

- A statement of the proposed maximum annual contribution for an active volunteer member; and,

- If the proposed LOSAP authorizes crediting for prior years of service, a statement of the number of prior years of active emergency service that may be credited for each active volunteer member.

A majority vote of the sponsoring agency's governing body is required to approve the ordinance or resolution. Consent of the Director of the Division of Local Government Services is not necessary for ordinances, resolutions, or ballot questions regarding a LOSAP. However, at the request of the sponsoring agency, DCA will review individual enabling ordinances/resolutions, ballot questions and explanatory statements. The ballot questions shall be accompanied by an explanatory statement.

The enabling ordinance/resolution and a copy of the LOSAP law be made available to the public in, if there is one, a public library that serves the jurisdiction 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, it may be placed in that office.

As the law does not set forth a form of ordinance or resolution, local units should consult with legal counsel to ensure that the ordinance or resolution meets the minimum criteria of the law. To assist with this, a sample ordinance/resolution is available on the DLGS website.

Sponsoring agencies planning to adopt a LOSAP should ensure that their ordinance or resolution is adopted 60 days prior to the referendum date. While fire districts are responsible for their ballots, municipal clerks must coordinate, with the County Board of Elections, the printing of the question on the ballot.

Once approved by the voters, appropriations for a LOSAP program are included in the budget of the sponsoring agency as a separate line item. Municipal budget appropriations for LOSAPs may be treated as exceptions to the budget cap and require no other special treatment. Copies of all approved LOSAP ordinances/resolutions shall be filed with the Division within 30 days of the date of the referendum.

Fire districts anticipating creation of a LOSAP at their annual election must provide for the first year's cost of the program in the district's annual budget. If a fire district referendum on the public question to create the LOSAP is defeated, that appropriation will be removed from the budget, along with an equivalent decrease adjustment to the tax levy that is certified to the Municipal Tax Collector.

Several other important matters related to the program are:

- For municipalities, the calendar year following the referendum date, is the first year of the LOSAP; for fire districts, it is the same calendar year as the referendum vote.

- No municipality or fire district can have more than one program that provides cash payments for volunteers based on length of service. However, other properly authorized current-year based programs, such as stipends for serving in official capacities or uniform allowances, are not affected by the LOSAP law.

Abolishing or amending a LOSAP requires the same ordinance or resolution and ratifying referendum. However, the ordinance or resolution abolishing or amending the LOSAP must be passed by a two-thirds majority of the full membership of the sponsoring agency. The rules provide that minor, clarifying, or administrative amendments that do not materially affect the elements of the plan approved by the voters may be amended by a majority vote of the governing body. If the LOSAP is dissolved, all accumulated funds shall remain in trust for the volunteer members.

LOSAP Benefits

There are two important definitions to consider when dealing with LOSAP benefits:

"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.

"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.

About the Monetary Benefits
LOSAP benefit levels are set in the law. If an active volunteer member meets the year of active service requirement, a LOSAP must provide a benefit between the minimum contribution of $100 and maximum contribution of $1,150 per year. While the maximum amount is set by statute, in October of each year, it is subject to increases that are tied to the consumer price index. The permitted maximum amount will be issued by the Division annually.

A volunteer in an emergency service organization is eligible to participate in a LOSAP immediately upon becoming an active volunteer member of the emergency service organization (section 6(a) of the law, N.J.S.A. 40A:14-188(a)). It also permits a volunteer to "vest" after five years.

How is Eligiblity for a LOSAP Award Determined?
Each sponsoring agency is required to establish, in its ordinance, a point system that reflects the range of volunteer services that may be provided to the emergency service organization. The law does not prohibit the sponsoring agency from adopting a sliding scale of benefits that combines the use of points and years of service. One year of active emergency service is awarded for each calendar year in which an active volunteer accumulates the minimum number of points that are required by the sponsoring agency. If a volunteer is also a paid employee of a local government, credit shall only be given for volunteer activities outside of the volunteer's regularly scheduled work periods. No credit shall be given for services performed while on the paid job.

Remembering that LOSAPs are a reward for volunteer service, local units should consider the point system very carefully, as it will dictate policy on how much volunteer effort is needed for an award, and ultimately, the cost of the program to taxpayers. While the point system must be in the plan that is approved by the voters, minor amendments by ordinance/resolution that are required at a later date will be permitted without a subsequent referendum. As local circumstances and operation of volunteer emergency service organizations vary greatly, it should be given careful consideration and should be crafted in light of local circumstances.

In order to provide credit for existing volunteers, the enabling ordinance or resolution may provide for up to ten years of prior service credit. A year of prior service is defined by each emergency service organization. The law also permits credit for prior service in more than one participating volunteer emergency service organization.

LOSAP Award Process

The following elements regulate the LOSAP award process:

- Every year, emergency service organizations participating in a LOSAP must certify to the sponsoring agency an annual list of all volunteer members who have qualified for credit under the LOSAP program for the previous year.

- A year may be any 12 month period, but the Division suggests a calendar year basis.

- Upon receipt of the certification, the sponsoring agency must review it and approve the final certification.

- If the governing body has questions concerning the eligibility of any individual, it may request supplemental documentation from the emergency service organization.

- The approved list of active certified volunteer members is returned to the emergency service organization and posted for at least 30 days for review by the membership.

