Governmental
457(b) Plan

Guidebook

What you should know about 457(b) deferred compensation plans

FOR PLAN SPONSOR USE ONLY

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Governmental 457(b) Plan Guidebook

One of the most important roles of a Governmental 457(b) (referred to throughout as "457(b)") plan sponsor is to maintain the tax-favored status of the plan for participants and beneficiaries. This Guidebook is a basic reference designed to help public sector plan sponsors and administrators understand the rules and requirements that apply to eligible governmental deferred compensation plans under Internal Revenue Code (IRC) Section 457(b). Plan sponsors are encouraged to closely review state and local laws that may apply to these plans and consult their own legal counsel on issues that need further clarification.

While this Guide may be used as a basic reference, employers, plan sponsors and administrators should always consult their own legal counsel and carefully review plan documents when designing, amending and administering their 457(b) plans.

Introduction

State and local governmental employers may establish and maintain 457(b) deferred compensation plans for employees and independent contractors performing services for them. Most public employers already provide a qualified defined benefit, defined contribution or hybrid plan as their employees' primary retirement plan. The 457(b) plan is generally designed as a supplemental retirement plan funded by voluntary contributions from employee wages. These plans may be also funded with employer contributions or a combination of employer and employee contributions.

In recent years, nine legislative actions have made significant changes to governmental 457(b) plans:

1. The Small Business Job Protection Act of 1996 (SBJPA)
2. The Economic Growth and Tax Relief and Reconciliation Act of 2001 (EGTRRA)
3. The Job Creation and Worker Assistance Act of 2002 (JCWAA)
4. The Pension Protection Act of 2006 (PPA '06)
5. The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)
6. The Worker, Retiree and Employer Recovery Act of 2008 (WRERA)
7. The Small Business Jobs Act of 2010
8. The American Taxpayer Relief Act of 2012
9. The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") and the Bipartisan American Miners Act of 2019, both included in the Further Consolidated Appropriations Act of 2020

On June 22, 2016, the Treasury Department and the Internal Revenue Service published proposed regulations under IRC Section 457, which incorporate many of the more recent changes in the laws listed above.

The Treasury Department and Internal Revenue Service had last issued final 457 regulations in 2003, which incorporated changes made to 457(b) plans by EGTRRA and related guidance. Subsequently, the Internal Revenue Service issued Revenue

Procedure 2004-56, which provided model plan amendments that governmental employers and sponsors could use to amend or draft plan documents to comply with the requirements of IRC Section 457(b) and its regulations.

The model amendments do not, however, reflect changes to 457(b) plans as a result of PPA '06, the HEART Act of 2008, WRERA, the Small Business Jobs Act of 2010, the American Taxpayer Relief Act of 2012, the SECURE Act or the Bipartisan American Miners Act of 2019, all of which were enacted after the final regulations and the model amendments were issued. This Guide includes these legislative and regulatory changes and any relevant guidance issued as a result. Plan documents must reflect any required statutory and regulatory provisions, as well as any optional provisions the plan has adopted, to ensure that the plan is operated according to its terms.

Generally, plan sponsors were not required to amend their plan documents for the various changes under PPA '06 until the end of the 2011 plan year.[1] Governmental 457(b) plans needed to be amended for HEART Act and WRERA provisions no later than the end of the 2012 plan year. Governmental 457(b) plans must generally be amended for SECURE Act changes on or before the last day of the first plan year beginning on or after January 1, 2024.

Table 1

Required and Optional Provisions Applicable to Governmental 457(b) Plans After EGTRRA			
	Pension Protection Act of 2006		
Topic	**Provision**	**Required**	**Optional**
RMD Compliance	The Secretary of the Treasury, as directed under Section 823 of PPA '06, issued final regulations in 2009 that treat a governmental plan, including a governmental 457(b) plan, as complying with a reasonable good-faith interpretation of the required minimum distribution (RMD) requirements under 401(a)(9) for all years the RMD rules applied to the governmental plan.	✓	
Direct Rollovers to Roth IRAs	Section 824 of PPA '06 permits direct rollovers from governmental 457(b) plans to Roth IRAs for eligible rollover distributions made after December 31, 2007. Taxes on the rollover to the Roth IRA are due in the year the rollover is made to the Roth IRA.	✓	
Unforeseeable Emergency Withdrawals	PPA Section 826 permits employers to modify the unforeseeable emergency distribution rules for unforeseeable distributions made after August 17, 2006. On November 8, 2010, the IRS issued Revenue Ruling 2010-27 that contained additional guidance. A 457(b) plan may, but is not required to, consider a participant's nonspouse, nondependent beneficiary under the plan in determining if the participant would be eligible for an unforeseeable emergency distribution. For example, a plan may consider a participant's financial need to pay a plan beneficiary's medical, prescription drug or funeral expenses in determining if the participant has incurred an unforeseeable financial emergency.		✓
Health Care Premiums for Retired Police and Fire Fighters	Section 845 provides for a maximum annual exclusion up to $3,000 from gross income of retired public safety officers for distributions from governmental retirement plans that are sent directly to an insurance carrier to pay health and long-term care premiums for tax years beginning after December 31, 2006. The $3,000 annual limit is an aggregate limit and not a per plan limit. A technical correction under WRERA (see below) clarified that this exclusion from gross income applies to distributions used to pay premiums to both insured and self-insured plans.		✓
Rollovers to Inherited IRAs for Nonspousal Beneficiaries	Section 829 permitted governmental 457(b) plans to offer nonspouse beneficiaries the option to directly roll a plan decedent's 457(b) account to an IRA that will be treated as an inherited IRA for distributions made after December 31, 2006. This was an optional provision that applied to distributions made after December 31, 2006 through December 31, 2009. (See first provision of the WRERA section of this table.)		✓

[1] Section 1107 of the Pension Protection Act of 2006.

	Worker, Retiree, and Employer Recovery Act of 2008 (WRERA)		
Topic	**Provision**	**Required**	**Optional**
Nonspousal Beneficiary Rollover to Inherited IRA	For plan years beginning on or after December 31, 2009, all employer-sponsored retirement plans are required to offer designated nonspousal beneficiaries the option of directly rolling over a plan decedent's account balance to an inherited IRA, including a Roth IRA.	✓	
2009 RMD Waiver	Governmental 457(b) plans were permitted to suspend required minimum distributions to plan participants and beneficiaries for the 2009 calendar year only. This waiver affected RMD distributions using the life expectancy rule and the five-year rule.		✓

	Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)		
Topic	**Provision**	**Required**	**Optional**
Survivor Benefits for Participants Who Died While on Active Duty	The HEART Act requires that a 457(b) plan provide survivors of a participant who dies while performing qualified military service with any additional benefits, other than benefit accruals, related to qualified military service that would have been provided under the plan had the participant been reemployed by the employer and then terminated employment on account of death. This provision applies to deaths occurring after January 1, 2007. The types of benefits subject to this provision include accelerated vesting, ancillary life insurance benefits and other survivor benefits under the plan that are contingent on a participant's termination of employment on account of death.	✓	
Definition of Compensation	Differential wage payments are treated as wages and must be included in the plan's definition of compensation.	✓	
Stopping Deferrals After Withdrawals During Active Duty	If the plan permits employees on active military duty for more than 30 days to receive a distribution from the 457(b) plan, employees generally must cease making elective deferrals to the 457(b) plan during the six-month period beginning on the date of the distribution. This restriction on making elective deferrals does not apply to participants who have an actual severance from employment or who may be able to take a distribution from the plan for another reason.	✓	
Earning Benefits While on Active Duty	The plan may, but is not required to, determine death and disability benefits based on benefit accruals for the period of qualified military service. This provision may be applied beginning as of any date on or after January 1, 2007.		✓
Plan Contributions During Active Duty	The plan may permit former employees who are on active military duty for more than 30 days to contribute to the plan all or a portion of any differential wage payments they receive from their former civilian employer after December 31, 2008.		✓
Withdrawals While on Active Duty	For plan years beginning after December 31, 2008, an employee is treated as severed from employment during any period that he or she is performing service in the Uniformed Services (Armed Forces) for more than 30 days. The plan may permit these employees to withdraw elective deferrals from a governmental 457(b) plan without violating the plan's distribution restrictions.		✓

	Small Business Jobs Act of 2010		
Topic	**Provision**	**Required**	**Optional**
Designated Roth Accounts	Beginning with the 2011 tax year, governmental 457(b) plan sponsors may adopt designated Roth accounts (DRA) as part of the plan's salary deferral account. Contributions and related earnings to the DRA must be tracked separately from other money contributed to the plan.		✓
In-plan Roth Conversions	Beginning with the 2011 tax year, a 457(b) plan may permit pretax money within the plan to be rolled over (or "converted") to the designated Roth account within the same 457(b) plan, provided the participant is eligible for a distribution from the plan and the distribution is eligible for rollover.		✓

	American Taxpayer Relief Act of 2012		
Topic	**Provision**	**Required**	**Optional**
Designated Roth Accounts/ In-Plan Roth Conversions	After December 31, 2012, participants do not have to be eligible for distribution to convert pretax funds to designated Roth funds within the same plan provided all other requirements for in-plan Roth conversions are satisfied.		✓
	Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)		
Topic	**Provision**	**Required**	**Optional**
Increase in Age for Required Minimum Distributions	The age component of the required beginning date (RBD) for required minimum distributions (April 1 of the calendar year following the year) is increased from age 70½ to age 72 with respect to individuals who attain age 70½ after December 31, 2019.	✓	
Required Minimum Distribution Changes for Designated Beneficiary Distributions	The entire interest of a participant must be distributed to a designated beneficiary within 10 years after the death of the participant, whether or not distributions of the participant's interests have begun. There is an exception for certain classes of eligible designated beneficiaries that would permit distributions over the life expectancy of the eligible beneficiary. Applicable to distributions with respect to participants who die after December 31, 2021 (December 31, 2019 for non-governmental plans or plans not subject to a collective bargaining exception).	✓	
Participant Loans Made Through Credit Cards	No participant loans can be made through the use of any credit card or similar arrangement, effective for loans made after December 20, 2019.	✓	
Portability of Lifetime Income Options	If a lifetime income investment is no longer authorized to be held as an investment option under the plan, the plan may allow qualified distributions of the lifetime income investment or distribution of a lifetime income investment in the form of a qualified plan distribution annuity contract. Applies to plan years beginning after December 31, 2019.		✓
Penalty-Free Withdrawals for Birth of Child or Adoption	Although governmental 457(b) plans are not subject to the early withdrawal tax of IRC Section 72(t), rollovers to governmental 457(b) plans from other types of retirement plans continue to be subject to the tax. A new exception to the early withdrawal tax was added for withdrawals in the case of the birth or adoption of a child made after 2019. This withdrawal exception is limited to $5,000 per individual on an aggregate basis.		✓
	Bipartisan American Miners Act of 2019		
Topic	**Provision**	**Required**	**Optional**
In-service Withdrawal Age	Effective for plan years beginning after December 31, 2019, the earliest age at which distributions may be made is changed from age 70½ to 59½.		✓

Although federal tax laws have made governmental 457(b) plans more like 401(k) and 403(b) plans, significant differences remain. Table 2 compares governmental 457(b) plans with 401(k) and 403(b) governmental plans.

Table 2

Comparison of Governmental 457(b), 403(b) and 401(k) Plans				
Topic	**457(b)**	**403(b)**	**401(k)**	**All**
Participants may be independent contractors and/or employees	✓			
Timing restriction for making salary deferral election	✓			
Coordination of 457(b) plan deferrals with other 457(b) plans only	✓			
Employer contributions subject to FICA	✓			
Vested employer contributions reduce deferral limits	✓			
Special catch-ups for under-deferrals in prior years	✓	✓		
Universal availability requirement for elective salary deferrals		✓		
Limited investment options		✓		
Post-severance employer nonelective contributions permitted		✓		
No aggregation with employer's non-403(b) defined contribution plans for 415 annual additions[1]		✓		
Subject to 402(g) deferral and coordination limits		✓	✓	
Eligible employees must be common-law employees		✓	✓	
Subject to 415 limit on annual additions		✓	✓	
Non-Roth employee after-tax contributions permitted		✓	✓	
Application of an additional 10% early withdrawal tax[2]		✓	✓	
IRC 401(a)(17) limit on compensation for plan purposes		✓	✓	
Qualified reservist distributions		✓	✓	
In-service transfers allowed for permissive service credit purchases in a governmental defined benefit plan				✓
Roth deferral account available				✓
In-plan Roth conversions permitted				✓
Saver's Credit available				✓
Sponsorship limited to certain types of employers[3]				✓
Auto rollover for mandatory distributions of small account balances				✓
In-service distribution of elective deferrals at age 59½ permitted				✓
Automatic enrollment permitted[4]				✓
Deferral contributions subject to FICA taxes[5]				✓
Participant loans permitted				✓
Age 50 Catch-Up permitted				✓
Direct rollover option for nonspouse beneficiaries to inherited IRAs required				✓
Direct rollover option to Roth IRAs required				✓

[1] Defined contributions plans of the employer sponsoring the 403(b) plan are not aggregated for 415 purposes. However, if a 403(b) participant is in control of more than 50% of an outside business that maintains a defined contribution plan, both the participant's 403(b) plan and the outside plan are aggregated for 415 purposes.

[2] Applies only to rollovers from qualified plans, 403(b) plans and IRAs to the 457(b) plan that are subsequently distributed from the 457(b) plan.

[3] State and local governmental employers may not adopt new 401(k) plans but may continue to maintain existing plans.

[4] For 457(b) and governmental 403(b) plans, must be permitted by state legislation and by the plan document.

[5] Applies only if employment is covered under Social Security. Medicare taxes would still apply.

Note: The footnotes above relate to Table 2 only.

Comparison of Governmental 457(b), 403(b) and 401(k) Plans (continued)				
Topic	**457(b)**	**403(b)**	**401(k)**	**All**
In-service distributions from rollover accounts permitted				✓
Plan termination permitted				✓
Post-severance elective deferral contributions of accumulated unused leave permitted				✓
Subject to USERRA				✓
Inclusion of differential pay in definition of compensation required for employees on active military duty				✓
Employees on active military duty may defer differential pay into plan				✓
Employees on active military duty for more than 30 days may be permitted to withdraw elective deferrals				✓
Employees on active military duty for more than 30 days generally must cease making elective deferral to the plan for six months after taking a withdrawal from the plan unless an exception applies				✓
Written plan or plan document required				✓
402(f) Notice required prior to distribution				✓
Required minimum distribution (RMD) rules apply				✓
Form 1099-R tax reporting for distributions				✓

457(b) Plan Fundamentals

This section provides a basic overview of 457 plan types, plan document requirements and eligibility requirements (employers and participants), as well as a brief discussion of the general governance structure of these plans.

Types of 457 Plans

There are two kinds of 457 deferred compensation plans — eligible plans (457(b) plans) and ineligible plans (457(f) plans). A plan that meets all the requirements of IRC Section 457(b) is an eligible plan. A plan that does not meet the requirements of IRC Section 457(b) is an ineligible (457(f)) plan. In addition, there are two types of 457(b) plans: governmental 457(b) plans and tax-exempt 457(b) plans, based on the type of plan sponsor. The rules governing tax-exempt 457(b) plans and 457(f) plans (which can be offered by either governmental or tax-exempt employers) are very different from the rules governing governmental 457(b) plans, and are beyond the scope of this publication.[2] This guide covers 457(b) plans of governmental employers exclusively.

