457 PLANS
457(b) and 457(f) Plans

NONQUALIFIED DEFERRED
COMPENSATION PLANS
What is a 457 Plan?

- Nonqualified Deferred Compensation
- *Eligible* Deferred Compensation Arrangement
- Restrictions on 457(b) Plans
  - Contributions
  - Trust Requirement for State/Local Gov’ts
  - Distributions
Who Can Establish a 457 Plan?

- Governments - state, political subdivision of a state (including cities, counties, boroughs, and school districts)

- Tax-exempt organizations where only certain highly compensated employees (“the top paid group”) are participating – all 501(c)(3) orgs.
Types of 457 Plans

- **457(b)** – Restrictions on Contributions, Distributions, etc.
  - Governmental – May Rollover to other plans
  - Tax-exempt

- **457(f)** Top Hat Plans – No rollovers permitted; may only cover top paid grp.
  - Governmental
  - Tax-exempt
457(f) Plans

- 457(f) - Top Hat Plans
  - Governmental – Superintendent; Executive staff; Athletic Director of state college
  - Tax-exempt – Dean of private university; administrator of hospital
  - Basically a legal agreement between the Employer and the Employee.
# How Much Can Be Contributed to 457(b)?

For years beginning after 12/31/2001:

<table>
<thead>
<tr>
<th>Year</th>
<th>Increased Deferral Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$11,000</td>
</tr>
<tr>
<td>2003</td>
<td>$12,000</td>
</tr>
<tr>
<td>2004</td>
<td>$13,000</td>
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<tr>
<td>2005</td>
<td>$14,000</td>
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<tr>
<td>2006</td>
<td>$15,000</td>
</tr>
<tr>
<td>2007 - 2008</td>
<td>$15,500</td>
</tr>
<tr>
<td>2009 - 2011</td>
<td>$16,500</td>
</tr>
<tr>
<td>2012</td>
<td>$17,000</td>
</tr>
<tr>
<td>2013</td>
<td>$17,500</td>
</tr>
</tbody>
</table>

These are NOT 402(g) Deferrals!
Section 402(g) Elective Deferrals

Includes deferrals made to the following Plans:

- 401(k)
- 403(b)
- Salary Reduction SEP (SARSEP)
- SIMPLE Plans
Section 402(g) Elective Deferrals

402(g) Limit Per Taxpayer Per Calendar Year

2000 and 2001 - $10,500
After 2002 – same as 403(b)
2012-$17,500; 2013 - $17,500

Special 402(g) limit applies for 403(b) participants with 15 years or more with the same employer, the limits above are increased by $3,000.
457(b) Plan Deferrals

- **Not 402(g) Elective Deferrals**

- Pre-2002 Coordination Rule Repealed. The maximum deferral of $17,500 for 2013 can be made in addition to other 402(g) Deferrals.
457(b) Plan Deferrals

457(b) Elective Deferrals include*:

1. Employee Pre-tax deferrals (and Roth Post-Tax deferrals)
2. Employer Matching
3. Employer Nonelective

*Definition added by final regulations
Example 1:

John participates in a 403(b) program. For 2013 he defers $17,500 into the 403(b) plan. He can defer an additional $17,500 into a 457(b) plan.
Are Catch-up Contributions Permitted?

- Governmental Plans:
  - Age 50; and
  - Special 3 year Catch-up before reaching NRA
- Tax-exempt Plans
  - Only special 3 year catch-up permitted
Coordination of Government “Catch-up” Rules

The Participant may contribute the greater of:

- Age 50 Catch-up limit;

  OR

- Special 3 year 457 Catch-up.
Example 2:
John will reach his NRA in 2013. For 2010 he defers $16,500 into his 403(b), he may (assuming the limits work to his advantage) defer an additional $33,000 to his 457(b) plan.
457(b) Plan Deferrals

Example 2 continued:

If John is age 50 or older =  $5500
If John has 15 yrs of service =  $3000

That means: $16,500+$33,000+$5,500+$3000 OR $57,500 deferred in one year.
Section 457(b) Gov’t Plans