- The emergency service organization must maintain all required records on forms prescribed by the requirements of the LOSAP program.

An active volunteer member whose name does not appear on the approved certification list or who is denied credit for prior service may appeal to the sponsoring agency within 30 days of the posting of the list or within 30 days of denial of past service credit. The appeal must be in writing and mailed to the clerk or secretary of the sponsoring agency. The agency must investigate the appeal, which is subject to judicial review. Once the 30 days have elapsed, and subject to holding any members being appealed, payment is then made by the sponsoring agency to the individual members' accounts in the deferred income program.

A volunteer may request, in writing, to have their name deleted from the list as a participant in the LOSAP program, and will remain as a non-participant until the request is similarly withdrawn.

Pre-existing LOSAP Programs

The law recognizes that a number of sponsoring agencies had previously adopted an annuity form of LOSAP. If your organization has a LOSAP and did not comply with this provision, contact the Division immediately. These programs may continue but, are subject to the following requirements:

- That the Director of the Division of Local Government Services was notified of the existence of the LOSAP and its benefits by March 16, 1998.

- That within 180 days of being notified by the Director to do so, the agency sponsoring the pre-existing LOSAP shall file, with the Director, documentation demonstrating that the LOSAP has been brought into conformance with the law. A ratifying referendum is not necessary. That notification will take place shortly.

- Pre-existing LOSAP participants who were vested at a level in excess of $750 as of January 19, 1998, may continue to receive benefits at that level.

- Pre-existing LOSAP participants who vest after January 19, 1998, shall not receive a benefit in excess of $750 per month, though that level may be adjusted for the cost of living as permitted in the law.

Special Circumstances — Prior Service Credit

Below are provisions set for prior service credit:

- Prior service credit may only be granted to active volunteers.

- The point schedule adopted by the sponsoring agency, and the description of the time frame for use in defining a year of active service adopted by the emergency service organization at the time the program is created, must be used for calculating prior year credit.

- Any ten years preceding the creation of the program may be used in calculating prior service credit.

- A list, certifying the prior year's credit, must be provided to the sponsoring agency, posted by the organization, and is subject to the appeal process described above.

- Credit for time earned in other emergency service organizations must be documented by that organization. The credit is awarded at the discretion of the current sponsoring organization.

- In no event, however, shall a participant be credited for a year of active emergency service in more than one service award program of the same type of emergency service.

Special Circumstances — Multiple Jurisdictions

Another special circumstance is how emergency service organizations that serve more than one municipality or fire district are to be treated. The following provisions apply to them:

1. The LOSAP benefit amount is based on the individual's service to the emergency service organization. This means that no individual may receive more than the maximum benefit amount, regardless of the number of sponsoring agencies served.

2. Each sponsoring agency must adopt an enabling ordinance or resolution (as appropriate). The point system they adopt must be the same point system and the point system cannot be based on services to individual municipalities or fire districts. Service must be accounted for in the aggregate. The amount of benefit may be prorated and differ between sponsoring organizations, so long as an individual volunteer's aggregate benefit does not exceed the maximum.

3. The organizations must adopt identical deferred income plans and have a common plan administrator. To facilitate this process and the handling of contributions, the Division recommends that sponsoring agencies coordinate their efforts through the use of a shared services agreement for the LOSAP. That way, one sponsoring agency assumes responsibility for administering the plan.

4. A shared service agreement must be approved in a separate resolution following adoption of the LOSAP. The LOSAP may be conditioned upon the final approval of the shared service agreement.

5. If managed individually, each sponsoring agency must approve the annual certification. Under the shared service agreement approach, the responsibility for annual certification is generally delegated to the lead sponsor. That authority, however, may be retained by the individual sponsoring agencies.

Training Programs

The Department of Community Affairs Division of Fire Safety, in conjunction with the Division of Local Government Services, will be conducting training seminars in the near future regarding LOSAP

administration. We encourage all of those responsible for LOSAP administration to participate in this training as it will provide an in-depth review of administrative requirements as well as an opportunity for Q&A with Division staff to address any program specific or general questions of individual participants.

Additional Review Procedures

The Division intends to amend LOSAP regulations regarding the annual review required by the sponsoring agency. These changes would expand the scope of the review to include additional agreed upon procedures to ensure periodic sampling and testing of various components of the plan such as contributions, eligibility verification, account status and other administrative requirements of the plan. Performed by an independent auditor in addition to the annual review, these additional procedures would help safeguard the plan's financial integrity and further ensure proper allocation of financial resources by the sponsoring agency.

Approved: Timothy J. Cunningham, Director

Table of Web Links

Document	Internet Address
LOSAP Law	http://www.nj.gov/dca/divisions/dlgs/programs/losap_docs/losaplaw07-2002.pdf
LOSAP Rules	http://www.nj.gov/dca/divisions/dlgs/programs/losap_docs/adopted_rules.pdf
OSC Report	http://www.nj.gov/comptroller/news/docs/losap_final_report.pdf
DLGS Website	NJ Department of Community Affairs
Frequently Asked Questions	http://www.nj.gov/dca/divisions/dlgs/programs/losap_docs/losap_faq.pdf
Sample Ordinance/Resolution	http://www.nj.gov/dca/divisions/dlgs/programs/losap_docs/enabling_ord_or_res.pdf