[2] I.R.C. §457(f); Treas. Reg. §1.457-9.

Eligible Employers

The eligible employers that may adopt a governmental 457(b) plan are:

- States (including the District of Columbia)
- Local governments and any of their agencies or instrumentalities

The federal government, its agencies and instrumentalities may not establish 457(b) plans.

Eligible Participants

Employees and independent contractors who perform services for an eligible governmental employer may be eligible to participate in a governmental 457(b) plan.[3]

The 457(b) plan document establishes eligibility requirements, which may include all employees or exclude certain employment categories (union, nonunion) or employment statuses (e.g., full-time, part-time or seasonal). The plan may include or exclude independent contractors.

Plan Document(s)

A governmental 457(b) plan must be established in writing and maintained by an eligible governmental employer. The plan document must include:

- All required material terms
- Conditions for eligibility, contributions, benefits and distributions
- Any optional provisions such as participant loans, unforeseeable emergency withdrawals and plan-to-plan transfers that are to be permitted under the plan

The plan sponsor is responsible for ensuring that the plan document is in compliance with current federal tax laws and regulations and that the plan is operated according to its terms. All 457(b) plans of an employer are treated as a single 457(b) plan even if the employer maintains more than one 457(b) plan.[4]

Required plan provisions and any optional provisions included in the plan must meet the form and operation requirements of the 457(b) regulations and interpretative guidance. Exhibit B lists the required 457(b) plan provisions and Exhibit C identifies optional plan provisions.

Plan Governance

Many public sector employers assign responsibility for the 457(b) plan to the same agency or individual responsible for the primary retirement plan (usually a defined benefit plan). Other employers may assign it to the human resource department, budget and accounting office or other designated area within the entity. The responsibility for overseeing the day-to-day operations of the 457(b) plan typically falls to the plan's administrator.

Regardless of where specific responsibilities are assigned, plan sponsors have the ultimate responsibility to:

- Ensure that the plan is operated according to its terms and that it complies with federal as well as applicable state and local laws
- Base all actions and decisions regarding the plan for the exclusive benefit of participants and beneficiaries

[3] I.R.C. §457(e)(1); Treas. Reg. §1.457-2(e).
[4] Treas. Reg. §1.457-3(b).

It may be prudent for plan sponsors to utilize tax or legal counsel to assist the plan sponsor with its responsibilities with regard to the plan. Plan sponsors are encouraged to closely review state and local laws that may apply to these plans and consult their own legal counsel on issues that need further clarification.

457(b) Plans and ERISA

Governmental plans are not subject to the fiduciary standards, nondiscrimination rules and the reporting and disclosure requirements that apply to private sector plans under Title I of ERISA (Employee Retirement Income Security Act of 1974).[5] State enabling legislation, statutes or local ordinances; attorneys' general opinions and case law; and other federal laws may determine fiduciary requirements that apply to a 457(b) plan. Many times, state and local laws have fiduciary requirements similar to those found in ERISA, which is one of the reasons state and local governments often consult ERISA for guidance when formulating best practices for their retirement plans.

Funding a 457(b) Plan

Contributions to governmental 457(b) plans must be held in tax-exempt 457(g) trusts, custodial accounts or annuities for the exclusive benefit of participants and beneficiaries. This section discusses the rules that apply to this requirement.

457(g) Trusts

Under federal law, plan assets must be held in a 457(g) governmental trust, custodial account or an annuity contract purchased from an insurance company for the exclusive benefit of participants and beneficiaries.[6] The trust must be established in writing and meet the requirements of a valid trust under state law. The terms of the trust must not permit the trust assets or income to be used for any reason other than for the exclusive benefit of participants and their beneficiaries. The trust also protects plan assets from employer and employee creditors in bankruptcy proceedings.

Custodial Accounts and Annuity Contracts

Instead of using a trust for the governmental 457(b) plan, the plan sponsor may establish a custodial account or annuity contract which, under federal law, is treated as a 457(g) trust. The custodian must be a bank or nonbank trustee. Nonbank trustees must submit to the Internal Revenue Service a written application which demonstrates their ability to comply with IRC Section 457(g)(1) and (3).[7]

Annuity contracts purchased from an insurance company are also treated as a trust if:

- The insurance company is qualified to do business in the state that governs the public employer's plan
- The contract meets the requirements of the trust provisions as stated in the final 457 regulations, other than the requirement that it be a trust

5 ERISA §4(b)(1).
6 I.R.C. §457(g); Treas. Reg. §1.457-8(a)(2); Bankruptcy Protection Act of 2005.
7 I.R.C. §457(g); Treas. Reg. §1.457-8(a)(3).

An annuity contract that meets these conditions cannot include a life, health or accident, property, casualty or liability insurance contract.[8] While life insurance contracts held in a custodial account may be used to fund a 457(b) plan, special requirements must be met, and as a result, this investment vehicle has become increasingly rare.

Contributions

Federal laws and regulations specify the maximum amounts employees and employers can contribute to a 457(b) plan.

Salary Deferral Agreements

To make contributions to a 457(b) plan, eligible employees must complete and sign a participation agreement (salary deferral agreement) to voluntarily defer a portion of their wages (compensation) into the 457(b) plan. This agreement specifies the amount or percentage of pretax compensation or designated Roth contributions an employee chooses to defer to the plan from each paycheck.

The agreement to defer compensation and any subsequent changes to the agreement cannot take effect before the first day of the month following the employee's completion of the deferral agreement. However, newly hired employees may begin deferrals during the initial month of employment if the deferral agreement is completed on or before the first day the employee performs services for the employer.[9] The deferral agreement generally goes into effect as soon as it is administratively possible for the plan administrator to implement the employee's instructions and remains in force until the employee changes the election to increase, reduce or stop deferrals.

Like 401(k) and 403(b) elective deferrals, governmental 457(b) elective deferrals are subject, at the time of deferral, to any applicable FICA (Social Security and Medicare) taxes.[10] Governmental 457(b) plans may also include employer matching and nonelective contributions. Unlike 401(k) and 403(b) plans, employer matching and nonelective contributions to the 457(b) plan are subject to applicable FICA taxes and reduce a participant's elective deferral limit when those contributions vest. Because employer 457(b) matching and nonelective contributions to a 401(a) defined contribution plan do not reduce the 457(b) deferral limit and are not subject to FICA taxes, employers often make 457(b) matching contributions and other employer contributions to a 401(a) defined contribution plan.

[8] I.R.C. §457(g); Treas. Reg. §1.457-8(a)(3)(iii).
[9] I.R.C. §457(b)(4); Treas. Reg. §1.457-4(b).
[10] I.R.C. §3121(a)(5), 3121(v)(2).

Table 3

Application of FICA Taxes on Contributions to Employer-Sponsored Retirement and Welfare Benefit Plans		
Type of Plan Contribution	**Contributions Subject to All FICA Taxes (Social Security and Medicare Taxes for Covered Employment)**	**Medicare Taxes for Employment not Covered Under Social Security**
457(b), 403(b) or 401(k) elective salary deferrals	Yes	Yes; applies to employees hired after March 31, 1986
Employee after-tax contributions to an employer-sponsored retirement plan	Yes	Yes; applies to employees hired after March 31, 1986
Mandatory employee contributions and one-time irrevocable elections to a 401(a) plan picked up (paid) by the employer under a salary deferral agreement*	Yes or no, depending on the facts and circumstances: If contributions are made pursuant to a salary reduction agreement, FICA applies; if not, FICA does not apply	Yes or no, depending on the facts and circumstances: If contributions are made pursuant to a salary reduction agreement, FICA applies; if not, FICA does not apply
Employer contributions to a 457(b) plan**	Yes, as they vest	Yes; applies to employees hired after March 31, 1986
Employer-matching, discretionary, fixed or supplemental contributions to a 401(a), 401(k) or 403(b) plan	No	No
Employer contributions to health and welfare plans	No	No
Employee pretax contributions to a cafeteria plan (Section 125)	No	No

* Mandatory 414(h) "picked up" employee contributions to a qualified plan or mandatory employee contributions to a 403(b) plan are not salary deferrals and do not reduce elective deferral limits.

** Employer contributions are not common but will reduce participant's 457(b) salary deferral limits when they vest and may cause the plan to have excess deferrals.

Contributions to Social Security Replacement Plans

Some employers establish mandatory 457(b) employee contribution arrangements that require employees, as part of the employment contract, to contribute a portion of their compensation to the plan. These mandatory 457(b) contribution plans (referred to as Social Security replacement plans, PST (Part-Time, Seasonal and Temporary) plans, FICA Replacement Plans or "OBRA" (Federal Omnibus Budget Reconciliation Act of 1990) plans are used instead of covering workers under Social Security and are most often offered to part-time, seasonal and temporary employees, although eligibility may vary. In order to qualify as a Social Security replacement plan, a contribution of at least 7.5% must be contributed to the plan. The mandatory 7.5% contribution may be made by the employee, the employer or a combination as long as the mandatory contribution threshold is satisfied. All 457(b) Social Security replacement plans are subject to the contribution and distribution rules of the 457(b) plan and not the rules that apply to Social Security. Social Security replacement plans generally require participants and employers to pay Medicare taxes on employee wages.[11] However, mandatory employee contributions that are picked up by the employer will not be considered wages for Social Security or Medicare taxes. Employers should review state laws and their State's agreements with the Social Security Administration before adopting a Social Security replacement plan.

Social Security replacement plans that cover part-time, seasonal and temporary employees require 100% immediate vesting and do not generally permit in-service withdrawals or loans (although the 457(b) de minimis distribution may be offered by the plan).

[11] Consolidated Omnibus Budget Reconciliation Act of 1985; I.R.C. §3121(u); Revenue Ruling 86-88.

Automatic Enrollment

Governmental employers may adopt automatic enrollment programs for their 457(b) plans, if permitted under state law. These arrangements may automatically enroll new hires and/or current employees who have not voluntarily enrolled in the 457(b) plan[12] — the plan sets a prescribed deferral amount, such as 3% of compensation for automatically enrolled employees. Employees may elect not to have automatic enrollment deferrals made to the plan, or they may change the percentage or amount of the deferral contribution. The plan may also permit the automatic deferral percentage to be increased annually. If an automatically enrolled employee does not provide investment direction for these contributions, the employer selects a default investment option for these contributions. The employee can always provide investment direction at a later time.

The Department of Labor (DOL) has issued a final regulation for qualified default investment alternatives (QDIAs) that applies to ERISA covered plans. QDIAs shield ERISA plan fiduciaries, but not governmental plan sponsors, from fiduciary liability for investing participant assets in certain default investment options when participants do not provide investment direction for their accounts.[13] Although governmental plans are exempt from ERISA,[14] plan sponsors may want to review the DOL QDIA guidelines when developing their own default investment policies and options.

Designated Roth Contributions

Designated Roth contributions (DRCs) are after-tax elective salary deferrals that were originally permitted in 401(k) and 403(b) plans but not in governmental 457(b) plans.[15] Effective in 2011, governmental 457(b) plan sponsors may permit participants to defer after-tax contributions to designated Roth accounts if the plan has been amended to allow designated Roth accounts. The inclusion of designated Roth accounts was part of the Small Business Jobs Act of 2010.

The Small Business Jobs Act of 2010 also permits 457(b) plan participants to roll over (i.e., convert) all or any portion of their 457(b) pretax account to an in-plan Roth conversion account within the same plan. The participant must be eligible for a distribution, and the distribution must be an eligible rollover distribution. To offer this in-plan Roth conversion option to participants, a 457(b) plan:

- Has to be amended in a timely manner to provide for this option
- Must establish designated Roth accounts within the plan prior to accepting a rollover of pretax contributions within the same plan

Prior to January 1, 2013, in order to take advantage of the in-plan Roth conversion, 457(b) plan participants had to be eligible for a distribution that was an eligible rollover distribution, meaning that in-plan Roth conversions generally would not be available until a participant had terminated employment, unless the plan permitted in-service distributions from the plan's pretax accounts. The American Taxpayer Relief Act of 2012 expanded this plan feature by permitting 457(b) plan participants to convert pretax money in their account to a designated Roth account within the same plan without being eligible for a distribution from the plan — provided all other requirements for in-plan Roth conversions were met. The conversion amount is subject to ordinary income tax in the year of the conversion.

Key Action Points

Plan sponsors that want to offer these Roth options (including in-plan Roth conversions) will need to:

- Amend their plan documents by the last day of the plan year in which the Roth provisions became effective

[12] Preamble T. D. 9447; Rev. Ruling 2000-33.
[13] DOL Reg. §2550.404c-5(e).
[14] ERISA §4(b)(1).
[15] I.R.C. §402A; Treas. Reg. §1.402A-1, Q&A 1.

- Ensure that the plan separately accounts for and tracks designated Roth contributions and related earnings, rollovers from another plan's designated Roth account, in-plan Roth conversions, participant loans and the repayments attributed to loans made with funds from the designated Roth accounts
- Modify plan administrative procedures and materials (forms, etc.) and participant communication materials to accommodate Roth contributions
- Provide additional employee education about designated Roth accounts

Table 4

The following table, based on current available guidance, summarizes designated Roth contributions and in-plan Roth conversions in 401(k), 403(b) and governmental 457(b) plans, as well as Roth and Roth deemed IRAs.