Characteristics

- EE participation is voluntary, maximum deferral, lesser of 100% of “includible” compensation or $17,500 for 2013
- A deferred compensation plan, not a "qualified plan" under §401(a) IRC
- Eligibility – May cover all employees or since there is no nondiscrimination testing, may exclude any groups of employees.
- Only plan that may INCLUDE Independent Contractors (non-employees)
Section 457(b) Gov’t Plans

Characteristics

- In the proposed and final regs, IRS took position that there must be a “plan document”. This goes back to 2002!
- Nonbank trustees may include “States” for purposes of the Deemed IRA rules – regulations issued 7-20-04
- There are no “vendors” as with a 403(b), similar to a 401(a) plan with a trust.
- Some orgs refer to “vendors” only to have it make more sense to teachers.
Section 457(b) Gov’t Plans

Characteristics

- For governmental 457 plans, assets required to be held in trust (generally effective after 1998) for the exclusive benefit of participants or beneficiaries.

- Deferrals are subject to FICA and FUTA when services are performed. Deferrals are subject to income taxes at the point of distribution.
Section 457(b) Gov’t Plans

Characteristics

- For governmental 457(b) plans, Rev. Rul. 2004-67 permits investments in group trusts – extends Rev. Rul. 81-100 to gov’t 457(b), deemed IRAs and Roth IRAs.

- Rev. Rul. 2004-67 provides model amendments for use by plans to add group trusts as an investment.
Section 457(b) Gov’t Plans

Characteristics

➤ "Catch-up" contribution rule applies to 3 years immediately preceding the employee's normal retirement age which permits a potential deferral up to 2 X the normal deferral limit for the 3 year period.

➤ Distributions permitted prior to separation from service in the event the employee incurs an "unforeseeable emergency".

➤ There is NO premature 10% penalty tax on any distributions
Section 457(b) Gov’t Plans

Characteristics

➢ Rollovers into IRAs are permitted for distributions from gov’t 457(b)s made after 2001.

➢ Employees were permitted to stop “irrevocable elections” in 2002 and possibly roll over the remainder.

➢ Does not result in active participation status for IRA deduction purposes.
Section 457(b) Plans

Disadvantages

- Favorable tax treatment is not available (10 year averaging)

- No Prototype available, however, IRS issued sample model language during 2004. Deadline to amend was 12/31/2005.
QDROs
(Qualified Domestic Relations Orders)

- QDRO rules apply to 457(b) plans for years after 2001.

- Court order must still be followed for years prior to 2002 (referred to as a PDRO).

457(b) Allowable Benefit Payments

1. Attainment of Age 70½

2. Separation from Service

3. Incurs an "Unforeseeable Emergency"
   Unforeseeable Emergency means a severe financial hardship to the participant resulting from sudden and unexpected illness or accident to the participant or to a dependent. Also includes loss of participant's property due to casualty.
457(b) Allowable Benefit Payments

Emergency distributions may not be made if relief is available through insurance, other reimbursement; liquidation of the participant's other assets or ceasing deferrals to 457 plan.

4. Independent Contractors may only qualify for "retirement" payments when service contract ends – generally 12 months with no contract.

5. Plan Termination (added under final regulations)
Minimum Required Distributions From 457 Plans

- Rules "similar" to QP rules apply until regulations are issued (not even proposed regs yet!)

- RBD is the later of April 1st following 70½

- MDIB rules apply for years before 2002
In-Service Distributions

- Effective for tax years after 12/31/96
- Plan must contain provision
- Requirements:
  - total amount may not exceed $5,000
  - no deferrals made for 2 years
  - no prior in-service distribution taken under this rule (available one-time)
- Voluntary or Mandatory in-service options available
457 Catch-up

Joe Smith has been working for the Township of Lower Dublin for 3 years. Joe found out in 2010 that his employer has maintained a 457 plan throughout his employment. His compensation for his 3 years of employment and his unused limits to his 457 plan are as follows:
# 457 Catch-up

<table>
<thead>
<tr>
<th>Year</th>
<th>Compensation</th>
<th>Unused Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$20,000</td>
<td>$15,500</td>
</tr>
<tr>
<td>2009</td>
<td>$22,000</td>
<td>$16,500</td>
</tr>
<tr>
<td>2010</td>
<td>$27,000</td>
<td>$16,500</td>
</tr>
<tr>
<td><strong>Total Limits</strong></td>
<td><strong>$48,500</strong></td>
<td><strong>$48,500</strong></td>
</tr>
</tbody>
</table>

