

**PROPOSED REGULATION OF THE  
COMMITTEE TO ADMINISTER THE PUBLIC EMPLOYEES’  
DEFERRED COMPENSATION PROGRAM**

**LCB File No. R054-22**

December 8, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-4, NRS 287.330.

A REGULATION relating to public employees; adopting provisions governing employer contributions to certain deferred compensation plans of public employees; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law authorizes the establishment of the Public Employees’ Deferred Compensation Program. (NRS 287.250-287.370) Under the Program, state employees and employees of the Nevada System of Higher Education are authorized to defer a certain amount of compensation and have such deferred compensation set aside for certain plans authorized under federal law to reduce taxable compensation or other forms of compensation. (NRS 287.320, 287.340) Existing law requires that such deferred compensation be held in trust for the exclusive benefit of the participants in the Program and their beneficiaries and be invested in certain approved investments. (NRS 287.320) Under existing law, the Committee to Administer the Public Employees’ Deferred Compensation Program, which is appointed by the Governor, is required to administer the Program. (NRS 287.325, 287.330)

Under the existing federal law, employers are authorized to make contributions to the deferred compensation plans of their employees under certain circumstances. (*See, e.g.*, 26 U.S.C. §§ 401(a), 401(m) and 403(b); 26 C.F.R § 1.457-2) **Section 3** of this regulation establishes requirements for employer contributions made to a deferred compensation plan under 26 U.S.C. § 457(b), and **section 4** of this regulation establishes requirements for employer matching contributions made to deferred compensation plans of certain employees. **Section 2** of this regulation establishes that, for the purposes of existing law and regulations, such employer contributions to a deferred compensation plan are treated as deferred compensation of the employees for whom the contributions were made, along with the income which the employee has elected to defer.

**Section 1.** Chapter 287 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

**Sec. 2.** *For the purposes of NRS 287.250 to 287.370, inclusive, and this chapter, the term “deferred compensation” includes any:*

*1. Income which a state employee or employee of the Nevada System of Higher Education may legally set aside under the Program;*

*2. Employer contributions described in section 3 of this regulation which are legally made under the Program; and*

*3. Employer matching contributions described in section 4 of this regulation, which are legally made under the Program..*

**Sec. 3.** *1. A department, agency, board, committee, commission or any other entity within the Executive Branch of State Government may, on behalf of an employee of the employer, make contributions to the eligible deferred compensation plan of the employee if:*

*(a) The employer and employee have entered into a compensation agreement or contract that requires the employer to make contributions to the eligible deferred compensation plan of the employee in addition to the payment to the employee of a salary or hourly wage;*

*(b) The total amount of deferred compensation withheld by the employer and set aside to the eligible deferred compensation plan during the calendar year and the total amount of the employer contributions described in paragraph (a) do not exceed the maximum amount of compensation which may be deferred by the employee pursuant to section 457(b) of the Internal Revenue Code, 26 U.S.C. § 457(b); and*

*(c) The compensation paid to the employee and the amount of employer contributions described in paragraph (a) comply with NRS 281.120 to 281.1575, inclusive.*

2. *As used in this section, “eligible deferred compensation plan” means a plan satisfying the requirements of section 457(b) of the Internal Revenue Code, 26 U.S.C. § 457(b).*

**Sec. 4.** 1. *A department, agency, board, committee, commission or any other entity within the Executive Branch of State Government which qualifies to participate in the Public Employees’ Retirement System established by chapter 286 of NRS may not make employer matching contributions to any plan within the Program.*

2. *A department, agency, board, committee, commission or any other entity within the Executive Branch of State Government which does not qualify to participate in the Public Employees’ Retirement System established by chapter 286 of NRS may make employer matching contributions to any plan within the Program if:*

(a) *The total amount of deferred compensation set aside by the employer to a plan under the Program during any calendar year and the total amount of the employer matching contributions does not exceed the maximum contribution limit for the applicable plan; and*

(b) *The compensation paid to the employee and the amount of employer matching contributions described in paragraph (a) complies with NRS 281.120 to 281.1575, inclusive.*

3. *As used in this section, “employer matching contributions” means any contributions made by an employer to a plan within the Program pursuant to an arrangement whereby an employer makes contributions to the plan based on the amount of compensation deferred by an employee and contributed to such a plan.*