

## **Favorable Outcome for the State of Missouri Deferred Compensation Plan Stable Income Fund**

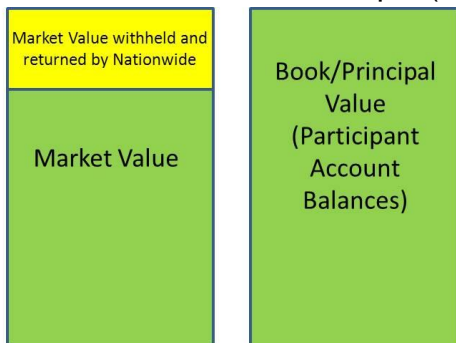
On June 28, 2011, the Missouri Supreme Court denied transfer of the case of State of Missouri, et al. v. Nationwide Life Insurance Co. et al., following the Western District Court of Appeals ruling in favor of the State of Missouri Deferred Compensation Plan. The resulting judgment called for Nationwide to appropriately compensate the Deferred Compensation Plan for the funds withheld when the transfer was made from Nationwide to ING. The proceeds were used to strengthen the market value component of the ING Stable Income Fund (see illustration below). This action does not increase participant account balances. When Nationwide withheld the market value adjustment in June 2006, ING credited participant account balances at 100% of book value even though less than 100% of book value was transferred from Nationwide to the ING Stable Income fund. Again, individual participant principal balances were not reduced as the result of Nationwide's failure to transfer the full principal balance to ING. Please see the following history for more information on this litigation dating back to June of 2006.

This is great news for the Deferred Compensation Plan, and we are happy that the case has been resolved in favor of the Plan.

### **Stable Income Fund Illustration**

For accounting purposes, Stable Income Funds consists of 2 components:

- Market Value – actual value of underlying investments
- Book Value or Principal (Participant account balances)



### **History on the Litigation regarding the Market Value Adjustment (Nationwide Lawsuit)**

#### **July 1, 2011**

In compliance with the judgment by the Western District Court of Appeals in favor of the Plan, Nationwide wired \$27,083,155.84 to the State of Missouri Deferred

Compensation Plan. These monies have been returned to the ING Stable Income Fund from which they were originally withheld resulting in a more stable investment option for plan participants.

### **June 28, 2011**

Following a request by Nationwide, the Missouri Supreme Court denied transfer of the case from the Western District Court of Appeals thereby upholding the decision for judgment in favor of the State of Missouri Deferred Compensation Plan.

### **March 8, 2011**

#### **Press Release from the Missouri Attorney General:**

#### **AG Koster announces favorable Appeals decision for the State Employees' Deferred Compensation plan**

Jefferson City, Mo. – Attorney General Chris Koster said today a Court of Appeals, Western District, decision is good news for Missouri's deferred compensation plan, and, when final, should lead to \$18 million, plus interest, being returned to the plan, making it more secure.

Koster said the case involved the changeover in 2006 from Nationwide to ING as managers of the stable income fund within the Missouri State Employees Deferred Compensation program. Nationwide claimed the contract allowed them to withhold \$18 million as a market value adjustment. When a lower court agreed, the Attorney General's Office appealed on behalf of the state. Today the Western District Court of Appeals issued its ruling, which agrees with the Attorney General's argument that the provision allowing a market value adjustment had been removed from the contract at an earlier time and was no longer in effect at the time of the changeover.

"I am pleased that today's decision, if upheld, will mean \$18 million will be returned to the plan, helping to ensure that our state employees have access to a more secure, higher earning investment product through which they can invest for retirement," Koster said.

### **December 16, 2010**

Oral argument for the appeal will be heard by the Western District Court of Appeals on January 5, 2011.

### **October 19, 2010**

Nationwide and the Attorney General's Office have submitted briefs to the Western District Court of Appeals. The court will notify the parties once it schedules the oral argument phase in the appeal.

### **May 18, 2010**

A Record of Appeal was filed on May 6th. The Attorney General's Office is in the process of preparing a detailed brief for the appellate court. This brief is due on July 5<sup>th</sup>, while Nationwide's brief is due August 5<sup>th</sup>. Further updates on the appeal process will be provided by the Attorney General's Office to the Office of Administration and the State of Missouri Deferred Compensation Plan. This information will continue to be posted on the plan website.

### **March 25, 2010**

A decision to appeal Judge Patricia Joyce's ruling was made on March 18, 2010. Updates on the appeal process will be provided by the Attorney General's Office to the Office of Administration and the State of Missouri Deferred Compensation Plan. This information will continue to be posted on the plan website.

### **March 1, 2010**

On Friday, February 26, 2010, Cole County Circuit Judge Patricia Joyce ruled in favor of Nationwide Life Insurance Co., and Nationwide Retirement Solutions, in the lawsuit filed by the State of Missouri, Office of Administration and the Missouri State Deferred Compensation Plan. The suit was filed in early 2006 to seek recovery of a market value adjustment made by Nationwide when the decision was made to transfer account balances from the Nationwide Stable Value Fund to a new service provider. Principal balances in participant accounts were not affected by the transfer in 2006. However, the interest rate earned on those accounts has been slightly less than the rate would have been without the market value adjustment. The Attorney General's Office will be in contact with Office of Administration and the State of Missouri Deferred Compensation Plan (which is now administered by the Missouri State Employees Retirement System board) regarding next steps, including whether or not to appeal to the Western District Court of Appeals.