Joe will reach his NRA in 2013. Let's determine for the 3 years prior to 2013 his catch-up contribution. His compensation for 2010 (the current year) is $27,000.
1st Year Catch-Up Worksheet (2010)

1. Enter 2 X ED Limit $33,000
2. Enter lesser of line (1) or 100% of Comp. $27,000
3. Add all prior years' limits $48,500
4. Enter all prior exclusions -0-
5. Subtract line 4 from line 3 $48,500
6. Add line 2 and line 5 $47,500
7. Enter lesser of line 1, 2 or 6 $27,000

THIS IS THE MAXIMUM ANNUAL CATCH-UP CONTRIBUTION
2nd Year Catch-Up Worksheet (2011)  
(Joe's Compensation is now $28,500)

1. Enter 2 X ED Limit $33,000
2. Enter lesser of line (1) or 
   100% of Compensation $28,500
3. Add all prior years' limits 
   (lines 2 + 3 of prior Worksheet) $75,500
4. Enter all prior exclusions $27,000
5. Subtract line 4 from line 3 $48,500
6. Add line 2 and line 5 $77,000
7. Enter lesser of lines 1, 2, or 6 $28,500

THIS IS THE MAXIMUM ANNUAL CATCH-UP CONTRIBUTION
3rd Year Catch-Up Worksheet (2012)

(Joe's Compensation is now $30,000)

1. Enter 2 X ED Limit $34,000
2. Enter lesser of line (1) or 100% of Compensation $30,000
3. Add all prior years' limits (lines 2 + 3 of prior Worksheet) $104,000
4. Enter all prior exclusions $55,500
5. Subtract line 4 from line 3 $48,500
6. Add line 2 and line 5 $78,500
7. Enter lesser of line 1, 2 or 6 $30,000

THIS IS THE MAXIMUM ANNUAL CATCH-UP CONTRIBUTION
Maximum 457 Plan Deferral

FOR YEARS BEFORE 2002
33 1/3% X Includible Compensation
= equaled
25% X Gross Compensation

Example: June's compensation for the year is $25,000 (before any reductions in compensation. June's maximum deferral is $6,250 (25,000 X 25%).

June's includible compensation is $18,750. $18,750 X 33 1/3% gives the same answer of $6,250.
Miscellaneous 457 Rules

- Loans permitted for gov’t plans only after 1998 - rules "similar to" QP rules apply


- No tax-free rollovers to any other plan permitted at a distributable event for years prior to 2002.
Miscellaneous 457 Rule

- Transfers to other 457 arrangements are permitted. Must be “like” to like” plans and both plans must permit

- Governmental plans must have assets in a Trust (Trustee (or custodian) must be a "bank" or IRS approved "nonbank" Trustee).

- 15 day deposit rule does not apply to 457(b) plans (not ERISA Plans).
Portability After 2002

Rollovers permitted for governmental 457(b) plans.

Traditional IRA* (except nondeductible) \(\rightarrow\) 457(b) Plans
457(b) \(\rightarrow\) Traditional IRA
QP/403(b) \(\rightarrow\) 457(b)

*Traditional IRAs include Regular, Rollover, SEP and SIMPLE-IRAs after 2 years
Must provide 402(f) Notice

No in-service distributions of rollover amounts unless plan permits.
Miscellaneous Changes beginning in 2002

- Employees may stop previous “irrevocable election” distributions and, if applicable roll over balance.

- Distributions from other 457(b) plans (tax exempt) reported on Form W-2, except for beneficiary distributions (Form 1099-MISC is used)

- Tax Credits- (50% on the first $2,000 deferred)-if certain AGI criteria is met
DB Service Credits

- Gov’t 403(b) and 457(b) assets may be transferred to State DB plan to purchase service credits
- Must be done by trustee-to-trustee transfer
- No distributable event required
- 1099R Instructions indicate - No Reporting!
DB Service Credits

- DB may place restriction on how long after separation, purchase may be made
- DB must be amended to accept transfers
- DB plan may place restriction on the number of years that may be purchased
Miscellaneous Changes for 2003