Designated Roth Accounts, In-Plan Roth Conversions and Roth IRAs

Topic	Designated Roth Accounts	In-Plan Roth Conversions	Roth IRAs
Definitions	• Hold employee after-tax elective deferrals that are included in a participant's gross income in the year they are contributed to the account • Are coordinated with pretax elective deferral limits • Are subject to most of the rules that govern the plan • Do not affect Roth IRA contributions	Allows participants to convert/roll over taxable eligible rollover distributions or taxable accounts not presently eligible for a distribution to a Roth elective deferral account within the same plan	**Roth IRA** A tax-favored individually owned account that accepts nondeductible after-tax contributions from taxpayers who meet prescribed income requirements. **Roth Deemed IRA** A separate account or annuity maintained under an employer-sponsored retirement plan to accept voluntary employee after-tax contributions that are intended to be Roth contributions. If the separate account or annuity otherwise meets the requirements of a Roth IRA, it will be subject only to Roth IRA rules, and not those of the employer's retirement plan or a traditional IRA. Both traditional and Roth deemed IRAs may be included in: • 401(a) qualified plans, including 401(k) plans • 403(b) plans • Governmental 457(b) plans
Effective Date for Designated Roth Accounts	**Governmental 457(b) Plans** Beginning after Dec. 31, 2010 **401(k) and 403(b) Plans** Available since 2006	**Governmental 457(b) Plans** Tax years after 2010 for in-plan Roth conversions of eligible rollover distributions; effective December 31, 2012, in-plan Roth conversions also available from account balances not eligible for distribution **401(k) and 403(b) Plans** After September 27, 2010, for in-plan Roth conversions of eligible rollover distributions; effective December 31, 2012, in-plan Roth conversions also available from account balances not eligible for distribution	**Roth IRA** Since 1998 **Roth Deemed IRA** Plan years beginning after 2002

Topic	Designated Roth Accounts	In-plan Roth Conversions	Roth IRAs
Availability	If the plan permits, these accounts are established as part of the governmental 457(b), 401(k) or 403(b) plan's elective salary deferral account.	The plan must have a provision for in-plan Roth conversions and have established a designated Roth account before in-plan conversion amounts may be contributed to the plan's designated Roth account.	**Roth IRA** Available to taxpayers whose modified adjusted gross income and filing status are within prescribed limits for annual ongoing contributions, excluding rollovers and conversions. **Roth Deemed IRA** Same as Roth IRA. Employers may establish eligibility requirements for the Roth deemed IRA that differ from the employer's retirement plan.
Requirements	Designated Roth accounts may be established only in plans that offer employee pretax elective deferral contributions and are subject to the plan's eligibility requirements. Elective deferrals must be designated as a Roth elective deferral or pretax elective deferral before contribution is made to the plan. Roth elective deferrals and earnings must be accounted for separately within the plan's elective deferral account. Designated Roth contributions are included in the deferral limits ($19,500 for 2020).	Beginning on January 1, 2011, if allowed in the plan document, distribution must be an eligible rollover distribution, and the plan must have a designated Roth elective deferral account. In addition to the above, beginning January 1, 2013, if permitted by the plan document, in-plan Roth conversions may be made without a distributable event. The plan may specify other pretax distributions that may be converted and contributed to the plan's designated Roth account. In-plan Roth conversions are treated as rollovers and do not count toward the plan's annual contribution or catch-up limits.	**Roth IRA** Contributions held in Roth IRAs cannot be part of a traditional deductible or nondeductible IRA and must be aggregated with all other IRAs so that contributions do not exceed $6,000 for 2020. **Roth Deemed IRA** Same as above. Contributions, earnings and charges are tracked separately in the Roth deemed IRA and not part of the employer plan or the traditional deemed IRA. Note: Roth deemed IRAs may be held in the same trust that holds traditional deemed IRAs provided that the IRA trustee maintains separate accounts and each IRA is designated as either a Roth or traditional IRA.
Automatic Enrollment	Permitted	N/A	**Roth IRA** – N/A **Roth Deemed IRA** May be used with traditional deemed and Roth deemed IRAs.
Coordination with Other Elective Deferral Plans	**457(b) Plans** Pretax and Roth deferrals are coordinated under all 457(b) plans in which the employee participates. **401(k) and 403(b) Plans** Pretax and designated Roth elective deferrals are coordinated with each other under all 401(k) and 403(b) plans in which the employee participates.	In-plan Roth conversions are not subject to plan's annual contribution limits or any deferral coordination rules.	**Roth and Roth Deemed IRAs** Coordinated with all contributions to other IRAs, both Roth and traditional IRAs, including deemed IRAs.
100% Vesting	When contributed to the plan.	In-plan Roth conversions are restricted to vested amounts. (Notice 2010-84, Q&A-2)	When contributed to the IRA.

Topic	Designated Roth Accounts	In-Plan Roth Conversions	Roth IRAs
Allocation of Forfeitures, Matching and Employer Nonelective Contributions to Roth Elective Deferral Account	Not permitted.	Not permitted.	**Roth IRA** — N/A **Roth Deemed IRA** Matching contributions or forfeitures from the employer's qualified plan cannot be allocated to the Roth deemed IRA.
Loans, Hardships and Unforeseeable Emergency Withdrawals	May be used for loans, hardships and unforeseeable emergency withdrawals if plan permits. Requires complex recordkeeping capabilities and administration.	Same as designated Roth account, but may be subject to a 10% recapture tax (401(k), 403(b), or in the case of 457(b) only, rollover accounts which originated from a qualified plan or IRA.	**Roth IRAs and Roth Deemed IRAs** Not applicable. IRAs cannot be used as collateral for any type of loan. Hardship and unforeseeable emergency withdrawals are generally not necessary because IRA account holders can access the money in their IRAs for any reason at any time (but early withdrawal tax may apply).
Conversion of Pretax Elective Deferrals to Designated Roth Elective Deferrals	See In-Plan Roth Conversions.	Plan may permit the taxable portion of an eligible rollover distribution to be converted and contributed to the same plan's designated Roth account. In addition to the above, beginning January 1, 2013, if permitted by the plan document, in-plan Roth conversions may be made without a distributable event.	**Roth and Deemed IRAs** Traditional IRAs may be converted to Roth IRAs regardless of an individual's tax filing status or modified adjusted gross income after 2009. Effective January 1, 2018, pursuant to the Tax Cuts and Jobs Act of 2017, a conversion from a traditional, SEP or SIMPLE IRA to a Roth IRA cannot be recharacterized.
Conversion of Roth Elective Deferrals to Pretax Deferrals	Not permitted.	Not permitted.	**Roth or Roth Deemed IRAs** Roth and Roth Deemed IRA contributions can be re-characterized as traditional or traditional deemed IRA contributions within certain timeframes.
Conversion of Other Pretax Contributions	See In-Plan Roth Conversions.	The plan document must specify if other taxable eligible rollover distributions or other taxable money sources not eligible for distribution can be converted and rolled into a designated Roth account.	Effective January 1, 2018, pursuant to the Tax Cuts and Jobs Act of 2017, a conversion from a traditional, SEP or SIMPLE IRA to a Roth IRA cannot be recharacterized. This restriction on recharacterization also applies to a retirement plan distribution to Roth IRA conversion.

Catch-up Contributions (Dollar Limit)	**Age 50+ Catch-Up** Coordinated 401(k) and 403(b) catch-up contributions (both pretax and Roth deferrals) cannot exceed $6,500 for 2020. **457(b) Plan** Catch-up contributions cannot exceed $6,500 for 2020 (single limit for all 457(b) plans). **Special 457(b) Catch-Up** Pretax and Roth elective deferrals, including Special 457(b) Catch-up, cannot exceed a total of $39,000 for 2020.	**N/A** Catch-up contributions may be converted from pretax to Roth when and if they are eligible for an in-plan Roth conversion.	**Roth and Roth Deemed IRAs** Total aggregate IRA catch-up contributions to all IRAs (Roth and traditional, including deemed IRAs) cannot exceed $1,000.
Withdrawal Restrictions	Same as those for pretax elective deferrals.	Generally, the same as pretax elective deferrals, but the in-plan Roth conversions are subject to five-year holding periods that have to be tracked separately and may cause the participant to be subject to a 10% recapture tax for early withdrawals unless an exception applies. For in-plan Roth conversions of eligible rollover distributions, the plan's distribution rules for rollover accounts generally apply.	**Roth IRA/Roth Deemed IRA** Distributions are available at any time but may be subject to taxes and an additional 10% early withdrawal tax under certain circumstances.
Required Minimum Distributions	Apply to both participants and beneficiaries.	Apply to both participants and beneficiaries.	**Roth and Roth Deemed IRAs** Account holders are not subject to RMDs. Beneficiaries are subject to RMDs.
Tax-Free (Qualified) Distributions	A qualified distribution must meet two requirements: (1) A distribution made 5 years or more after the January 1 of the calendar year in which the first Roth contribution or in-plan Roth conversion was made; and (2) the participant has attained age 59½, died or become disabled.	Not subject to a 10% recapture tax if an in-plan Roth conversion has been in the Roth account 5 years or more after January 1 of the calendar year in which the first Roth contribution or in-plan Roth conversion was made and the participant has attained age 59½, died or become disabled.	Tax-free distributions are available from a Roth or Roth deemed IRA provided the distribution is made 5 years or more after January 1 of the calendar year in which the first Roth contribution was made and the participant has attained age 59½, died or become disabled, or qualifies as a first-time homebuyer under IRC Section 72(t)(2)(F) (Treas. Reg. §1.408A-6, Q&A-1).
Taxation of Nonqualified Distributions	If the requirements for a qualified distribution are not met, the distribution will be a nonqualified distribution and distributed earnings will be taxable. 403(b) and 401(k) participants may also be subject to an additional 10% early withdrawal tax for nonqualified distributions made prior to age 59½ unless an exception applies.	Distributions from 401(k) and 403(b) plans may be subject to a 10% recapture tax (see above).	**Roth IRA and Roth Deemed IRAs** If the requirements for a qualified distribution are not met, the distribution will be a nonqualified distribution and distributed earnings will be taxable. The distribution may also be subject to an additional 10% early withdrawal tax for nonqualified distributions made prior to age 59½ unless an IRA exception to the tax applies.

Maximum Contribution Limits

The maximum annual salary deferrals, both pre-tax and designated Roth contributions, that an employee can contribute to the 457(b) plan parallels the maximum deferral limit that applies to 403(b) and 401(k) plans, unless the 457(b) plan specifies a lower amount. However, it is important to note that while the 401(k) and 403(b) elective deferral maximum contributions are governed by IRC Section 402(g), the 457(b) elective deferral maximum is governed by IRC Section 457(b)(2) and 457(e)(15). This limit, excluding rollover contributions and loan repayments, is the lesser of:

- 100% of a participant's includible compensation
- An annual dollar amount as indexed under the IRC[16]

For 2020, the maximum dollar limit per participant is $19,500. The 457(b) contribution limits apply to all contributions made to all eligible 457(b) plans in which the employee participates, regardless of employer. The 457(b) annual deferral limit includes all elective deferrals, any vested employer matching or nonelective contributions and any mandatory contributions imposed by the employer, but it excludes rollover contributions and loan repayments.

Prior to 2002, includible compensation for 457(b) plans was defined as compensation includible in gross income. All pretax deferrals to a section 457(b), 401(k), 403(b), 414(h) pick-up and/or section 125 cafeteria plan were deducted from gross compensation to calculate the maximum 457(b) contribution limit for the year. The Jobs Creation and Workers Assistance Act of 2002 changed the definition of includible compensation for 457(b) plans to the same definition that is used for qualified defined contribution plans under IRC Section 415(c)(3). Includible compensation for 457(b) plans is now defined as compensation for federal income tax purposes plus all pretax elective salary deferrals to Section 457(b), 401(k) and 403(b) plans, 125 cafeteria plans and 132(f) qualified transportation plans.[17] Although the definition of compensation under 415(c)(3) now applies to 457(b) plans, the 415(c)(3) contribution limits that apply to qualified and 403(b) plans do not apply to 457(b) plans. Table 5 provides the contribution limits that apply to 457(b) and other retirement plans.

Table 5

Retirement Plan Contribution Limits							
	2020	2019	2018	2017	2016	2015	2014
Retirement Plan and IRA Dollar Limits							
Annual compensation limit (per participant)	$285,000	$280,000	$275,000	$270,000	$265,000	$265,000	$260,000
Defined contribution limit (per participant)	$57,000	$56,000	$55,000	$54,000	$53,000	$53,000	$52,000
401(k)/403(b) elective deferral limit (excluding applicable catch-up contributions)	$19,500	$19,000	$18,500	$18,000	$18,000	$18,000	$17,500
457(b) elective deferral limit (excluding applicable catch-up contributions)	$19,500	$19,000	$18,500	$18,000	$18,000	$18,000	$17,500
Age 50 Catch-Up 401(k)/403(b) and 457(b) plans	$6,500	$6,000	$6,000	$6,000	$6,000	$6,000	$5,500
Compensation limit for grandfathered participants in government plans	$425,000	$415,000	$405,000	$400,000	$395,000	$395,000	$385,000
Defined benefit annual benefit limit (per participant)	$230,000	$225,000	$220,000	$215,000	$210,000	$210,000	$210,000
Key employee threshold (nongovernment plans only)	$185,000	$180,000	$175,000	$175,000	$170,000	$170,000	$170,000
Highly compensated employee (HCE) threshold	$130,000	$125,000	$120,000	$120,000	$120,000	$120,000	$115,000
Traditional and/or Roth IRA contribution limit	$6,000	$6,000	$5,500	$5,500	$5,500	$5,500	$5,500
Age 50+ Catch-Up for Roth and traditional IRAs	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000

[16] I.R.C. §457(b)(2); Treas. Reg. §1.457-4(c)(i).

[17] I.R.C. §§457(e)(5), 415(c)(3); Treas. Reg. §1.457-2(g).

Coordination of 457(b) Deferrals

Prior to 2002, contributions to 457(b) plans had to be coordinated (reduced) by deferrals to Section 403(b), Section 401(k), SEP and SIMPLE plans as well as those to any other 457(b) plan — which reduced the available 457(b) limit for that year ($8,500 for 2001). Beginning in 2002, 457(b) plan deferrals are now coordinated only with other 457(b) plan deferrals. The total contribution amount to all 457(b) plans (of the same employer and 457(b) plans of other employers) cannot exceed the annual maximum deferral limit.[18]

Example: In 2020, Joe, age 45, earns $65,000 from a public school district. He participates in the school district's 457(b) and 403(b) plans. He is not eligible for any form of catch-up under either plan. The maximum amount, assuming both plans permit deferrals up to the maximum amount, he can defer for 2020 would be $19,500 to the 403(b) plan and another $19,500 to the 457(b) plan.

Special 457(b) Catch-Up Contributions

A 457(b) plan may offer participants an additional deferral opportunity by adopting the Special 457(b) Catch-Up provision. This optional plan provision permits participants to contribute underutilized (unused) deferrals from prior years during any or all of the three calendar years ending before the tax year they reach the plan's normal retirement age (NRA), as defined in the plan document.[19] All of an employer's 457(b) plans must have the same NRA. A participant may only contribute the greater of the Age 50 Catch-Up or the Special 457(b) Catch-Up; it is not possible to take advantage of both catch-up contributions in the same year.

The participant must have sufficient compensation and unused deferrals from prior years to make Special 457(b) Catch-Up contributions.

The three-year period that the participant can make catch-up contributions of underutilized deferrals from prior years begins with the third calendar year prior to the year the participant attains the plan's NRA and ends on the final day of the calendar year before the calendar year NRA is reached. To determine the age at which a participant can use the Special 457(b) Catch-Up provision, the plan document must assign a specific NRA (e.g., age 65) or indicate the NRA is a range of ages beginning with age 65, or if earlier, the earliest age participants can retire and receive an unreduced benefit from their basic defined benefit plan (or money purchase plan if not participating in a defined benefit plan) and ending at age 70½. The plan document may also specify a range of ages (between age 65 and 70½), permitting the participant to designate his or her NRA for purposes of the Special 457(b) Catch-Up.[20]

Governmental 457(b) plans may adopt a special rule for police and firefighters permitting them to designate an NRA earlier than the earliest age that they can retire with an unreduced benefit from their defined benefit pension plan. Alternatively, the plan document can designate a special NRA for police and firefighters, which may be as early as age 40 or a range of ages between 40 and 70½. State law may also impact the definition of NRA.

Example 1: A 457(b) plan document allows participants to designate an NRA (range of ages between age 65 and age 70½) for purposes of the Special 457(b) Catch-Up. Participants who elect an NRA of age 65 can make Special 457(b) Catch-Up deferrals in the calendar years they are 62, 63 and 64 years old. Special 457(b) Catch-Up cannot be used in the year participants reach their NRA.

[18] I.R.C. §457(c); Treas. Reg. §1.457-5.
[19] I.R.C. §457(b)(3); Treas. Reg.§1.457-4(c)(3).
[20] Treas. Reg. §1.457-4(c)(3)(v).

For Special 457(b) Catch-Up, the total unused deferral amounts from prior years are determined by calculating the amount the participant was eligible to defer to the employer's 457(b) plan in each year (based on the IRC limit for each year and the rules that applied to those deferrals) minus the amount that the participant actually deferred (not including any Age 50 Catch-Up deferrals). The difference is the amount the participant may be able to catch up during this three-calendar-year period before reaching the plan's normal retirement age. The maximum amount that a participant could contribute in annual deferrals and Special 457(b) Catch-Up is twice the annual dollar maximum amount in effect for the year Special 457(b) Catch-Up contributions are being made to the plan.[21]

Example 2: For 2020, the maximum contribution including Special 457(b) Catch-Up would be:

$19,500 annual maximum limit
+
$19,500 Special 457(b) Catch-Up

= $39,000 total maximum contribution

Participants can use the Special 457(b) Catch-Up only once with the employer sponsoring the plan based on underutilized deferrals to that employer's plan and not underutilized deferrals to another employer's 457(b) plan.[22] Although the NRA is used to determine when Special 457(b) Catch-Up may be used, participants are not required to retire on that date.

