

# SECTION 457(b) PRIVATE NONQUALIFIED DEFERRED COMPENSATION PLANS

## SUMMARY OF KEY FEATURES

### OVERVIEW

A Private Section 457(b) plan is often termed an “eligible” nonqualified deferred compensation plan because compensation deferred to this plan is eligible for favorable tax treatment if the plan satisfies the limitations imposed by Section 457(b) of the Internal Revenue Code. Private 457(b) plans are primarily used to provide additional tax-sheltered income in excess of a regular pension plan for a select group of management or highly compensated employees of a tax-exempt employer. This type of plan is often referred to as a “Top Hat Plan.”

A 457(b) plan generally provides employees an opportunity to reduce taxable income through the deferral of compensation, as well as to receive distributions after retirement when they may be in a lower tax bracket.

A 457(b) plan is relatively easy to establish because the requirements regarding coverage, eligibility, participation, vesting, etc. are less structured than those for 403(b) arrangements and 401(a) qualified plans. Further, these plans can be designed in a variety of ways, depending on the features preferred by the institution.

This type of 457(b) plan is intended primarily as a supplemental retirement plan for highly compensated employees, allowing them to defer compensation in addition to the amount that Section 402(g) permits to be deferred to 403(b) or 401(k) plans. There is no aggregation of deferrals under this type of plan with deferrals to 403(b) or 401(k) plans.

The Institution owns the plan’s assets until they are distributed to employees. However, assets can be set aside under a rabbi trust to separate them from general assets of the employer.

The following information summarizes private 457(b) plan details. Your Managing Consultant will work with you to ensure you have more complete information and discuss important considerations related to 457(b) and other executive compensation arrangements.



<b>FUNDING</b>	<p>Private 457(b) plans are unfunded. The Institution owns the plan assets until distributed to employees.</p> <p>Assets can be set aside under a rabbi trust to separate them from the general assets of the employer. In the event of employer bankruptcy, assets are subject to claims of employer's creditors even if in a rabbi trust.</p>
<b>ELIGIBILITY</b>	<p><b>EMPLOYER:</b> Private tax-exempt institutions.</p> <p><b>EMPLOYEE:</b> A select group of management or highly compensated employees.</p>
<b>ELECTIONS, CONTRIBUTIONS AND LIMITS</b>	<p>Most plans are designed as elective plans funded exclusively with salary reduction (before-tax) employee contributions.</p> <p>Contribution limit is \$16,500 in 2009. Cost-of-living adjustments in future years in \$500 increments as authorized by the Internal Revenue Service.</p> <p>Age 50 catch-up contributions not available. An enhanced contribution limit is available in each of the three years preceding the plan's normal retirement age equal to the lesser of (1) twice the normal limit or (2) the normal limit plus the unused amounts of the limits in prior years.</p> <p>Contributions to 457(b) plans are not aggregated with 401(k) or 403(b) contributions for purposes of applying Section 457(b) or 402(g) contribution limits.</p>
<b>VESTING</b>	<p>The Institution owns the assets until distributed to employees. Assets can be set aside under a rabbi trust to separate them from the general assets of employer. In the event of employer bankruptcy, plan assets are subject to the claims of employer's creditors even if in a rabbi trust.</p>
<b>ROLLOVERS IN/OUT</b>	<p>Rollovers to and from other plans are not permitted by the IRC. Direct transfers to and from other private 457(b) plans may be permitted if allowed by both the transferring plan and the receiving plan.</p>
<b>DISTRIBUTIONS</b>	<p>Available at separation from service, age 70½ or unforeseeable emergency.</p> <p>Subject to minimum distribution requirements.</p> <p>Deferral possible until age 70½ or separation from service (if later).</p>
<b>LOANS</b>	<p>Loans not available.</p>

<b>TAXATION</b>	<p>Taxed as wages when paid (or constructively received).</p> <p>FICA taxes are due at the later of when the services are performed or the amounts are vested.</p>
<b>IMPACT OF LEGISLATION</b>	<p>EGTRRA repealed coordination of annual contribution limits with 403(b) and 401(k) plan contributions and also provided higher annual contribution limits.</p> <p>Pension Protection Act made higher contribution limits permanent. Section 409, recently added to the Internal Revenue Code and covering many types of non-qualified deferred compensation arrangements, specifically exempts 457(b) plans from its rules.</p>
<b>IRS FORM 5500 FILING</b>	<p>A one-time, one-page notice of plan adoption is filed with the Department of Labor to document the plan's "top hat" exemption from ERISA.</p>

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