“Deemed IRAs” made to 457(b) plans

1. Must keep separately accounted for 457 monies not subject to 10% premature tax, IRA monies may be subject to tax
2. Can be traditional or Roth Contributions
3. Form 5498 reporting
4. FMV statement by end of January
5. RMD Statement by end of January
6. Two different “trustees”
7. IRA trustee/custodian could jeopardize the qualified status of the 457 plan.
Transfers between gov’t 457(b) plans

Three types of transfers between governmental 457(b) plans:

1. “Person-to person” transfers are permitted for any participant who has a severance from employment with the transferring 457 plan and is performing services for the new entity maintaining the receiving 457 plan, whether or not in the same state.
Transfers between gov’t 457(b) plans

2. Transfers are permitted between different governmental 457 plans within the same state and severance from employment is not required, if the entire plan’s assets are transferred to another governmental plan.

3. Transfers are permitted from one governmental plan of an employer to another governmental plan of the same employer.
Special Rules for Tax-Exempt 457(b) plans

1. May only cover the “top-paid group”.
2. Age 50 catch-up does not apply
3. Reported on W-2 as wages
4. Not part of portability to other types of retirement plans
Special Rules for Tax-Exempt 457(f) plans

1. May only cover the “top-paid group”.
2. Reported on W-2 as wages
3. Not part of portability to other types of retirement plans
4. What constitutes the Top Hat Group?

“Individuals who have the ability to affect or substantially influence the design and operation of the NQDC plan”

Naming Highly Compensateds will usually **NOT** work!
Why Would an Entity Sponsor a 457(f) NQDC Plan?

- To Attain/Retain Key Employees
- Salary Continuation Plan
- Provide Death Benefit
- Defer Income
Features of a 457(f) Plan

- Funded Plans
- Unfunded Plans ("Profit" ERs)
- 457 Plans (nonprofits/state or local govts.)
  - 457(b) "Eligible Plans"
  - 457(f) "Ineligible Plan"
Unfunded Plans General ERISA Rules

- Participation
- Vesting
- Funding
- Trust Requirements
- Fiduciary Duties
  - Prudence
  - Diversity
  - Exclusive Benefits
Unfunded Plans ERISA *Exemptions*

- **Excess Benefit Plan**
  - Takes care of 415 Limitation

- **Top Hat Plan**
  - No Participation Requirements
  - No Vesting Requirements
  - No Funding Requirements
  - No Fiduciary Duties
  - No PBGC Termination Requirements
Top Hat Plan Declaration

♦ File with DOL within 120 days

♦ Must Include:

☐ Employer Name
☐ Address
☐ EIN
☐ Declaration of “Top Hat group”
☐ Number of Plans
Contribution/ Benefit Formula

♦ Variety - No rules; no limits until 10/3/04

♦ 401(k) Mirror Plan

♦ Wrap 401(k)

♦ Triggering Events

♦ Excess Benefit – the most common
Investments/ Funding

Investment Discretion

♦ “Hypothetical”

Funding

♦ Mutual Funds or Bonds
♦ Corporate Owned Life Ins. (COLI)
♦ Company Securities
♦ Split Dollar Insurance
♦ Annuities
COLI

♦ Inside Build-up Grows Tax Free

♦ Death Benefit to Corporation is Tax Free
  □ Subject to Alternative Minimum Tax

♦ Death Benefit Paid to Beneficiary
  □ Subject to Income and Estate Tax
COLI

♦ Employer can use Policy Loans and Withdrawals to pay Employee Benefits
♦ Amounts withdrawn are not taxable until the amount withdrawn exceed premiums paid
♦ Unpaid policy loans reduce death benefit Paid to Employer
♦ IRS starting to question COLI investments – tax avoidance issues.
Tax Consequences

- Employer Does Not Receive Deduction for Contributions

- Employer Receives Deduction When a Participant May Receive a Distribution

- Employer is Taxed on any Earnings Accrued On Amounts "put away" to Pay for Promised Benefits
Contributions and Earnings on Employee or Employer Contributions are not Taxed to Employee

Contributions and Earnings are Taxed to Employee When Employee May Receive Benefit
Contrast to 401(k)

- NO 10% Early Distribution Tax
- NO 10 year Income Averaging
- NO ADP/ACP Testing
Accounting Consequences

Contributions to Plan are Yearly Book Charges to Employer

Money Remains the property of the Employer until it becomes “available” to the EE
American Jobs Creation Act of 2004

- Signed into law on October 22, 2004.