Calculating underutilized deferrals for years prior to 2002

It is important to recognize the deferral coordination rule in effect prior to 2002 when calculating underutilized deferrals. The calculation of underutilized deferrals must include any other deferral contributions to 403(b), 401(k), SEP and SIMPLE plans, as well as deferrals to other 457(b) plans, for years prior to 2002.

Example 3: In 2015, Bill, age 62, is within the final three-year period prior to the year he reaches the plan's NRA normal retirement age of 65. He wants to maximize his deferrals to the 457(b) plan using the Special 457(b) Catch-Up option. In 2001 and in the years prior to 2001, Bill was eligible to participate in his employer's 401(k) plan and 457(b) plan. He participated only in the 401(k) plan and deferred the maximum amount possible under the 401(k) plan. For 2002 through 2014, he participated in both plans and contributed the maximum amounts permitted to both plans.

To determine if he has any underutilized deferrals for the Special 457(b) Catch-Up, Bill must reduce the 457(b) deferral limits for each year prior to 2002 by his 401(k) deferrals for the year being calculated. For years after 2001, 457(b) deferral limits are no longer reduced by the annual 401(k) deferral contributions.

Based on this calculation, Bill has no underutilized deferrals for the years prior to 2002 because he deferred amounts to the 401(k) plan in excess of the 457(b) limits for those years. For 2002 to 2014, even though deferrals to the 401(k) plan no longer reduce amounts he may contribute to the 457(b) plan, he has no underutilized deferrals because he deferred the maximum amounts in each of those years to the 457(b) plan. Therefore, he is not eligible to make Special 457(b) Catch-Up contributions. He could make Age 50 Catch-Up contributions, if the plan permits.

[21] Treas. Reg. §1.457-4(c)(3)(i).
[22] I.R.C. §457(b)(3); Treas. Reg. §1.457-4(c)(3).

Age 50 Catch-Up Contributions

EGTRRA added another catch-up contribution option for 457(b) participants. Participants age 50 and older may, if the plan permits, defer an additional amount (up to $6,500 in 2020). The additional amount permitted under this provision will increase periodically in $500 increments based on cost-of-living adjustments. Unlike the Special 457(b) Catch-Up, the Age 50 Catch-Up does not require the calculation of underutilized deferrals from prior years.[23]

Participants are eligible to begin using the age 50 Catch-Up provision in the calendar year they reach age 50. The Age 50 Catch-Up cannot be used in the same year the participant uses the Special 457(b) Catch-Up. If a participant is eligible for both options, the one that produces the greater contribution for the participant is the one that should be used for that year.[24]

Example: In 2020, Frieda, a 64-year-old plan participant, is eligible for both the Special 457(b) Catch-Up and the Age 50 Catch-Up contribution. She has $4,000 in total underutilized deferrals from prior years. She could defer:

1. $23,500 based on the $19,500 normal maximum deferral limit plus $4,000 in underutilized deferrals under the Special 457(b) Catch-Up provision; or
2. $26,000 based on $19,500 maximum deferral limit plus $6,500 under the Age 50 Catch-Up. The Age 50 Catch-Up calculation produces the greatest deferral amount and is applied for 2020.

Deferring Sick, Vacation or Back Pay

A 457(b) plan may allow current employees to defer an amount representing the value of unused sick, vacation and/or back pay to the plan. A plan offering this option is required to specify that the agreement to defer these amounts must be completed before the first of the month these amounts would be paid, and the participant must be considered to be an employee in that month. Deferrals of unused sick, vacation and back pay count towards the 457(b) annual maximum deferral limit in the year they are contributed to the plan. The amount that can be deferred from unused sick, vacation and back pay, combined with regular deferrals, cannot exceed the annual maximum deferral limit for that calendar year.[25]

Post-severance deferrals may be contributed to the plan by the later of 2½ months after termination of employment or by December 31 of the year termination of employment occurs,[26] provided the participant's election to defer this post-severance compensation is made by the first day of the month containing the date of severance. State law can require this provision to be more restrictive.

This rule applies to post-severance deferrals only if the participant would have been paid these amounts had they continued working, or in the case of leave-related payments, only if the employee could have used the leave had employment continued. The following examples illustrate how post-severance payments may be deferred into a 457(b) plan.

Example 1: George, age 62, is a participant in County X's 457(b) plan as well as his employer's bona fide sick and vacation pay program. The 457(b) plan's normal retirement age is 65. Under the terms of the 457(b) plan and the sick and vacation plan, George is permitted to make a one-time election to contribute amounts representing unused accumulated sick and vacation pay into the 457(b) plan when he terminates employment. George terminates employment on January 12, 2020, at which time his accumulated sick and vacation pay totals $12,000.

[23] I.R.C. §414(v); Treas. Reg. §1.457-4(c)(2)(i).
[24] Treas. Reg. §1.457-4(c)(2)(ii).
[25] Treas. Reg. §1.457-4(d)(1).
[26] Treas. Reg. §1.415(c)-2(e)(3)(i).

Under the terms of the sick and vacation pay program and the 457(b) plan, George may defer the value of his accumulated sick and vacation pay into the 457(b) plan no later than the end of the calendar year that includes his date of severance (December 31, 2020).

Example 2: Same as above except George terminates employment on November 1, 2020. He has made regular deferrals to his 457(b) plan account and has reached the maximum deferral limit for 2020. Although George cannot defer any unused sick and vacation pay into his 457(b) plan for 2020, he could defer his accumulated sick and vacation pay into the plan by January 15, 2021, provided the deferral does not exceed the deferral limit for 2021. In order to take advantage of this option, George would have to elect to defer this post-severance compensation by November 1, 2020.

Contributions of Differential Pay for Employees on Active Military Duty

Differential pay, for this purpose, is defined as all or a portion of the wages employers pay to employees who are on active duty in the Uniformed Services. It represents pay the employees would have received if they were still working for the employer instead of serving in the military.

Differential pay paid after December 31, 2008, to all employees on active military duty for more than 30 days must be included in the plan's definition of compensation, but is not required to be treated as compensation for purposes of determining contributions and benefits under a plan.

The 457(b) plan may, but is not required to, permit employees on active military duty to contribute all or a portion of their differential pay to their employer's 457(b) plan.

Make-Up Deferrals for Employees Returning from Military Service

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), employees who perform qualified military service [IRC Section 414(u)] must be given the opportunity to make up (contribute) missed deferrals when they resume employment with their former civilian employer. These employees may elect to make additional elective deferrals (pretax and/or designated Roth contributions) to the plan representing deferrals they could have made if they had not been on active military duty. The period for making up missed deferrals is generally five years after returning from military service or a period equal to three times the period of military leave, whichever is less.

Prompt Remittance of Deferral Contributions

Participant deferrals must be remitted to the 457(b) trust or 457(b) investment providers within a period that is reasonable for proper administration of the plan. Generally this period, according to the 457(b) model amendments, should be no longer than 15 business days following the end of the month in which the amount would have been paid to the participant.[27] (Note: It is important to check if state law requires deferrals to be contributed to the plan earlier than this federal requirement.)

[27] Treas. Reg. §1.457-8(a)(2)(ii); Revenue Procedure 2004-56, Model Amendment 2.5.

Excess Contributions

If a participant's total deferrals to a 457(b) plan during a calendar year exceed the maximum annual contribution allowed (normal deferral plus any allowable catch-up amounts), the excess amount is taxable to the participant in the year the excess deferrals were contributed to the plan. The plan must provide for distribution of excess deferrals and any earnings attributed to the excess deferral to the participant as soon as administratively practicable after the excess deferrals have been discovered. A 457(b) plan may become a 457(f) (ineligible) plan with potentially severe tax consequences for all future contributions of all participants if excess contributions and earnings are not distributed to participants who made excess contributions.[28]

Saver's Credit

The Saver's Credit offers low- and moderate-income taxpayers a way to save on federal income taxes. Eligible individuals may be able to take a credit on their federal income taxes up to $1,000 (up to $2,000 for joint filers) depending on their adjusted gross income and tax filing status for contributions they make to their employer-sponsored retirement plans, IRAs and ABLE accounts (only available to ABLE accounts through 2025). ABLE accounts are tax-advantaged savings accounts for individuals with disabilities and their families, which were created as a result of the Stephen Beck, Jr. Achieving a Better Life Experience Act of 2014, better known as the ABLE Act.

Table 6

2020 Saver's Credit Adjustments			
	Adjusted Gross Income/Filing Status		
Amount of Credit	**Married Filing Jointly**	**Head of Household**	**Single/Others**
50% of first $2,000 deferred	$0 to $39,000	$0 to $29,250	$0 to $19,500
20% of first $2,000 deferred	$39,001 to $42,500	$29,251 to $31,875	$19,501 to $21,250
10% of first $2,000 deferred	$42,501 to $65,000	$31,876 to $48,750	$21,251 to $32,500

Taxpayers must attach IRS Form 8880 to their federal income tax returns to claim the Saver's Credit. If joint filers have each contributed to their respective IRAs, ABLE accounts (through 2025) or retirement plans, they could be eligible for up to twice the dollar limit ($4,000) instead of the $2,000 limit that applies to non-joint filers.

Distributions

The provisions of a 457(b) plan document must describe when participants and beneficiaries may take or are required to take distributions from the plan. This section discusses these rules and their application. Plan sponsors should also review any applicable state and local laws to determine if there are additional restrictions or limitations that must be incorporated into the plan.

[28] Treas. Reg. §§1.457-4(e), 1.457-9(a).

Timing of Distributions

The 457(b) plan document specifies when distributions may be made from the plan. It may or may not include all of the following permissible distribution events listed in the tax code [IRC Section 457(d) and Section 414(w)]:

- **Severance from employment** — is defined as termination of employment, retirement or death of the employee. Independent contractors participating in the 457(b) plan are considered to have a severance of employment at the expiration of their contract (if the expiration is a complete termination of the relationship between the contractor and the employer). There must be a clear expectation that no further contracts will be entered into for additional work with the employer. The regulations provide a special rule employers can follow to ensure distributions to independent contractors comply with the severance from employment requirement which must be included in their plan documents.
- **Attainment of age 59½** — The plan may permit participants who are still working at age 59½ (or older) to begin taking distributions from the plan in the calendar year they attain age 59½. For plan years that commenced prior to January 1, 2020, this in-service withdrawal age was 70½.
- **Unforeseeable emergency withdrawals** — If the plan document permits these withdrawals, it will include the requirements for these types of distributions. These withdrawals are permitted only for the amount needed to cover the stated emergency situation and any applicable federal and state taxes. See the Unforeseeable Emergency Withdrawals section below for more details.
- **Withdrawal of automatic enrollment contributions** — For plan years beginning on or after January 1, 2008, plans with an automatic enrollment feature may, but are not required to, permit automatically enrolled employees who elect not to participate to withdraw their automatic contributions, adjusted for gains and losses, within 90 days after the first contribution is contributed to the plan. The withdrawn amounts are not eligible for rollover and are taxable in the year they are withdrawn from the plan.
- **Withdrawals of elective deferrals for employees on active military duty** — Under the HEART Act of 2008, 457(b) plans may allow employees who are on active military duty in the Uniformed Services for more than 30 days to withdraw their elective contributions from the 457(b) plan. For this purpose, employees on active military duty are considered (deemed) to have terminated employment with the employer, so the plan's distribution rules are not violated because of these distributions. However, any eligible participant that makes these withdrawals must cease making elective deferrals to the plan for six months beginning on the date the distribution is made. This optional plan provision is effective for plan years beginning on or after December 31, 2008.

  Subsequent IRS guidance (Notice 2010-15) clarified that this six-month restriction on making elective deferrals to the plan does not apply to active duty participants who:

  – Have an actual severance from employment

  – May be able to take a distribution from the plan for another reason

  Other types of in-service plan distributions are not affected if permitted under other rules and terms of the plan.
- **Distributions of small accounts** — called *de minimis distributions*, permits the plan to distribute small account balances ($5,000 or less) to participants, with or without their consent. See the Distributions of Smaller Amounts section below for further details.

Unforeseeable Emergency Withdrawals

The key to administering this provision is to consistently apply the rules and procedures for these distributions to all participants. A 457(b) plan may include a provision to allow participants to request an in-service distribution (severance of employment is not required) from their accounts for an unforeseeable emergency. An unforeseeable emergency is typically defined as a severe financial hardship of the participant, dependent or plan beneficiary resulting from one or more of the following:

- Illness or accident of the participant or beneficiary, participant's or beneficiary's spouse or the participant's or beneficiary's dependent as defined in Section 152(a) of the IRC and, for taxable years beginning on or after January 1, 2005, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B)
- Loss of the participant's or beneficiary's property due to casualty (not covered by insurance)
- Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary[29]

The 457 final regulations provide specific examples of what may constitute an unforeseeable emergency, such as:

- Imminent foreclosure or eviction from the participant's or beneficiary's primary residence
- Need to pay medical expenses, including nonrefundable deductibles, as well as prescription drug costs
- Need to pay funeral expenses of a spouse or dependent as defined in IRC Section 152(a), and, for taxable years beginning on or after January 1, 2005, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B).[30]

Situations that do not meet the definition of unforeseeable emergency include the purchase of a home and the payment of college tuition. Plan sponsors or their designees should evaluate the facts and circumstances of each case to determine if they meet the requirements for an unforeseeable emergency withdrawal. Because of the subjective nature of decisions to grant emergency distributions, it is important to document the review and determination process and to apply approvals and denials consistently.

If the emergency withdrawal request meets the above requirements, only an amount that is reasonably necessary to satisfy the stated emergency need can be distributed.

When requesting a distribution under the unforeseeable emergency provision, the participant must also document that a financial need exists that cannot be relieved through any other means. Other means to alleviate the financial hardship include reimbursement or compensation from insurance, discontinuing deferrals into the plan and liquidation of assets to the extent the liquidation itself does not cause a financial hardship.

According to IRS Notice 2007-7, beginning in 2007, a plan may modify the unforeseeable emergency withdrawal provision to consider financial hardship situations relating to the participant's plan beneficiary, even if the beneficiary is not the participant's spouse or dependent, when determining if the withdrawal can be approved. In other words, the participant's designated plan beneficiary can be treated the same as a participant's spouse or dependent when making decisions to approve or deny a participant's unforeseeable emergency request. A plan that adopts this expanded unforeseeable emergency withdrawal provision must satisfy all other applicable requirements (e.g., withdrawal must be necessary to satisfy financial need).

IRS Revenue Ruling 2010-47 provided additional examples of unforeseeable emergency withdrawal based on plan language similar to the IRS model amendment for unforeseeable emergency withdrawals. This ruling discusses "other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary."

[29] I.R.C. §457(d)(1)(A)(iii); Treas. Reg. §1.457-6(c)(2).

[30] Treas. Reg. §1.457-6(c)(2).

