

SUPPLEMENTAL EXECUTIVE RETIREMENT PLANS FOR PUBLIC EMPLOYERS

SUMMARY OF KEY FEATURES

OVERVIEW

A supplemental executive retirement plan, or SERP, is a term that is often used to describe a variety of nonqualified deferred compensation arrangements designed for key executives or highly compensated employees. A SERP can be used by both a tax-exempt and governmental employer and can take a variety of forms. One common characteristic is that these plans are comprised entirely of employer contributions. This Fact Sheet focuses on supplemental executive retirement plans that are structured as either a defined benefit plan or as a 401(a)/403(a)/403(b) defined contribution plan.

These types of arrangements are generally not suitable for use by tax-exempt institutions because the plans would most likely fail to meet ERISA and IRS nondiscrimination requirements since they are offered to a select group of highly compensated employees. However, these types of plans are suitable for use by governmental institutions because they are not subject to ERISA and are exempt from IRS nondiscrimination testing requirements. Consequently, it does not matter if only key employees are eligible for one or more plans or if few rank and file employees participate.

FUNDING

Funding arrangements will depend on what type of supplemental plan is used. Generally, however, plans are funded.

ELIGIBILITY

EMPLOYER: State and local governments and their agencies.

EMPLOYEE: Any group or single employee.



ELECTIONS, CONTRIBUTIONS AND LIMITS

- An employee eligible to participate in both a qualified 401(a)/403(a) defined contribution retirement plan and a 403(b) defined contribution retirement plan is able to take advantage of dual Section 415 limits. In 2009, the annual Section 415 limit is \$49,000 for defined contribution plans. Therefore the employee would be eligible for a total of \$98,000 in contributions across the two plans (plus an additional \$5,500 of catch-up contributions to the 403(b) plan if he or she is age 50 or older). This is because the Section 415 limit on annual contributions is applied separately to retirement plans that qualify under IRC Section 401(a)/403(a) and retirement plans that qualify under IRC Section 403(b).
- An employee eligible to participate in both a 403(b) plan and a governmental 457(b) plan is able to make elective deferrals to both plans. In 2009, the maximum elective deferral limit for each plan is \$16,500. Therefore, the employee would be able to defer a total of \$33,000 (plus an extra \$11,000 of catch-up contributions if he or she is age 50 or older) across the two plans. This is because EGTRRA eliminated the requirement that Section 457(b) and 402(g) limits offset each other.
- In 2009, the limit on benefits from a defined benefit plan is \$195,000. In many cases, when hired key employees are generally older than rank and file employees meaning that a disproportionate amount of employer contributions will go to fund benefits for key employees even if rank and file employees were eligible for the plan. Therefore, a defined benefit plan allows for a much larger retirement benefit to be accrued in a few years of service than would be possible under a defined contribution plan.
- An employee eligible for benefits of \$195,000 a year from a defined benefit plan is still entitled to a full Section 415 limit of \$49,000 for annual additions to a 403(b) or qualified defined contribution plan in 2009.

VESTING	Immediate vesting.
ROLLOVERS IN/OUT	Permitted to or from 403(b), 401(a), 401(k), other public 457(b) plans and IRAs.
DISTRIBUTIONS	The employee elects the distribution dates for the payment of benefits, subject to applicable laws/regulations.
LOANS	Permitted.
TAXATION	Distributions taxable upon receipt.
IMPACT OF LEGISLATION	Related to the underlying type of plan used.
IRS FORM 5500 FILING	Public plans are not required to file Form 5500.

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