



457 Plans

A 457 plan is a nonqualified, employer-sponsored deferred compensation plan for employees of state and local government agencies and some tax-exempt organizations. Eligible employees are allowed to set aside a portion of their salary on a before-tax basis. The plans can also accept employer contributions. Earnings grow on a tax-deferred basis and contributions are not taxed until assets are distributed from the plan. Contributions to these plans are not aggregated with contributions to 403(b), 401(k), or plans subject to Section 402(g) contribution limits.

Eligible Plan 457(b)

A plan that includes limits on the employee contributions to the plan. Receives favorable tax treatment.

- Governmental 457(b) plans are the most common for which governmental entities such as local municipalities allow employees to invest money on a pre-tax or Roth after-tax basis through salary reduction.
- Non-Governmental 457(b) plans are limited to a predefined standard group of higher compensated employees, typically directors or officers of the company. Oftentimes, this compensation limit is the same that is used for 401(k) participation testing purposes. Because these plans are usually limited to highly compensated employees or a select group of executives, they are sometimes referred to as “top hat” plans. The contributions and earnings accumulate tax-deferred until paid to the executive. The executive’s account is an employer asset, subject to any claims made by its creditors.

Ineligible Plan 457(f)

A non-qualified deferred compensation arrangement (a non-qualified retirement plan) that provides tax-exempt or 501(c)(3) employers with an opportunity to supplement the retirement income of highly compensated employees. Within such an arrangement, employers can contribute to this plan, and money is paid to the employee at retirement. This is why these plans are sometimes referred to as a “golden handcuffs” plan, since they provide an incentive for executives to stay with the organization.

Under the provisions of Section 457(f), assets contributed by the employer remain owned by the employer until paid to the executive at retirement. This provides the promise of future benefits to the executive, while also providing a tax shelter, since the assets are not taxable income as long as they remain property of the employer.

Contribution rules for a 457(f) plan are extremely generous (unlimited). Amounts contributed are subject to a “substantial risk of forfeiture,” meaning it must be conditioned upon future performance and/or attainment of a certain age. In other words, the employee could forfeit everything he/she saved for themselves. Taxes are not due until the year the substantial risk of forfeiture lapses, as defined in the adoption agreement.

Contributions

Basic limit—\$19,000 (2019) – age 50 or over catch-up contribution limit is an additional \$6,000 (2019)

Special catch-up limit—3-year-old catch-up provision that applies during participant’s last 3 years before plan’s normal retirement age.

Limited to lesser of: *(not available to those utilizing the 50 or over catch-up provision)*

- \$38,000 (twice basic annual limit for 2019) or;
- The basic annual plan underutilized basic annual limit + underutilized basic annual limit in prior years.

Comparing Features of 457 Plans

The following table compares the features such as contribution limits, transfers, distributions, and rollover rules of 457(b) plans for governmental agencies, tax-exempt organizations, and those employers offering 457(f) plans.

457 Plan Rules

Feature	457(B) Governmental	457(B) Tax Exempt	457(F) All Plan Types
Employer	State/Local government	Any 501(c) organization	State/local government or any 501(c) organization
Participation	All employees, plus independent contractors	Select/Top paid group	Select/Top paid group
Contribution Limit	\$19,000 ¹ for 2019	\$19,000 for 2019	No Limit
Types of Permitted Deferrals	Pre-tax and after 12/31/2010, Roth deferrals permitted	Pre-tax deferrals only - Roth deferrals are not allowed	Not applicable
Age 50 Catch-up	\$6,000 for 2019 if age 50+	Not permitted	Not applicable
Special Catch-up within 3 yrs. of NRA	Up to 2x normal deferral limit	Up to 2x normal deferral limit	Not applicable
Rollovers to other plans?	Yes. To IRAs, QPs, 403(b)s subject to direct rollover rules; 20% withholding rules and voluntary withholding rules	No	No
Transfers	Yes. To another governmental 457(b)	Yes. To another tax-exempt 457(b)	No
Distributable Events	Severance from employment (if later, NRA), age 70 ½ rules, plan termination, special rule for independent contractors, special \$5,000 rule, unforeseeable emergency	Based on document and employee elections	Generally lump sum or 5-year installment
Loans Permitted	Yes, based on QP rules	No	No
Vesting	Permitted for employer contributions but amounts subject to limit when they vest.	Permitted for employer contributions but amounts subject to limit when they vest.	Not applicable

¹ "Elective Deferral" under final regulations includes employee deferrals, employer matching, and employer nonelective contributions.

Impact of Legislation

The American Job Creation Act of 2004 added an Internal Revenue Code Section outlining the rules and regulations governing nonqualified deferred compensation plans. Compliance with these regulations are required as of 1/1/2009. The IRS will impose tax consequences on plans that do not comply with the guidelines.

- Timing of deferrals and distributions
- Allowable forms of distributions
- Change in the time and form of distributions
- Written plan documentation requirements
- An annual Form 5500 is required for private institutions unless the plan sponsor files 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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