- *Situation 1*: A participant requests an unforeseeable emergency distribution to pay for the cost of repairing significant damage from a water leak discovered in the basement of the participant's principal residence. The water damage is not covered by insurance. The participant provides a written cost estimate for the necessary repairs to the plan administrator. According to the revenue ruling, this situation would be an unforeseeable emergency arising from extraordinary and unforeseeable circumstances beyond the participant's control, similar to a natural disaster.
- *Situation 2*: A participant requests an unforeseeable emergency distribution to pay for the funeral expenses for their adult son, who is not a dependent [as defined in Section 152(a)]. This request would meet the requirements of an unforeseeable emergency because the situation is beyond the control of the participant and similar to the need to pay funeral expenses of a dependent.
- *Situation 3*: A participant requests an emergency withdrawal to pay accumulated credit card debts, which were not due to any events that are extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. This request would not meet the requirements for an unforeseeable emergency withdrawal.

Required Minimum Distributions

Required minimum distributions (RMDs) are the minimum amounts that must eventually be distributed from the plan to participants and beneficiaries. Participants and beneficiaries who do not take timely RMDs from the plan will be subject to a 50% excise tax on the amount of the required minimum distribution that should have been distributed.

Governmental 457(b) plans are generally subject to the same RMD rules that apply to qualified and 403(b) plans under IRC Section 401(a)(9). In general, a plan is required to begin distributions to a participant no later than April 1 of the calendar year following the later of:

- The calendar year the participant attains age 72
- The calendar year the participant retires

For all subsequent years, including the year in which the first RMD was made by April 1, the participant must take an RMD by December 31 of each year.

The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") changed the age at which required minimum distributions must begin. The age used to be 70½, but for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after that date, the age was increased to 72.

On March 27, 2020, in response to the coronavirus pandemic and its economic consequences, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted. The CARES Act waived 2020 RMDs for most defined contribution plans and IRAs, including 2019 RMDs not paid by January 1, 2020. Therefore, for those plan participants retiring in 2020 after attaining the age of 70½ prior to January 1, 2020, he or she would have to take their first RMD by December 31, 2021.

It is important to note the plan document terms may allow participants to wait until the year of actual retirement to take the first RMD. Alternatively, a plan may require participants to begin receiving distributions by April 1 of the year after reaching age 72 (70½ if age 70½ is attained in 2019), even if the participant has not retired.

Minimum distributions to participants and beneficiaries are calculated under either the:

- Life expectancy rule
- The five-year rule
- The ten-year rule[31]

Many plans distribute a participant's account balance during a participant's lifetime based on the participant's life expectancy. If, however, the participant's spouse is the sole designated beneficiary and at least 10 years younger than the participant, the plan may calculate participant RMDs during the participant's lifetime based on the joint life expectancies of the participant and the sole surviving spouse beneficiary.[32]

RMD rules continue to apply after the participant's death. The SECURE Act made significant changes to the RMD rules that apply to distributions after the participant's death. Before the SECURE Act, if RMDs to beneficiaries began no later than December 31 of the calendar year following a participant's death, they could be paid over the beneficiary's life expectancy. Alternatively, a plan could have required that the plan distribute the value of a deceased participant's account to the designated beneficiary by December 31 of the calendar year that included the fifth anniversary of the participant's death. There were also different rules depending on whether or not the participant died before or after they reached their required beginning date. With the passage of the SECURE Act, fewer beneficiaries will be able to avail themselves of the life expectancy payouts, as more beneficiaries will be restricted to a 10-year payout.

The SECURE Act provides that the entire interest of a participant must generally be distributed to a designated beneficiary by the end of the tenth calendar year following the year of death. However, payments can be made over life expectancy if the beneficiary is an "eligible designated beneficiary," which is defined as:

- A surviving spouse,
- A disabled or chronically ill individual (or certain trusts for the same),
- A beneficiary no more than 10 years younger than the participant, or
- A minor child of the participant (but only until the child reaches majority, at which time any remaining balance will be distributed within 10 years of such date)[33]

Distributions to eligible designated beneficiaries using the life expectancy rule must still commence by no later than December 31 of the calendar year following a participant's death. Under the life expectancy rule, there is a special rule if the surviving spouse is the sole beneficiary of the participant's account and the participant dies prior to his or her required beginning date (April 1 of the calendar year after the participant would have attained age 72). In this case, the sole surviving spouse beneficiary may postpone taking a distribution from the participant's account until the calendar year the participant would have attained age 72.

This new 10-year rule applies whether RMDs begin before the participant's death or after. Importantly, non-designated beneficiaries (such as estates, trusts) are still subject to the prior 5-year rule.

If an eligible designated beneficiary dies before the entire account balance has been distributed, the remainder must be distributed to the beneficiary of the eligible designated beneficiary within 10 years of their death.

[31] I.R.C. §§401(a)(9)(B)(ii,iii), 401(a)(9)(H), 457(d)(2); Treas. Reg. §1.457-6(d).
[32] Treas. Reg. §1.401(a)(9)-5, Q&A 4(b).
[33] I.R.C. §401(a)(9)(E).

The SECURE Act changes to the RMD rules are generally applicable to distributions with respect to participants who die after December 31, 2019. However, for governmental plans, these changes are applicable to distributions with respect to participants who die after December 31, 2021. There are also special effective dates for plans maintained pursuant to a collective bargaining agreement.

Example: A 457(b) plan participant dies in 2020 at the age of 68. His surviving spouse is the sole beneficiary of his retirement account. He would have been age 72 in 2024. His surviving spouse could postpone taking RMDs from his account until December 31, 2024. Alternatively, the surviving spouse could roll the deceased participant's account balance into her own IRA and postpone taking minimum distributions from the IRA until the surviving spouse attains age 72.

Multiple beneficiaries

In the above example, if there were multiple designated beneficiaries instead of a sole surviving spouse beneficiary, the surviving spouse would not be able to postpone taking RMDs from her account until the participant would have attained age 72. Instead, the surviving spouse would have to commence her life expectancy distributions by December 31 of the year following the year of the participant's death.

Plan administrators and sponsors should review plan documents for specific requirements applicable to required minimum distributions because their plans may be more restrictive than the required minimum distribution regulations.

Waiver of RMD payments for 2009

The Worker, Retiree and Employer Recovery Act of 2008 (WRERA) permitted qualified defined contribution plans, 403(b) and governmental 457(b) plans, and IRAs to waive RMD payments for the 2009 calendar year. However, initial RMD distributions for 2008 that were scheduled to begin by April 1, 2009, were not waived and still had to be paid by April 1, 2009.

A governmental plan, including a governmental 457(b) plan, was treated as being operated according to its terms in applying the RMD rules if the plan was amended for this WRERA provision on or before the last day of the first plan year beginning on or after January 1, 2012.

Complying with the RMD rules

In 2009, the Treasury Department and IRS issued final regulations that permit a governmental plan, including a governmental 457(b) plan, to comply with the RMD rules using a reasonable and good faith interpretation of the RMD statute. These final regulations apply to participants and beneficiaries in governmental 401(a) qualified plans [including 401(k) plans], 403(b) plans and 457(b) plans for all years the RMD rules apply to these plans.

Distributions of Smaller Accounts

457(b) plans may, but are not required to, permit the distribution of small accounts (de minimis distributions) to participants without a severance of employment if:

- The participant's total account balance (deferrals plus investment earnings) is $5,000 or less
- The participant has not made any deferrals into the plan during the two-year period ending on the date of the distribution
- There has been no prior distribution under this provision to the participant[34]

[34] I.R.C. §457(e)(9)(A); Treas. Reg. §1.457-6(e).

This plan provision may be applied several ways as a matter of plan design. The plan may provide for participant election, automatic mandatory distributions by the employer, mandatory distributions of account balances below a certain threshold and participant election for amounts above the threshold, or a combination.

Example: The plan document could require that distributions of smaller accounts (e.g., $500) will be automatically distributed to participants and beneficiaries, but distributions of accounts between $500 and $5,000 are permitted only if the participant or beneficiary elects to have these amounts distributed.

Mandatory Small Balance Cashouts

Governmental 457(b) plans are subject to the automatic rollover rules of IRC Section 401(a)(31)(B) that apply to qualified retirement plans and 403(b) plans. Therefore, if the plan provides for mandatory distributions of account balances of more than $1,000 but less than $5,000, it may be required to pay the distributions as a direct rollover to an IRA if the participant does not provide distribution instructions. Employers must notify participants, in writing, that their account balance will be rolled over to an IRA unless they provide distribution instructions (such as a rollover to another plan or IRA or direct payment to the participant).

IRS Notice 2005-5 clarifies that the automatic rollover rules apply to all qualified retirement plans, including eligible governmental 457(b) plans. Account balances under $1,000 do not have to be automatically contributed to an IRA and may be distributed in cash.

Qualified Domestic Relations Orders (QDRO)

A qualified domestic relations order is an order, judgment or decree generally issued by a state domestic relations court (including approval of a property settlement agreement), made pursuant to a State domestic relations law (including a community property law). The order relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a participant.

Federal law permits governmental 457(b) plans to treat domestic relations orders (DROs) as qualified domestic relations orders (QDROs) for distribution timing and taxation purposes. IRC Section 414(p)(11) provides that a distribution from a 457(b) plan is treated as made pursuant to a QDRO if the DRO satisfies the requirements of IRC Section 414(p)(1)(A)(i) (i.e., a DRO "which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under the plan") even if the other requirements of IRC Section 414(p) are not satisfied. 457(b) plans may, but are not required to, accept DROs under federal law. State laws need to be carefully reviewed to determine if any additional requirements apply to DROs.

A court-issued DRO may require that a portion (or all) of a participant's account balance be segregated and paid to an alternate payee (the participant's spouse, former spouse or child) named in the DRO. The 457(b) plan administrator is usually responsible for determining the validity of the DRO before making distributions to an alternate payee. An alternate payee generally has the same rights of ownership of the plan account balance as the participant, but may request an immediate distribution of his or her share of the participant's account balance if permitted by the QDRO and the plan document. Most 457(b) plan documents include provisions permitting the alternate payee to take an immediate distribution. An alternate payee (spouse or former spouse only) may then roll this distribution to an IRA or a workplace 401(a), 401(k), 403(b) or other

governmental 457(b) plan in which the alternate payee (spouse or former spouse) is a participant. The spousal alternate payee who does not roll over the distribution will be liable for any taxes due on the distribution.[35] The taxation rules for non-spousal alternate payees differ from those that apply to spouse or former spouse alternate payees.

Example 1 — Former spouse alternate payee does not participate in an employer-sponsored retirement plan

Felix is a participant in County Y's 457(b) plan. He and his wife, Tina, divorce. The 457(b) plan administrator receives a DRO issued by a state domestic relations court and determines that it is a QDRO. Under the terms of the QDRO, Tina is to receive 50% of Felix's 457(b) account balance payable immediately. Tina is not a participant in any employer-sponsored retirement plan. She, as a former spouse alternate payee, may roll this distribution into a traditional or Roth IRA.

Example 2 — Alternate payee participates in governmental 457(b) plan

Fred participates in his private sector employer's 401(k) plan. His wife, Ginger, participates in County X's 457(b) plan. Fred and Ginger divorce. The plan administrator of Fred's 401(k) plan receives a DRO that entitles Ginger to 50% of Fred's 401(k) account, payable immediately. The plan administrator determines that the DRO is a QDRO and that Ginger is entitled to receive 50% of Fred's 401(k) account. Ginger, as a former spouse alternate payee, may roll her distribution from Fred's 401(k) plan into her own 457(b) account or into an IRA.

Distributions to Public Safety Workers

The Pension Protection Act of 2006 (PPA '06) included two new distribution provisions affecting public safety employees and public safety officers.

Income exclusion for distributions to pay qualified health and long-term care premiums

Beginning in 2007, a governmental plan, including a 457(b) plan, may (but is not required to) permit retired or disabled public safety officers to elect to have a maximum of $3,000 per year subtracted from their plan distributions and sent directly to a health or long-term care provider to pay health and long-term care premiums. The $3,000 annual limit applies to premiums paid to both insured and self-insured health care plans from all governmental retirement plans, including defined benefit, defined contribution and governmental 457(b) plans.[36] In order to take advantage of this provision, the public safety officer must be separated from service by reason of disability or attainment of normal retirement age under the plan (note the provision does not apply if the retirement occurs before the attainment of normal retirement age).

Retired or disabled public safety officers may elect to have these amounts excluded from gross income on their federal income tax returns. This exclusion from gross income does not apply to surviving spouses or dependents that use plan distributions to pay for their own health or long-term care premiums.

For purposes of this annual $3,000 federal income tax exclusion, eligible public safety officers are defined as individuals serving a public agency in an official capacity, including:

- Professional firefighters
- Individuals involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to police, corrections, probation, parole, and judicial officers

[35] I.R.C. §§414(p), 402(e)(1); Treas. Reg. §1.457-10(c).

[36] I.R.C. §402(l); Notice 2007-7, Q&A 22.

- Officially recognized or designated public employee members of a rescue squad or ambulance crew
- Officially recognized or designated members of a legally organized volunteer fire department
- Officially recognized or designated chaplains of volunteer fire departments, fire departments and police departments[37]

Exception to the additional 10% early withdrawal tax

Public safety employees who separate from service at age 50 or older who take distributions from their governmental defined benefit or defined contribution plan will not be subject to the additional 10% early withdrawal tax. Public safety employees are defined as employees of a State or political subdivision of a State whose primary duties include services requiring specialized training in the area of police protection, firefighting or emergency medical services for any area within the jurisdiction of the State or its political subdivision. The definition of public safety employee was later expanded to include:

- Specified federal law enforcement officers
- Customs officers
- Border protection officers
- Federal firefighters
- Air traffic controllers

This provision also includes lump-sum distributions to public safety employees from governmental defined benefit plans with a DROP feature.

In addition, early distributions under this exemption will not be treated as a modification of substantially equal payments for purposes of application of the additional 10% early withdrawal tax (although substantially equal payments meeting certain requirements are already an exception to the additional 10% early withdrawal tax, modifications for reasons other than death or disability can cause the tax to apply).

Example: Firefighter Frank, a public safety employee, retires at age 52. Prior to retirement, he participated in State O's defined benefit DROP (Deferred Retirement Option Plan). After completing his DROP period of service, he is required to retire and take his DROP benefit as a lump sum as soon as administratively feasible after leaving service. If Frank takes the taxable portion of his DROP distribution and spends it or puts it in the bank, he will not be subject to the additional 10% early withdrawal tax, but he will still have to include the distribution in his gross income in the year it is distributed to him from the defined benefit DROP. If, instead, he rolls the DROP distribution into State O's 457(b) plan and takes distribution prior to age 59½, he still will not be subject to the additional 10% early withdrawal tax.

Benefits Available to Employees on Active Military Duty

Benefit accruals for employees who die or become disabled

The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) permits but does not require a 457(b) plan to treat employees who die or become disabled while on qualified military duty as if they had resumed employment with their former employer on the day before death or disability and terminated employment on the actual date of death or disability. This option allows the plan to restore some or all of the benefits the employee would have been entitled to if the employee had actually resumed employment with the employer, including counting qualified military service for vesting and benefit accrual purposes. This optional plan provision applies for deaths and disabilities occurring on or after January 1, 2007.

[37] I.R.C. §402(l)(4)(C).

Withdrawals by employees on active military duty

Under the HEART Act, employees are treated as having terminated employment during any period that they are performing qualified service in the Uniformed Services for more than 30 days. The plan may permit these employees to withdraw elective deferrals from the governmental 457(b) plan without violating the plan's distribution restrictions for plan years beginning after December 31, 2008.