- Added a new section 409A for amounts deferred after 12/31/2004. Primarily effects For profit Employers

- Effective for amounts deferred before 1/1/05, if the agreement was “materially modified” after 10/3/04.

- IRS working on guidance on the interaction between 457(f) rules and 409A rules. Until it is issued assume the 409A rules apply
Section 409(A)

NQDC under 409A does not include:

- 401(a)
- 403(b)
- 457(b)
- SEPs & SIMPLEs
- 415(m)
- Vacation Leave, Sick leave, disability or death benefit plans.
- 423 plans
Section 409(A)

NQDC under 409A does not include:

- Short Term Deferrals
- Stock Options issued with an exercise price equal to the FMV of the stock at the date of grant
- Certain SARs
- Severance plans only for non-key employees
- Severance paid only for involuntary terminations
Section 409(A)

NQDC under 409A does not include:

Certain Bonus Plans

Bonuses are often earned in one year and payable in the next year.

If they are paid within 2 ½ months of the ER’s year end, they are not deferred compensation.

If the 2 ½ window is missed and the EE is not certain what will be paid to them because it can change, will it still be deferred compensation?
Section 409(A)

NQDC under 409A includes

- 451
- 457(f)
- Stock Option Plans where less than FMV
- SAR (Stock Appreciation Rights) where exercise price is less than FMV on date of grant
- SERPs
- Any other arrangement that includes deferral of compensation
 IRS Guidance

• Notice 2005-1 issued 12/20/04

• Will issue at least 2 more notices in 2005 to provide more guidance in distributions, document requirements, and deferral elections (mid to late summer)

• Announcement 2004-96 – Added Code Y (Box 12) to Form W-2 for 2005
American Jobs Creation Act of 2004 - 409A

Requires Advance Elections to Defer or Re-defer:

**Initial** – taxable year prior to services or 30 days prior to eligibility – must contain the election as to the form of distribution

**Subsequent** – delay to receive dist or change form of payment may not take effect until 12 mos. after election and must defer initial paymt for at least 5 years (except for death, disability or unforeseeable emergency)
American Jobs Creation Act of 2004

“Performance-Based Compensation”, which is earned over at least 12 months

The initial election to defer may be made as late as 6 months prior to the end of the period
American Jobs Creation Act of 2004

Distribution Requirements:

Separation from service (but for key-Employees of market traded cos - 6 months after separation);

Death;

Disability;

Specific Time/fixed schedule (in plan at time of deferral);
American Jobs Creation Act of 2004

Distributions – cont’d:

- Change of control (does not include “financial health triggers”); or

- Unforeseeable emergency
American Jobs Creation Act of 2004

Key Employees include:

5% owners

1% owners with over $150,000

Officers who receive over $165,000 (2013)
American Jobs Creation Act of 2004

PLANS MAY NOT ACCELERATE THE TIME OR SCHEDULE OF ANY DISTRIBUTION!

➤ Exception “Change in Control”

➤ Discretionary distributions are prohibited, even if subject to a 10% “haircut”

➤ Hardship distributions no longer permitted – replaced with Unforeseeable Emergency rule
American Jobs Creation Act of 2004

A VIOLATION OF ANY OF THESE RULES WILL REQUIRE THE DEFERRED COMPENSATION TO BE INCLUDED IN INCOME UNDER SECTION 409A AND BECOME SUBJECT TO INTEREST AND A 20% PENALTY TAX!
Proposed Regs Issued

Reporting Requirements

- Annual deferrals of deferred comp in box 12 (with a Code Y) for employees of W-2.
- Form 1099-MISC for others non-employees/beneficiaries (box 15a)
- Annual deferral reporting is required unless the amounts are not reasonably ascertainable
- Prior reporting requirements for Box 11 are still in effect.
Proposed Regs Issued

Reporting Requirements For Violations

- The full amount accrued must be reported as gross income and wages in box 1 of W-2, and

