

SECTION 457(f) NONQUALIFIED DEFERRED COMPENSATION PLANS

SUMMARY OF KEY FEATURES

OVERVIEW

A Section 457(f) plan is often termed an “ineligible” nonqualified deferred compensation plan because tax-exempt and governmental employers are permitted to provide compensation in amounts that exceed limitations imposed on 457(b) “eligible” plans.

A 457(f) plan is usually established as a way of retaining executives, officers and select groups of highly compensated employees with supplemental retirement benefits. Sometimes called “golden handcuffs,” such plans stipulate certain periods of service be met to receive the additional amounts of compensation.

In addition to providing supplemental compensation, a 457(f) plan provides executives with an opportunity to both reduce taxable income through the deferral of unlimited amounts of compensation, as well as receive distributions after retirement when they are more likely in a lower tax bracket.

A 457(f) plan is relatively less difficult to establish because there are no requirements regarding coverage, eligibility, participation, vesting, etc. Further, these plans can be designed in a variety of ways, depending on the executive’s time to retirement, the tax strategy and funding arrangement desired, as well as other features preferred by the institution and the executive.

Assets are owned by the institution, subject to the claims of their creditors, and invested as determined by the institution and the executive.

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



<p>FUNDING</p>	<p>457(f) plans must be unfunded. The institution owns the plan assets until distributed to employees. However, they can be “informally funded” through the use of institutionally owned annuity contracts, life insurance policies and other types of investments.</p> <p>If funded with a life insurance policy, the policy is purchased by a benefits trust (usually a rabbi trust, which protects against most adverse contingencies, except claims of the institution’s creditors). The trust uses the contributions to pay the premiums on the life insurance policy.</p>
<p>ELIGIBILITY</p>	<p>EMPLOYER:</p> <ul style="list-style-type: none"> • State and local governments and their agencies, as permitted by applicable law. • Any 501(c) tax-exempt organization. <p>EMPLOYEE:</p> <ul style="list-style-type: none"> • Public institutions: Any group or single employee. • Private institutions: Limited to a “Top Hat” group (select group of management or highly compensated employee).
<p>ELECTIONS, CONTRIBUTIONS AND LIMITS</p>	<p>Most plans are designed as nonelective plans with employer-provided contributions. Historically, a 457(f) plan may have been designed to allow an employee to make unlimited salary reduction (before-tax) contributions. However, the introduction of IRC Section 409A and the announcement by the IRS of its intent to apply the more restrictive 409A definition of a substantial risk of forfeiture to Section 457(f) has basically eliminated future use of this feature.</p> <p>Elections may be made up to 30 days after becoming eligible. For annual performance-based plans, the executive may make an election up to six months before the end of the bonus plan year and/or defer a percentage of the next year’s salary prior to year-end.</p> <p>NOTE: Assets will be subject to substantial risk of forfeiture, which requires the employee to provide substantial future services in order to exclude distributions from gross income.</p> <p>Employee salary deduction (after-tax) contributions are not permitted.</p> <p>Since there are no contribution limits, catch-up contribution provisions do not apply.</p> <p>Contributions to 457(f) plans are not aggregated with contributions to 403(b), 401(k) or 457(b) plans or subject to Section 402(g) or 457(b) contribution limits.</p>
<p>VESTING</p>	<p>An employer may give the executive an immediate right to the benefits when substantial risk of forfeiture lapses, or make other provisions. For example, if the executive terminates employment or becomes disabled, the benefits can be both vested and paid, or the plan can continue in place until the distribution dates specified in the plan.</p>

ROLLOVERS IN/OUT	Not permitted.
DISTRIBUTIONS	<p>The employee elects the distribution dates for the payment of benefits. Distributions can be made at any time but are usually coordinated with the date when the substantial risk of forfeiture lapses. Payment is generally made in a lump sum.</p> <p>If funded with a life insurance policy, the institution may use the policy's cash value to pay the retirement benefits.</p>
LOANS	Not permitted.
TAXATION	<p>Accumulations are immediately and fully taxable to the employee when the substantial risk of forfeiture lapses, regardless of whether or not they are received by the employee. Distributions are taxed as wages, and withholding reporting is via a W-2 issued by the institution.</p> <p>If the plan is funded with a life insurance policy, the employee pays the income tax due on the premium amounts. However, the institution may also elect a "double bonus" arrangement, in which the executive is paid a bonus for the amount of income tax due.</p>
IMPACT OF LEGISLATION	<p>None specific to EGTRRA.</p> <p>The American Jobs Creation Act of 2004 added Internal Revenue Code Section 409A outlining the rules and regulations governing nonqualified deferred compensation plans. Full compliance with these regulations is required as of 1/1/09. The IRS will impose serious tax consequences on plans that do not comply with the guidelines on:</p> <ul style="list-style-type: none"> • Timing of deferrals and distributions • Allowable forms of distributions • Changes in the time and form of distributions • Written plan documentation requirements
IRS FORM 5500 FILING	Private institutions file a one-time, one-page notice of plan adoption with the Department of Labor to document the plan's "top hat" exemption from ERISA. Public institutions are not subject to any Form 5500 filing requirements.

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