Additional IRS guidance clarifies that:

- All individuals who are on active duty for more than 30 days, whether or not they are receiving differential pay, are considered (deemed) to have severed employment for distribution purposes under a 401(k), 403(b) or governmental 457(b) plan
- The plan may permit distributions for this deemed severance from employment
- The plan must also provide that an individual receiving the distribution not make elective deferral or employee contributions during the six-month period beginning on the date of the distribution
- The restriction on making elective deferrals to the plan does not apply to participants who have an actual severance from employment or who may be able to take a distribution from the plan for another reason

Other types of in-service plan distributions are not affected if the plan permits them.

Distributions made because of a deemed severance from employment are:

- Not considered hardship distributions
- Eligible for rollover
- Subject to mandatory 20% withholding rules if the distribution is not rolled over to another eligible retirement plan or IRA

Survivor benefits

The HEART Act requires governmental 457(b) plans to provide survivors of employees who die while on qualified military duty with any additional benefits the plan would have provided if the employee had returned to work with his/her former employer and then terminated employment because of death. These benefits could include such benefits as accelerated vesting or life insurance proceeds but exclude benefit accruals while on qualified military duty. This provision applies for deaths occurring on or after January 1, 2007.

Additional 10% Early Withdrawal Tax

If a participant receives any distribution from a qualified retirement plan before certain events defined by the IRS (generally, before age 59½), the participant is subject to an additional 10% early withdrawal tax (actually assessed against the participant by way of the individual income tax return Form 1040). Code section 72(t) describes in detail the numerous exceptions to the early withdrawal tax for retirement plan and IRA distributions, but the major exceptions that appear in most qualified plan documents are:

- Attainment of age 59½
- Disability
- Death
- Separation from service after age 55

Normally, the additional 10% early withdrawal tax does not apply to distributions from governmental 457(b) plans. However, if an amount is rolled over from a qualified plan, a 403(b) plan or an IRA to a governmental 457(b) plan, distributions from those rollover amounts from the governmental 457(b) plan are subject to the additional 10% early withdrawal tax (IRC Section 72(t)(9)). As a result, a governmental 457(b) plan is required by IRC Section 402(c)(10) to separately account for rollovers from qualified plans, 403(b) plans or IRAs.

The following table contains a list of the major exceptions to the additional 10% early withdrawal tax under IRC Section 72(t) and which types of plans are affected by each exception.

Table 7

Primary Exceptions to the Additional 10% Early Withdrawal Tax		
Exceptions Under IRC §72(t) for Distributions Which Are:	Traditional and Roth IRAs, Including Deemed IRAs	401(a), 403(b) Plans and Governmental 457(b) Plan Rollover Accounts Holding Rollovers from Non-457(b) Plans
Made on or after attainment of age 59½	✓	✓
Made to employee after separation from service and after attainment of age 55 (age 50 for public safety employees in governmental plans)	N/A	✓ Requires termination of employment
Distribution to beneficiary	✓	✓
Qualified reservist distributions	✓	✓ Does not apply to distributions from 457(b) plan accounts
Attributable to an employee's total and permanent disability	✓	✓
Made to qualified first-time home buyer	✓	N/A
Conversion from traditional IRA or SIMPLE IRA to a Roth IRA	✓	N/A
In-plan Roth conversions to the plan's designated Roth account	N/A	✓
Made for qualified higher education expenses	✓	N/A
Payment of qualified medical insurance premiums for unemployed persons	✓	N/A
Unreimbursed medical expenses up to 7.5% (after January 1, 2019, 10%) of adjusted gross income	✓	✓

Primary Exceptions to the Additional 10% Early Withdrawal Tax (continued)		
Exceptions Under IRC §72(t) for Distributions Which Are:	Traditional and Roth IRAs, Including Deemed IRAs	401(a), 403(b) Plans and Governmental 457(b) Plan Rollover Accounts Holding Rollovers from Non-457(b) Plans
Unreimbursed medical expenses up to 7.5% (after January 1, 2019, 10%) of adjusted gross income	✓	✓
Seizure by IRS for tax levy on qualified plan	✓	✓
Substantial equal periodic payments made at least annually based on life expectancy	Payments must be made until age 59½ or for five years, whichever is longer. Separation from service is not required.	Payments must be made until age 59½ or for five years, whichever is longer, and the individual must be separated from service.
QDRO payments to an alternate payee	N/A	✓
Qualified disaster recovery distribution or qualified disaster recovery assistance distribution	✓	✓
Expenses related to the birth or adoption of a child within one year of birth or adoption finalization (no more than $5,000 for each individual)	✓	✓

Rollovers

Rollovers are distributions from a 401(a), 403(b), governmental 457(b) plan or IRA that are eligible to be contributed to another eligible retirement plan or IRA after a distributable or access event such as severance from employment. Rollovers should not be confused with plan-to-plan transfers.

Some distributions from governmental 457(b) plans may be eligible to be rolled over and contributed to an Individual Retirement Arrangement (traditional and Roth IRAs), as well as a governmental 457(b), 401(a), 401(k) or 403(b) plan.[38]

Types of Rollovers

Direct rollover (trustee-to-trustee transfer) is a direct transfer of assets from an eligible governmental plan to an IRA or another eligible retirement plan and is not includible in the gross income of a participant, spousal beneficiary, nonspousal beneficiary or spouse or former spouse alternate payee until distributed from the receiving plan or IRA. Taxable distributions that are eligible for rollover but not directly rolled over are subject to mandatory 20% federal tax withholding.

Sixty-day rollover (indirect rollover) allows a participant, spousal beneficiary or spouse or former spouse alternate payee to retain the tax-deferred status of a distribution from the 457(b) account by rolling this

[38] I.R.C. §402(c)(8)(B).

distribution to another eligible plan in which they participate [i.e., IRA, 401(a), 401(k), 403(b) or governmental 457(b) plan] within 60 days from the date the distribution was received, provided the receiving plan agrees to accept the rollover. Indirect rollovers to an inherited IRA are not available to nonspousal beneficiaries.

In 2016, the IRS issued Revenue Procedure 2016-47, Waiver of 60-Day Rollover Requirement. This revenue procedure provides guidance concerning waivers of the 60-day rollover requirement if the failure to meet the deadline was the result of one of 11 listed reasons. Specifically, it provides for a self-certification procedure (subject to verification on audit) that may be used by a taxpayer claiming eligibility for a waiver with respect to a late rollover into a plan or IRA. In addition to the IRS not having previously denied a formal request for a waiver of the 60-day deadline and the failure to meet the deadline being a result of one of the 11 listed reasons, the taxpayer must correctly make the rollover as soon as practical after the reason for the delay no longer prevents the contribution.

The following table outlines the rollover options to and from employer-sponsored retirement plans and IRAs.

Table 8

Rollovers

Roll From \ Roll To	Govern-mental 457(b) Plan*	Qualified Plan (Pretax)[1]	403(b) Plan (Pretax)	Designated Roth Account in 401(k), 403(b) or Governmental 457(b) Plan	Roth IRA	Traditional IRA	SIMPLE IRA	SEP IRA
Governmental 457(b) Plan	Y	Y	Y	Y[3, 5]	Y[3]	Y	Y[7] – after 2 years	Y
Qualified Plan (Pretax)[1]	Y[4]	Y	Y	Y[3, 5]	Y[3]	Y	Y[7] – after 2 years	Y
403(b) Plan (Pretax)	Y[4]	Y	Y	Y[3, 5]	Y[3]	Y	Y[7] – after 2 years	Y
Designated Roth Account in 401(k), 403(b) or Governmental 457(b) Plan	N	N	N	Y[6]	Y	N	N	N
Roth IRA	N	N	N	N	Y[2]	N	N	N
Traditional IRA	Y[4]	Y	Y	N	Y[3]	Y[2]	Y[2, 7] – after 2 years	Y[2]
SIMPLE IRA	Y[4] – after 2 years	Y – after 2 years	Y – after 2 years	N	Y[3] – after 2 years	Y[2] – after 2 years	Y[2]	Y[2] – after 2 years
SEP IRA	Y[4]	Y	Y	N	Y[3]	Y[2]	Y[2, 7] – after 2 years	Y[2]

[1] Qualified plans are plans subject to 401(a) of the IRC and include both defined contribution and defined benefit plans. 401(k) plans are a subset of 401(a) profit-sharing plans.
[2] Only one rollover in any 12-month period, unless direct trustee-to-trustee rollover.
[3] Must include in income.
[4] Rollover and their earnings must be tracked in a separate rollover account(s) within the 457(b) plan.
[5] Must be an in-plan Roth conversion.
[6] Any amounts distributed must be rolled over via direct (trustee-to-trustee) transfer to be excluded from income.
[7] Applies to rollover contributions after December 18, 2015 (Protecting Americans from Tax Hikes (PATH) Act of 2015).
Note: The footnotes above relate to Table 8 only.

Effect of Rollovers

Rollover contributions to the 457(b) plan take on the characteristics of the 457(b) plan except for the application of the additional 10% early withdrawal tax for distributions prior to age 59½ from the rollover account that holds or includes non-457(b) plan rollover contributions. Distributions in the rollover accounts are subject to the exceptions to the additional 10% early withdrawal tax that apply to qualified plans even if the rollover contribution originated from an IRA.

Prior to making a distribution, the plan is required to give participants, spousal beneficiaries and/or spousal alternate payees a special tax notice known as a 402(f) notice explaining rollover rules and tax consequences of not rolling eligible distributions to other retirement plans, including IRAs. These notices must be distributed between 30 and 180 days prior to the distribution.[39] Participants may elect to waive the period of time under this notice requirement and receive their distribution earlier.

Rollovers from the 457(b) plan take on the characteristics and requirements of the plan or IRA that accepts the 457(b) rollover. The additional 10% early withdrawal tax, which generally does not apply to 457(b) distributions, may apply to rollovers from a 457(b) plan to an IRA or other non-457(b) retirement plan when distributions are subsequently made from these plans.

Rollover contributions to other eligible retirement plans and traditional IRAs as well as their earnings continue to be tax-deferred (not included in gross income of a participant, beneficiary or alternate payee when rolled over) until ultimately distributed from the receiving plan. Conversely, direct rollover contributions to Roth IRAs and in-plan Roth conversions are included in gross income of a participant, beneficiary or alternate payee in the tax year in which the rollover contributions are contributed. Participants, spousal beneficiaries and spousal alternate payees may be permitted to roll 457(b) distributions (that qualify as eligible rollover distributions) into IRAs or employer plans in which they are participants if the plan agrees to accept their rollover contributions.

Governmental 457(b) plans may permit participants, spousal beneficiaries, and spouse and former spouse alternate payees to roll distributions from their IRAs or other eligible plans [including Section 401(a), 401(k), 403(b) and governmental 457(b) plans] into the 457(b) plan, provided the rollovers are tracked in a separate rollover account.[40] Rollover contributions, including in-plan Roth conversions, do not count toward the plan's annual contribution limits.

Application of the additional 10% early withdrawal tax

When distributed from the 457(b) plan, rollovers from non-457(b) plans or IRAs into the 457(b) plan may be subject to the additional 10% early withdrawal tax.[41] This additional 10% early withdrawal tax applies to taxable distributions that are made prior to the year a participant attains age 59½ unless one of the exceptions to the tax applies. Rollovers from IRAs and all other plan types into the 457(b) plan can be combined into a single general rollover account for recordkeeping purposes. However, rollovers from another 457(b) plan that are combined in a general rollover account with IRA rollovers or rollovers from other retirement plans may become subject to the additional 10% early withdrawal tax. The plan document may permit the plan to establish two separate rollover accounts — one to accept 457(b) rollovers and one to accept all other rollovers — to shield 457(b) rollovers from this tax. For more information about the additional 10% early withdrawal tax, see Additional 10% Early Withdrawal Tax section above.

[39] I.R.C. §402(f); Treas. Reg. §1.402(f)-1

[40] I.R.C. §401(a)(31); Treas. Reg. 1.457-10(e).

[41] I.R.C. §72(t)(9).

Example: Ramon, a participant in City Z's 457(b) plan, wants to consolidate his retirement accounts from previous employers as well as his traditional IRA accounts, and he rolls these account balances into his current employer, City Z's, 457(b) plan. City Z's 457(b) plan establishes two rollover accounts, in addition to his normal accumulation account for ongoing deferrals, to receive the rollovers — one for the IRA, 401(a) and 403(b) rollovers and the second for the 457(b) rollovers so that 457(b) rollover money will not be subject to the additional 10% early withdrawal tax if it is distributed prior to age 59½.

Distributions from 457(b) Rollover Accounts

Revenue Ruling 2004-12 clarifies that amounts rolled into a retirement plan may be distributed any time the participant requests a distribution from the rollover account, even if the participant is not yet eligible for a distribution from the plan. This distribution is permitted only if the rollover amounts are in a separate rollover account and the 457(b) plan document permits distributions from the rollover account(s) at any time. Nontaxable plan-to-plan transfers from other 457(b) plans are not rollovers and cannot be distributed under this distribution rule at any time.[42]

Direct Rollovers to Roth IRAs

Beginning in 2008, governmental 457(b) plans must offer participants the option of rolling their 457(b) account balance directly to a Roth IRA, instead of rolling the balance first to a traditional IRA and then converting the traditional IRA to a Roth IRA. Rollovers from the 457(b) plan to a Roth IRA will be subject to federal income tax in the year the rollover is contributed to the Roth IRA.[43] Until 2010, rollovers from a governmental 457(b) plan to a Roth IRA were available only to participants with modified adjusted gross incomes of $100,000 or less. Starting in 2010, this income limitation no longer applies for rollovers to Roth IRAs from the 457(b) plan. Ongoing annual contributions to a Roth IRA are still subject to certain income limitations.

Rollovers for Nonspouse Beneficiaries

PPA '06 permitted employer-sponsored retirement plans [401(a), 401(k), 403(b) and governmental 457(b) plans] to offer designated nonspouse beneficiaries the option of directly rolling over a decedent's 457(b) account balance to an inherited IRA, which gives nonspouse beneficiaries in employer-sponsored plans the same rollover option as nonspouse beneficiaries of an IRA.

For plan years beginning after December 31, 2009, governmental 457(b) plans are required to:

- Offer nonspouse beneficiaries the direct rollover option to an inherited IRA
- Provide nonspouse beneficiaries with 402(f) notices informing them of their right to directly roll their eligible distributions into an inherited IRA
- Withhold 20% from the distribution for federal income tax purposes if distribution is not directly rolled into an inherited IRA

For rollovers to inherited IRAs, the 457(b) plan is required to provide the IRA trustee or custodian with the name of the deceased participant, the name of the beneficiary and other applicable information the IRA trustee or custodian would need to properly administer the inherited IRA.[44]

[42] Revenue Ruling 2004-12.
[43] I.R.C. §408A(d)(3); Notice 2008-30, Q&A 4.
[44] I.R.C. §402(c)(11); Notice 2007-7 Q&A 13.

Example 1: John is an employee in Company X's 401(k) plan and the beneficiary of his father, Ted's, governmental 457(b) plan. Ted dies. John can have Ted's 457(b) account balance directly rolled over to an inherited IRA, but cannot have this distribution rolled into his 401(k) plan or any other employer-sponsored retirement plan in which he participates or to an IRA of which he is the account holder.