- It also must be reported in box 12 of W-2 with a Code Z
NOTICE 2003-20

Applies to Employees of Eligible 457(b) Plans

Does not apply to 457(f) Plans

Does not apply to Independent Contractors covered under 457(b) plans
NOTICE 2003-20

Effective Date

• Applies to deferrals and distributions made after 12/31/01

• However, for deferrals and distributions made after 12/31/01 and before 1/1/04 may use reporting and w/h requirements under Notice 2000-38 (W-2 reporting except for death distributions on 1099-R)
Governmental 457(b) After 2001

- Payments (distributions) are no longer wages
- Included in income when paid
- Excess contributions (> $17,500 for 2013) are subject to income tax w/h rules when contributed
Governmental 457(b)

Participants, Beneficiaries and Alternate Payees subject to:

• Direct Rollover Rules
• 20% Mandatory w/h on eligible rollover distributions not rolled
• Voluntary w/h applies on distributions not eligible to be rolled over: nonperiodic – 10%; periodic – wage tables (May opt out of voluntary w/h)
Governmental 457(b)

Responsibility for Withholding

• Plan Administrator unless Plan Administrator directs the payor to withhold

Distributions from Gov 457(b) Plans

• Form 1099-R
• Form 945
Governmental 457(b)

Tax Deposit Rules

Same rules as IRAs, QPs, 403(b)s under Ann. 84-40:

• Aggregate with other amounts by same “person” under their EIN
• Use separate EIN for all gov 457(b) plans
• Use separate EIN for each 457(b)
• Same EIN must be used for 1099-R and 945
Tax-Exempt 457(b)

- Distributions are Wages
- Subject to Income Tax Withholding
- Use Circular E or Flat Rate
Tax-Exempt 457(b)

- Responsibility for Withholding – the Tax-Exempt Entity
- Reporting on Form W-2 for participants
- 941 Reporting applies
- Reporting on 1099-MISC for Beneficiaries
FICA and FUTA Tax

FUTA TAXES DO NOT APPLY TO:
  – State and Local Governments
  – 501(c)(3) Organizations

ALL DEFERRALS AND DISTRIBUTIONS ARE SUBJECT TO FICA UNLESS GOV’T ENTITY IS EXEMPT (SS REPLACEMENT PLAN)
FICA Tax

FICA TAXES APPLY FOR THE LATER OF:

– When services are performed; or

– When there is no longer a substantial risk of forfeiture

– Reported on Form W-2
FICA Tax

Governmental 457(b) – If ee is vested, subject to FICA going in.

Tax-exempt 457(b) – When there is no longer a substantial risk of forfeiture, amounts subject to FICA. This is usually at the point of distribution.

Reported on Form W-2
## Review of 457 Plan Rules 457 Plan Quick Reference Chart

<table>
<thead>
<tr>
<th>Provision</th>
<th>Governmental 457(b)</th>
<th>Tax-Exempt 457(b)</th>
<th>Govt/Tax-Exempt 457(f)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer</td>
<td>State/Local Government</td>
<td>Any 501 (c) Organization</td>
<td>State/local government or any 501(c) organization</td>
</tr>
<tr>
<td>Participation</td>
<td>All employees, plus independent contractors</td>
<td>Select/Top paid Group</td>
<td>Select/Top paid Group</td>
</tr>
<tr>
<td>Contribution Limit</td>
<td>$17,500 for 2013</td>
<td>$17,500 for 2013</td>
<td>No Limit</td>
</tr>
<tr>
<td>Types of Permitted Deferrals</td>
<td>Pre-Tax and after 12/31/2010, Roth Deferrals permitted</td>
<td>Pre-tax deferrals only. No Roth Deferrals</td>
<td>N/A</td>
</tr>
<tr>
<td>Age 50 Catch-up</td>
<td>$5,500 for 2013 if 50 by 12/31/2013</td>
<td>Not Permitted</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Special Catch-up</td>
<td>Up to 2 X Normal Deferral Limit</td>
<td>Up to 2 X Normal Deferral Limit</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Responsibility for Withholding</td>
<td>Plan Administrator unless directs Payor to withhold</td>
<td>Tax-Exempt Entity</td>
<td>Employer</td>
</tr>
<tr>
<td>Rollovers to other plans?</td>
<td>Yes. To IRAs, QPs, 403(b)s subject to direct rollover rules; 20% withholding rules and voluntary withholding rules</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Transfers</td>
<td>Yes. To another governmental 457(b)</td>
<td>Yes. To another tax-exempt 457(b)</td>
<td>No</td>
</tr>
<tr>
<td>Transfer to State DB Plan to purchase Service credits</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