### **October 2009**

The State continues to pursue this complex litigation and thus filed its motion for summary judgment on the contract issue on October 16, 2009. The Court

ordered a briefing schedule and set oral argument for January 12, 2010. The court continues to exercise its oversight of this case.

The transition of the oversight authority over the deferred compensation plan to MOSERS has not caused any change in the litigation strategy employed by the Office of the Attorney General.

We will continue to provide a regular update via a posting on this website whether or not anything specific has occurred. This way you will know that the Office of Administration continues to monitor the litigation activities. If events warrant direct communication with all participants, the Office of Administration will work with MOSERS to provide that communication.

### **April 2009**

As noted in our August 2008 update, the State continues to pursue this litigation. This is a complex lawsuit, and the parties are engaging in extensive discovery. That process continues under the oversight of the court. The transition of the oversight authority over the deferred compensation plan to MOSERS has not caused any change in the litigation strategy employed by the Office of the Attorney General.

We will continue to provide a regular update via a posting on this website whether or not anything specific has occurred. This way you will know that the Office of Administration continues to monitor the litigation activities. If events warrant direct communication with all participants, the Office of Administration will work with MOSERS to provide that communication.

### **August 2008**

As noted in our January update, (see below) the State continues to pursue this litigation. This is a complex lawsuit, and the parties are engaging in extensive discovery. That process continues under the oversight of the court.

We will continue to provide a regular update via a posting on this website whether or not anything specific has occurred. This way you will know that the Office of Administration continues to monitor the litigation activities. If events warrant direct communication with all participants, the Office of Administration will work with MOSERS to provide that communication.

### **January 2008**

The State is continuing to pursue this litigation. This is a complex lawsuit, and the parties are engaging in extensive discovery. We will continue to update you as developments occur via a posting on this website."

### **January 2007**

Our November 3, 2006 update indicated the Commission is pursuing legal remedies with Nationwide and is consulting with the Attorney General's Office on this matter.

In December, 2006, the Attorney General filed a lawsuit in Cole County Circuit Court wherein the State seeks return of the \$18.6 million retained by Nationwide as a Market Value Adjustment. The claim is for breach of contract and breach of fiduciary duties.

The Commission will continue to update participants as events warrant.

The Commission asks for your patience as litigation can take time. Be assured both the Commission and the Attorney General are diligently pursuing this matter.

As the Commission related in prior updates, if you were a participant in the Nationwide fixed annuity, the most important message for you is that your account balance transferred to ING at 100% of its value.

For the first quarter of 2007, ING is providing their participants with a return of 5.47% which is above their contractually required minimum interest rate of 5.15%. ING's active management of the fund helped increase the return beyond the contractual guarantees. Even though, this "increased" rate is slightly less than it would have been without the MVA, keep in mind that ING's contractual bid was approximately 1% higher than Nationwide's. Therefore, participants are assured of receiving a very competitive rate of return while retaining all the advantages of being a participant in the Missouri Deferred Compensation Plan.

### **November 3, 2006**

The Deferred Compensation Commission is aware of the concerns participants have voiced regarding Nationwide's withholding of an \$18.6 million "market value adjustment" when it transferred fixed annuity assets to the new contractor, ING. If you were a participant in the Nationwide fixed annuity, ***the most important message for you is that your account balance transferred to ING at 100% of its value.***

**Why did the Commission choose a new vendor?**

It had been ten years since we last bid the contract and the Commission wanted to achieve several goals with the new contract:

A) Establish a fixed cost for the Third-Party Administrator (TPA) - formerly PEBSCO, now CitiStreet. By bidding a fixed fee, the cost to the participants is very likely to go down as the assets in the Plan increase, unlike the former contract where costs were based on a percentage of assets.

B) The Commission wanted to bring to the Plan several new features, which they could not include under the old contract - in addition to the cost reduction mentioned above. These features are:

- Establish a fixed annuity where the Plan is not a general creditor. If the insurance company ran into financial difficulty, the Commission wanted the Plan's assets protected. With ING, the Plan's funds are in a Separate Account, protected from ING's creditors.
- Help participants make better investments choices using tools like Financial Engines
- Allow participants access to a Self Directed Account that makes available nearly any mutual fund, stock or bond that the participant could want

### **Will the Commission try to recover the market value adjustment?**

Yes. The Commission is currently in litigation with Nationwide and is consulting with the Attorney General's Office on this matter.

### **What effect did Nationwide's withholding of the market value adjustment have on my account?**

As emphasized above, your account was transferred to ING at 100% of its value. ING is providing all the participants with the contractually required minimum interest rate on their accounts. ING, however, is permitted to exceed the minimum rate if the market rate permits such an increase. This "increased" interest rate is slightly less than it would have been without M.V.A. Since ING's interest rate is approximately 1% higher than Nationwide's was, participants will still receive a very competitive rate of return.

### **June 5, 2006**

The previously announced interest rate for the new fixed annuity, the Stable Income Fund was approximately 5.4% for the period beginning June 5, 2006 and ending September 30, 2006. When Nationwide transferred the fixed account money to ING, the new contractor, it withheld a "market value adjustment" (MVA) of \$18.6 million or approximately 3.7% of the fund. Due to Nationwide's action, the interest rate on the Stable Income Fund may have to be adjusted slightly. The Commission believes that Nationwide did not have a legal right to withhold

the MVA. The Commission is in consultation with the Attorney General's Office concerning its legal remedies in the matter and is committed to doing everything in its power to maintain the full book value of participants' accounts while it pursues its legal remedies against Nationwide to recover the money.

The commission will provide you with regular updates on the proceedings in this matter.