Example 2: Same as above, except John dies instead of Ted. Ted is John's plan beneficiary and Ted wants to roll John's account balance into his 457(b) plan account. He cannot roll this money into his 457(b) account because he is a nonspousal beneficiary of John's account. His only rollover option is to have this money rolled directly into an inherited IRA.

Example 3: Both Bill and his sister Eunice are employees of County Y and participate in its 457(b) plan. They are each other's designated plan beneficiary. Eunice dies. Bill would like to roll Eunice's account balance into his own 457(b) account. Although he would like to, Bill cannot roll Eunice's account balance into his own 457(b) account.

In-plan Roth Conversions to 457(b) Designated Roth Accounts

In-plan Roth conversions are an optional feature governmental 457(b) plans may adopt after December 31, 2010, which permit participants to roll their 457(b) non-Roth funds into the same 457(b) plan's designated Roth account. Non-Roth funds that are converted to Roth contributions and rolled into the plan's designated Roth account are taxable in the year they are contributed to the plan's designated Roth account. Plans that adopt in-plan Roth conversions may designate that any vested amounts held in a non-Roth account may be eligible for an in-plan Roth conversion. Prior to December 31, 2012, these amounts had to satisfy the distribution rules of the 457(b) plan and the IRC and be eligible rollover distributions. The American Taxpayer Relief Act of 2012 no longer requires that a participant be eligible for a distribution to convert and roll over pretax amounts to the same plan's designated Roth account. This option is effective for conversions made after December 31, 2012, from pretax accounts to designated Roth accounts within the same plan.

Eligible and ineligible participants

The plan may permit participants, surviving spouses and spouse and former spouse alternate payees to make in-plan Roth conversions. In-plan Roth rollovers are not available to nonspouse beneficiaries or alternate payees who are not spouses or former spouses.

In-plan Roth conversions are irrevocable and cannot be reversed. It used to be possible to recharacterize a rollover to a Roth IRA as a rollover to a traditional IRA within certain timeframes. However, effective January 1, 2018, the Tax Cuts and Jobs Act of 2017 prohibits conversions to Roth IRAs from being recharacterized.

In-plan Roth conversions must be separately accounted for within the participant's designated Roth account. A designated Roth account may have subaccounts for:

- Roth elective deferrals and earnings
- Rollovers from another plan's designated Roth account and earnings
- In-plan Roth conversions and earnings

Distribution rules from each of these subaccounts may differ. For example, plans may permit distributions from rollover accounts at any time while the participant is still working, but would not permit distributions from other nonrollover accounts unless the participant was eligible for a distribution.

Participant notice requirements

IRC Section 402(f) requires that a plan offering in-plan Roth conversions under the Small Business Job Act of 2010 must include a description of this feature in the written explanation provided to participants prior to their taking a distribution from the plan. Notice 2010-84 Q&A 5 includes sample language that plan administrators may use to revise their IRS safe harbor 402(f) notices for distributions from non-Roth funds.

Recapture tax

The IRS does not impose the additional 10% early withdrawal tax on funds rolled over from a pretax account to a designated Roth account in a 403(b) or 401(k) plan. However, if a participant withdraws any part of the in-plan Roth conversion from the designated Roth account within five years of the rollover, the participant's withdrawal is subject to the additional 10% early withdrawal tax under IRC Section 72(t) unless an exception applies. This tax is usually called the recapture tax.

Because IRC Section 72(t) does not apply to governmental 457(b) plans and the 10% recapture tax is associated with 72(t), the recapture tax does not apply to governmental 457(b) plans. However, the recapture tax would apply to any rollovers which were originally accepted from either a 401(k) or 403(b) plan or an IRA into a governmental 457(b) plan and then those same funds were converted to Roth funds as part of an in-plan Roth conversion. Each in-plan Roth conversion will have its own five-year holding period for purposes of applying the recapture tax, so recordkeeping can become more complicated. Distributions from multiple in-plan Roth conversions are made on a first-in/first-out basis, so the oldest in-plan Roth conversion is treated as being distributed first.

The application of the 10% recapture tax should not be confused with determining whether a Roth 457(b) distribution is a qualified or nonqualified distribution. One of the conditions for a qualified distribution from a Roth account (including a designated Roth account in a 457(b) plan) is that the distribution was made five years or more after the January 1 of the calendar year in which the first Roth contribution or in-plan Roth conversion was made. The first Roth contribution could be a Roth contribution to the plan, a rollover of Roth funds from a designated Roth account in another plan or an in-plan Roth conversion, depending on which plan features the plan offers.

Taxes and withholding

Pretax funds that are converted to Roth contributions within the same plan are subject to taxation in the year the in-plan Roth conversion is contributed to the plan's designated Roth account. In-plan Roth conversions can be accomplished via direct or indirect rollover. Direct in-plan Roth conversions are not subject to the 20% mandatory federal tax withholding rules that would apply to an indirect rollover and are therefore more typical. However, participants may have to increase their tax withholding or make estimated tax payments to avoid an underpayment penalty on their federal income tax. (See IRS Publication 505.)

Allocation of Pretax and After-Tax Amounts When Disbursements Are Made to Multiple Destinations

On September 18, 2014, the IRS released Notice 2014-54 and proposed regulations regarding splitting after-tax contributions (including Roth) when pretax and after-tax amounts are simultaneously disbursed to multiple destinations. This new guidance addressed a longstanding issue that arose when the IRS issued safe harbor language for the 402(f) Special Tax Notice in 2009.

Previous law

IRS Notice 2009-68 provided sample participant notices to describe the distribution options available to a participant to defer taxation on their eligible rollover distributions. The notice described how the pretax and after-tax amounts would be allocated when only a portion of the distribution was rolled over.

Direct rollover: A distribution which includes a direct rollover and cash to the participant or a distribution split between two IRAs resulting in the after-tax contributions being allocated pro-rata between the two portions of the distribution. Also, for a distribution from a designated Roth account which consists of a rollover and a cash distribution, each of the payments includes an allocable portion of the earnings in the designated Roth account.

Indirect rollover: Taxable amounts are allocated first to the rolled over portion.

The pro-rata recovery of nontaxable amounts appeared to conflict with IRC rules regarding a partial rollover distribution under which the amount rolled over would be considered to consist of taxable amounts first. The issue was whether a distribution that was split among multiple destinations was to be considered a single rollover (subject to the ordering rules described in the IRC) or multiple distributions, each of which would be subject to the pro rata recovery of nontaxable amounts.

As a result of the Notice 2009-68 guidance, a participant could not choose to receive all of their after-tax contributions in cash while directly rolling over the taxable portion of the distribution to an IRA. The guidance also prevented participants from separating out the after-tax contributions to roll over to a separate Roth IRA. Interestingly, the Notice created disparate treatment of direct and indirect rollovers, because indirect rollovers followed the IRC rules permitting taxable amounts to be allocated first to the rolled over portion, while direct rollovers were subject to the pro rata rule.

New rule

The new IRS guidance in Notice 2014-54 provided that all disbursements scheduled to be made at the same time would be treated as a single distribution without regard to whether the recipient had directed that the disbursements be made to a single destination or multiple destinations. The guidance basically creates an ordering rule: Pretax funds are directly rolled over first; if there is excess, it is allocated to a 60-day rollover; if there is still excess, it is includible in the participant's gross income.

The newly proposed rules generally apply to distributions made on or after January 1, 2015, but can be applied earlier.

Because governmental 457(b) plans cannot accept employee after-tax (non-Roth) contributions, the new guidance affects partial rollovers of designated Roth accounts. The application of the guidance in Notice 2014-54 permits a participant taking a distribution from a designated Roth account to roll over the entire pretax portion (e.g., the earnings on the designated Roth contributions being distributed as part of a distribution that is not a qualified Roth distribution) to a plan that accepts designated Roth contributions or to a Roth IRA, and have the after-tax portion (e.g., the designated Roth contributions) disbursed to the participant tax-free. Note that a qualified Roth distribution is completely tax-free (contributions and earnings), so such a split would not be necessary in that circumstance.

The IRS then issued Notice 2014-74 to amend and update the safe harbor explanations for notices required under IRC Section 402(f) for individuals receiving eligible rollover distributions to align with this new guidance.

Distributions Not Eligible for Rollover

Some plan distributions are not eligible to be rolled over and contributed to another eligible retirement plan, a designated Roth account in another plan or within the same plan or an IRA. The following distributions are not eligible rollover distributions and cannot be contributed to a governmental 457(b) plan:

- Unforeseeable emergency withdrawals and hardship distributions
- Required minimum distribution (RMD) payments, except for 2009 RMDs
- Returned excess contributions and earnings
- Distributions from Roth IRAs
- Loans treated as deemed distributions
- Payments based on life expectancy, or payments that are expected to last 10 years or more
- Distributions from foreign retirement plans
- Distributions to automatically enrolled participants who opt out of an automatic enrollment arrangement within 90 days after the first contribution is made to the plan for them[45]

Other Plan Provisions

A plan sponsor may include additional provisions in the 457(b) plan for participant loans, defined benefit plan permissive service credit purchases, designated Roth contributions, in-plan Roth conversions, deemed IRAs, plan-to-plan transfers and plan termination.

Participant Loans

A plan may permit participants to borrow from the 457(b) plan using their account balance as security for a loan from the plan. Participant loans in governmental retirement plans are governed by the IRC and regulations under IRC Section 72(p) as well as the Plan's loan procedures. They are not subject to the Department of Labor (DOL) regulations. However, many governmental plan sponsors will include DOL requirements in their loan procedures. Participant loans are nontaxable and are not treated as actual plan distributions, if certain conditions are met. Plan sponsors may establish loan procedures for their 457(b) plans provided the programs are for the exclusive benefit of participants and beneficiaries. Many plan documents incorporate the loan procedures into the plan document by reference, but this is not a requirement for governmental 457(b) plans. If the governmental 457(b) plan permits participant loans, they should be authorized by the plan document.

No participant loans can be made through the use of any credit card or similar arrangement, effective for loans made after December 20, 2019.

The maximum nontaxable loan amount, including loans from any life insurance contracts that are offered as plan investment options, is generally the lesser of:

[45] I.R.C. §§402(c)(4), 414(w)(1)(B).

- 50% of a participant's vested account balance in the 457(b) plan (excluding any balances held in a deemed IRA)
- $50,000, reduced by the excess (if any) of
  - the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made
  - the outstanding balance of loans from the plan on the date on which such loan was made

Note that all loans from all retirement plans sponsored by the employer are taken into consideration when performing this calculation.[46]

Loans are either a general purpose loan or a principal residence loan. A general purpose loan must be repaid within five years unless the loan is used, within a reasonable amount of time, to acquire a principal residence of the participant. Although the regulations do not specify a maximum loan length for principal residence loans, most recordkeepers limit them to 10 or 15 years.

457(b) loan programs generally follow the same rules as loans from qualified plans [under IRC Section 72(p) and regulation §1.72(p)-1], which require that the plan's loan procedures follow a bona fide lender-borrower loan process that includes:

- An application procedure and an approval and denial process
- An expectation that the participant can fulfill the loan repayments
- Safeguards to require repayment as any other prudent lender, with an enforceable agreement and repayment schedule
- A commercially reasonable rate of interest

Example 1 – Loan less than $50,000

Sue's 457(b) plan allows up to two loans at a time. Her vested account balance is $105,000. On January 15, 2020, she obtains a $40,000 loan from the plan, secured by her vested account balance. She has no other loans from this or any of her employer's other retirement plans. On November 1, 2020, when she requests another loan, her outstanding loan balance is $35,000. Her highest outstanding loan balance for the 12-month period immediately prior to the date of her request for a second loan is $40,000. Because she still owes $35,000, she may borrow another $10,000 without exceeding the $50,000 maximum loan limit. [$50,000-($40,000-$35,000)=$45,000; $45,000-$35,000=$10,000]

Example 2 – $50,000 Loan

Jack has a vested account balance of $200,000 and has no prior participant loans. Under the terms of the plan's loan program, which allows for 2 loans to be outstanding at any one time, the maximum amount he can borrow from his account is $50,000 (the lesser of 50% of his vested account or $50,000). On March 1, 2020, he borrows $50,000. He has repaid $8,000, leaving an outstanding loan balance of $42,000, when on December 1, 2020, he requests an additional loan of $8,000. Jack's maximum nontaxable loan amount available on December 1, 2020, is [$50,000 - ($50,000 - $42,000) - $42,000] = $0. Because the maximum loan amount available to him equals $42,000 and he still owes $42,000, Jack is not eligible for an additional loan from the plan. Jack would need to wait until the next 12-month period after his original loan initiation date to be eligible for a new loan from the plan.

Loan programs can be designed to use lower vested percentages and dollar limits than those permitted under the loan regulations. For example, a loan program may provide that only 40% of a participant's vested account balance may be used in calculating the maximum loan amount available. The plan loan program can limit the

[46] I.R.C. §72(p)(2) and (4); Treas. Reg. §§1.72(p)-1, 1.457-6(f).

number of loans to one loan outstanding at a time or provide for multiple outstanding loans at a time. The plan loan program can also allow for a participant loan to be refinanced.

Deemed Distribution

A deemed distribution occurs at the time a participant loan or a portion of a participant loan fails to satisfy IRC Section 72(p) in form or in operation. Under the regulations, a loan which has a form defect at the time the loan is established will result in a deemed distribution of the entire amount of the loan or the amount above the limit at the time the loan is made. Examples of form defects include:

- A general purpose loan which extends beyond 5 years (60 months)
- A loan which does not conform to the substantially level amortization requirement with principal and interest paid at least quarterly
- A loan not evidenced by a legally enforceable agreement
- Any portion of the loan which exceeds the maximum loan amount under the terms of the plan or regulations

A loan which goes into default because the participant fails to make loan repayments when due (including the cure period) will be considered a deemed distribution on the last date a loan repayment was due plus the applicable cure period. The plan's loan procedures should allow for a cure period before it treats the unpaid loan balance as a deemed distribution. A cure period is a period of time to give the participant the opportunity to make up missed loan repayments. Under the regulations, the cure period may not extend beyond the last day of the calendar quarter following the calendar quarter in which the missed loan repayment was due. The cure period also applies to the last repayment due on a loan; i.e., the maturity date of the loan.

Partial loan repayments may be allowed in a loan program; however, a loan repayment which represents less than the required loan repayment amount will be considered a missed repayment for purposes of the cure period. Loan programs may also allow for a loan to be paid off early, which may require the entire outstanding loan balance to be paid in a lump sum.

A deemed distribution is treated like a distribution from the plan for tax purposes only and is not considered an actual distribution from the plan. Therefore, it is not considered an eligible rollover distribution and the mandatory 20 percent withholding rules do not apply. It is a taxable distribution that is reported on Form 1099-R. The deemed distribution may also be subject to an additional 10 percent early withdrawal tax, depending on the age of the participant and the type of plan. Deemed distributions from a participant's Roth account are always considered a nonqualified distribution from the Roth account, even if the participant has met the requirements for a qualified distribution; i.e., the distribution is made more than five years after the first tax year in which a contribution was made and the distribution is made after attainment of age 59½, death or disability. Therefore, the earnings portion of a deemed distribution from a Roth account will always be taxable.