1 “Elective Deferral” under final regulations includes employee deferrals, employer matching & employer nonelective contributions.
<table>
<thead>
<tr>
<th>Provision</th>
<th>Governmental 457(b)</th>
<th>Tax-Exempt 457(b)</th>
<th>Gov./Tax-Exempt 457(f)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distributable Events</td>
<td>Severance from employment (if later, NRA), age 70 ½ rules, Plan Termination, Special rule for independent contractors, Special $5,000 rule, Unforeseeable Emergency</td>
<td>Based on document and employee elections</td>
<td>Generally lump sum or 5 year installment</td>
</tr>
<tr>
<td>Loans Permitted</td>
<td>Yes, based on QP rules</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>RMD Rules</td>
<td>Yes. Later of April 1&lt;sup&gt;st&lt;/sup&gt; after 70 ½ or retirement</td>
<td>Yes. Later of April 1&lt;sup&gt;st&lt;/sup&gt; after 70 ½ or retirement</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Vesting</td>
<td>Permitted for employer contributions, but amounts subject to limit when they vest!</td>
<td>Permitted for employer contributions, but amounts subject to limit when they vest!</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>FICA Tax</td>
<td>1. Yes, unless entity is exempt (SS replacement plan)</td>
<td>1. Yes</td>
<td>1. Yes, unless government entity and is exempt</td>
</tr>
<tr>
<td></td>
<td>2. Applies later of: When services are performed or when no longer substantial risk of forfeiture</td>
<td>2. Applies later of: When services are performed or when no longer substantial risk of forfeiture</td>
<td>2. Applies later of: When services are performed or when no longer substantial risk of forfeiture</td>
</tr>
<tr>
<td>FUTA Tax</td>
<td>Not Applicable</td>
<td>Yes, except 501(c)(3) organization.</td>
<td>All tax exempt except 501(c)(3) and gov’t</td>
</tr>
<tr>
<td>Reporting Contributions</td>
<td>FICA on W-2 usually vested</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Reporting Distributions</td>
<td>Form 1099-R</td>
<td>Form W-2, except decedents</td>
<td>Form W-2, except decedents</td>
</tr>
<tr>
<td>Decedent Reporting</td>
<td>Form 1099-R</td>
<td>Form 1099-MISC</td>
<td>Form 1099-MISC</td>
</tr>
<tr>
<td>Provision</td>
<td>Governmental 457(b)</td>
<td>Tax-Exempt 457(b)</td>
<td>Gov./Tax-Exempt 457(f)</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------</td>
<td>-------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Curing Excess Deferrals</td>
<td>Similar to 401(k)</td>
<td>Similar to 401(k)</td>
<td>N/A</td>
</tr>
<tr>
<td>Curing Other Excesses</td>
<td>Under EPCRS (Rev. Proc. 2013-12) permitted to correct under a provisional basis similar to EPCRS standards</td>
<td>Under EPCRS (Rev. Proc. 2013-12) IRS will not generally accept a correction submission</td>
<td>Generally no correction procedures available under EPCRS</td>
</tr>
<tr>
<td>Investments</td>
<td>Depends on document, some states have restrictions, group trusts permitted.</td>
<td>Depends on document, “Hypothetical” investment direction</td>
<td>Depends on document, “Hypothetical” investment direction</td>
</tr>
<tr>
<td>Deemed IRAs</td>
<td>Permitted</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Tax Credit Available</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>10% Premature Tax</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>QDRO Rules Apply</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Subject to Plan Asset Rule</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Rule (15 Day deposit rule)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trust Required</td>
<td>Yes</td>
<td>Not Permitted unless a Rabbi or secular Trust is established</td>
<td>Not Permitted unless a Rabbi or secular Trust is established</td>
</tr>
<tr>
<td>Subject to ERISA</td>
<td>No</td>
<td>No</td>
<td>Yes BUT excess benefit and top-hat plans are exempt.</td>
</tr>
</tbody>
</table>