After a deemed distribution, the loan remains an asset of the participant's account and the loan continues to accrue interest. Because the loan remains outstanding, the deemed distribution does not affect the participant's obligation to repay the loan. However, the interest which accrues after the deemed distribution

is not reportable or taxed again (so called "phantom interest"). This is because any loan repayments which are received after a deemed distribution increase the participant's tax basis by the amount of the loan repayments. These repayments are considered after-tax money and will not be taxed again when distributed to the participant. The basis generated with respect to loan repayments made on a previously taxed loan includes the interest that is paid with the loan repayments.

A loan default that has been reported as a deemed distribution has many ramifications on the participant's ability to borrow additional funds from his or her account.

1. Because the unpaid loan amount remains outstanding, a loan that is deemed distributed must be taken into account in calculating the maximum permissible amount of any subsequent loan.
2. Many plan loan procedures are written to restrict the ability of a participant to take a new loan after a loan default until the defaulted loan is either paid in full or offset.
3. If the plan loan procedures restrict participants to one loan outstanding at any one time, the loan that has been deemed distributed will represent the one permitted outstanding loan and no further loans can be made until the deemed distributed loan is either paid in full or offset.
4. If the plan's loan procedures allow for multiple loans and a participant is allowed to take a loan after a loan default, the participant will either be required by regulation to make loan repayments on the subsequent loan through payroll deduction or the plan must receive security from the participant that is in addition to his or her vested account balance. If one of these conditions is not met regarding the subsequent loan, the loan will be treated as a deemed distribution. Note: Receiving additional security outside of the participant's vested interest is very uncommon because this becomes an administrative burden and is not practical.

Loan Offset

A loan offset takes place when the participant's account balance is used to extinguish the participant's outstanding loan obligation. It represents an actual distribution from the plan and unlike a deemed distribution, reduces the participant's account balance by the amount of the outstanding loan balance. A loan offset cannot take place unless the participant is eligible for a distribution from the plan; i.e., a distributable event such as termination of employment, death, retirement, or attainment of age 59½ (when permitted by the plan) has occurred. The loan procedures should be consulted to determine when loan offsets occur. Many plans will offset a loan only after the entire account balance of the participant is paid following a distributable event. Others, which have payroll deduction as the sole repayment method, will offset at the time of the distributable event because the participant can no longer make loan repayments from payroll.

If a loan offset follows a deemed distribution, it is not taxable, but it is reportable on Form 1099-R as an actual distribution from the plan. It is considered an eligible rollover distribution and is not subject to the mandatory 20 percent withholding tax since withholding is only applicable to the taxable portion of the distribution. If a loan offset does not follow a deemed distribution, it is reportable and taxable on Form 1099-R as an actual distribution from the plan. It is also considered an eligible rollover distribution and is subject to mandatory 20 percent withholding. It may also be subject to an additional 10% early withdrawal tax depending on the age of the participant and the type of plan. The tax withholding is limited to the maximum amount of cash distributed from the participant's account. If no cash is distributed from the participant's account, there is no tax withholding due. Loan offsets can be combined with distributions from a participant's core account and reported on the same Form 1099-R.

If the loan offset or the distribution of which the loan offset is a part satisfies the definition of an eligible rollover distribution, the participant may defer taxation by making a timely rollover. A plan sponsor does not have to offer participants the ability to perform a direct rollover of a loan offset. However, the participant would still have a couple of options in order to complete this rollover. The participant could repay the loan prior to the offset and roll over their entire account balance. As an alternative, the participant can complete the rollover of the loan offset distribution by contributing to an IRA or an eligible retirement plan a cash amount equal to the amount of the loan offset by their tax return filing date, including extensions (this extended rollover period for loan offsets is available only when the loan offset is being treated as distributed solely by reason of plan termination or the failure to meet the loan repayment terms because of the participant's severance from employment; otherwise, the normal 60-day indirect rollover period would be applied). This contribution may be made in addition to any direct rollover of the nonloan offset portion of the eligible rollover distribution.

Loan repayment suspension for a nonmilitary leave of absence

The plan may suspend loan repayments during a nonmilitary leave of absence up to a one-year maximum. Interest will continue to accrue on the loan during that time, and the loan repayment suspension cannot extend the five-year repayment period. The participant must still repay the loan within five years from the origination date of the loan.

Loans for employees on qualified military leave of absence

Loan repayments may be suspended while an employee is on qualified military leave of absence. The loan repayment suspension can last for the entire period of military service and is not restricted to one year. A military leave of absence can extend the repayment period beyond five years. Interest on loans made during a qualified military leave will continue to accrue but generally cannot exceed 6% during periods of qualified military leave of absence, which includes fees and other charges for the loan.[47]

Plan-to-Plan Transfers

A 457(b) plan may permit certain nontaxable plan-to-plan transfers of participant and beneficiary account balances to another governmental 457(b) plan without a distributable event. The terms transfer and rollover should not be used interchangeably. Governmental 457(b) plans may accept plan-to-plan transfers only from other governmental 457(b) plans. A governmental 457(b) plan cannot complete a plan-to-plan transfer to nongovernmental tax-exempt 457(b) plans; 457(f), 401(k), 401(a), 403(b) plans or IRAs; and vice versa.[48] Both the transferring plan and the receiving plan must agree to the transfer and their plan documents must include a plan-to-plan transfer provision.

There are three scenarios that permit plan-to-plan transfers between governmental 457(b) plans. The requirements for each are described below.

Requirements for post-severance plan-to-plan transfers

1. The transferor plan provides for transfers;
2. The receiving plan provides for the receipt of transfers;

[47] I.R.C. §414(u)(4-5); Treas. Reg. §1.72(p)-1, Q&A 9; Service Members Civil Relief Act of 2003
[48] Treas. Reg. §1.457-10(b)(1).

3. The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
4. In the case of a transfer for a participant, the participant has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan.

Requirements for plan-to-plan transfers of all plan assets

1. The transfer is from an eligible governmental plan to another eligible governmental plan within the same state
2. All of the assets held by the transferor plan are transferred;
3. The transferor plan provides for transfers;
4. The receiving plan provides for the receipt of transfers;
5. The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
6. The participants or beneficiaries whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they are performing services for the entity maintaining the receiving plan.

Requirements for plan-to-plan transfers among eligible governmental plans of the same employer

1. The transfer is from an eligible governmental plan to another eligible governmental plan of the same employer (and, for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity);
2. The transferor plan provides for transfers;
3. The receiving plan provides for the receipt of transfers;
4. The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
5. The participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participant or beneficiary is performing services for the entity maintaining the receiving plan.[49]

Table 9 compares rollovers with plan-to-plan transfers.

[49] Treas. Reg. §1.457-10(b).

Table 9

Plan-to-Plan Transfers vs. Rollovers (Trustee-to-Trustee Transfers)		
Distribution	Rollovers direct or indirect	Plan-to-plan transfer
Requires distributable event such as termination of employment (may or may not apply to in-plan Roth conversions)	✓	
May be contributed to 401(a), 403(b), governmental 457(b) plans and IRAs	✓	
Required plan provision	✓	
May be distributed at any time as requested by participant and if plan permits	✓	
Must be tracked in a separate account within plan	✓	
Subject to mandatory 20% tax withholding if distributed to participant first then contributed to an eligible receiving plan	✓ — applies if distribution is not directly rolled over to another retirement plan or IRA	
402(f) notices and Form 1099-R tax reporting required	✓	
Permissive plan provision		✓
Cannot be distributed to participant		✓
Can only be contributed directly to a like plan*		✓

* May also be transferred to a governmental defined benefit plan to purchase service credits while participant is still working.

Purchase of Permissive Service Credits

Governmental 457(b), 401(a), 401(k) and 403(b) plans may also permit in-service plan-to-plan transfers of all or a portion of a participant's or beneficiary's account balance to a governmental defined benefit plan to purchase permissive service credits. This transfer is not treated as a reportable distribution for tax purposes and does not require a severance of employment.

The plan-to-plan transfer to purchase permissive service credits is typically initiated by the pension system at the request of the participant or beneficiary. Generally, the pension system is responsible for determining whether service in the defined benefit plan is eligible to be purchased with 457(b), 401(a), 401(k) or 403(b) plan assets.

PPA '06 clarified the definition of permissive service credit to include time periods during which no service has been performed (airtime). Service can be purchased to increase benefits even if the years of service that are being purchased are already being used to determine retirement benefits (prior employee service upon which a retirement benefit is based).

Direct transfers from 457(b), 401(a), 401(k) and 403(b) plans to governmental defined benefit plans are not subject to the limits that apply to nonqualified service credit purchases and are not required to be made to the governmental defined benefit plan of the same employer that is sponsoring the 457(b) or 403(b) plan.[50]

[50] I.R.C. §415(n)(3)(D); Treas. Reg. §1.457-10(b)(8).

Deemed IRAs

Employers may establish a deemed IRA as a separate account within the 457(b) plan. The plan document must allow for deemed IRAs. The deemed IRA is treated as an IRA and is subject to the rules governing IRAs, not the rules governing the 457(b) plan. Voluntary employee contributions to a "deemed IRA," as designated by the employee, are treated as either traditional or Roth IRA contributions.[51] Roth deemed IRAs should not be confused with a plan's designated Roth accounts.

Annual contribution limits to a deemed IRA, excluding rollovers and conversions, within an employer-sponsored retirement plan are subject to the same limits that apply to traditional and Roth IRAs. For 2020, the maximum annual contribution is $6,000, with an additional catch-up contribution of $1,000 for those participants who are age 50 and above. Eligibility to contribute to the deemed IRA is also governed by the rules that apply to traditional and Roth IRAs as shown in the table below.

Table 10

Traditional and Roth IRA Income Limits (Including to Deemed IRAs) — Figures show when full eligibility begins to phase out until no longer available

2020	Single Filers	Married Filing Jointly	Married Filing Separately
Traditional IRA — active participant in a retirement plan	$65,000 – $75,000	$104,000 – $124,000	$0 – $10,000
Roth IRA — contributions (other than conversions)	$124,000 – $139,000	$196,000 – $206,000	$0 – $10,000

The final deemed IRA regulations provide guidance for administering deemed IRAs as part of an employer-sponsored retirement plan. Deemed IRA assets may be held in:

- Separate individual IRA trusts
- A single trust holding both traditional and Roth IRAs that is separate from the trust for the employer-sponsored plan
- A single trust that includes the employer-sponsored qualified plan and the deemed IRA, but with the trustee maintaining a separate account for each deemed IRA

IRAs may not invest in life insurance contracts. The final deemed IRA regulations clarify that retirement plans can use a single trust for both the qualified plan and the deemed IRA — provided that deemed IRA assets are not invested in life insurance contracts. Deemed IRAs that are individual retirement annuities may be held under a single annuity contract or under separate annuity contracts. These contracts, however, must be separate from any annuity contract or contracts of the employer's retirement plan.

The trustee of a deemed IRA must be a bank or nonbank trustee approved by the IRS. The IRS issued final rules permitting governmental entities to serve as nonbank trustees of the deemed IRA trusts, provided:

- Governmental employers demonstrate in writing to the IRS that they are able to administer the IRA trust according to the federal laws and regulations that govern traditional and Roth IRAs
- The deemed IRA will be administered in the best interest of participants and beneficiaries

[51] Treas. Reg. §1.408(q)-1(b).

Governmental employers do not have to satisfy the net worth requirements that apply to IRA trustees and custodians if they have taxing authority under applicable state or local laws. The IRS Commissioner may exempt a governmental unit from other requirements.[52]

Disaster/Public Health Emergency/Severe Weather Relief for Employee Benefit Plans

When hurricanes, floods, wildfires, earthquakes, tornadoes, epidemics or pandemics, and severe storms strike, it can be challenging for plan administrators, service providers and employers to meet plan compliance deadlines and responsibilities in a timely fashion. In addition, participants of those plans could have significant housing and financial needs when coping with such a disaster.

IRC Section 7508A(b) provides that, in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary or other person with respect to such plan affected by a Presidentially declared disaster (as defined in IRC Section 165(h)(3)(C)(i)) or a terroristic or military action (as defined in IRC Section 692(c)(2)), the Secretary of the Treasury may prescribe a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed. This section states that any plan taking advantage of this provision will not be treated as failing to be operated in accordance with its terms (as a result of not complying with any required compliance due date). A parallel provision can be found in Title I of ERISA [ERISA §518].

Note that any postponements of deadlines for any act does not apply unless it is expressly authorized by the IRS in a published revenue ruling, revenue procedure, notice, announcement, news release, or other guidance.[53] While Treasury Regulation §301.7508A-1(c)(1) provides a list of certain actions that relate to retirement plans for which postponements may be granted, the IRS or the Department of the Treasury may elect to postpone many others at their discretion through separate publications.

The need for both plan sponsor and plan participant relief after a disaster is usually much greater than just the need to extend compliance deadlines. Starting in 2005, the retirement plan community started seeing broader based relief from the IRS, which included making retirement plan funds more available to disaster victims. This relief included streamlined loan procedures and liberalized hardship distribution rules.

The close succession of Hurricanes Katrina, Rita and Wilma made the IRS realize that future disasters were inevitable and related relief should be standardized. The IRS responded with Revenue Procedure 2007-56, which established a consistent procedure to be followed when disaster necessitated relief. This revenue procedure declared that in the event of a Presidentially declared disaster or terroristic or military action, the IRS would issue a news release or other guidance authorizing the postponement of acts described in the revenue procedure. The news release or other guidance would also:

1. Define which taxpayers would be considered to be "affected taxpayers"; and
2. Describe the acts postponed, the duration of the postponement, and the location of the covered disaster area.

When there is a Presidentially declared disaster or national emergency that leads to IRS relief specifically for retirement plans, it is important to remember that the individual IRS guidance will provide:

1. What type of relief will be provided;
2. Who the relief will be provided for (sometimes the retirement plan relief extends to family members of the participant's family);

[52] Treas. Reg. §1.408-2(e)(8).
[53] Treas. Reg. §301.7508A-1(e).

3. Where the employer or participant must reside in order to take advantage of the relief (the disaster area is always defined and can be certain counties or parishes within a state, or sometimes whole states); and
4. The duration of the relief period.

It is always important to research the respective guidance for each disaster, because there can be several pieces of IRS guidance released over time due to the prolonged period of need and the extent of the disaster.

Plan Terminations and Frozen Plans

A governmental 457(b) plan may permit the employer to terminate the plan and distribute all account balances to participants and beneficiaries. Terminated plans must:

- Distribute account balances to all participants and beneficiaries as soon as administratively practicable after the termination of the plan
- Give participants the option of directly rolling their account balances to an IRA or another plan that will accept the rollover[54]

Alternatively, the plan could be frozen. Frozen plans cease accepting future contributions but must continue to comply with all requirements necessary to maintain the plan, including amending the plan document when necessary to incorporate any required changes.[55]

457(b) plans may be frozen instead of terminated when governmental employers cease to be governmental employers and cannot continue to maintain 457(b) plans. Instead of terminating the plan and distributing plan assets to participants, these employers may transfer all plan assets to another eligible 457(b) governmental plan within the same state. Both plans must agree to the transfer, and all assets of the frozen plan must be transferred to the receiving plan. Only employees who are employees of the employer sponsoring the receiving plan are permitted to make ongoing contributions to the receiving plan.

Tax Compliance

The tax-deferred status of the plan may be jeopardized if the plan is not operated according to all of its written terms — both required and optional.

A governmental 457(b) plan that does not meet the requirements, regulations and applicable guidance under IRC Section 457 may become an ineligible deferred compensation arrangement, as described under IRC Section 457(f).[56] Compliance errors should be corrected as soon as possible after discovery. When the IRS audits a plan and finds compliance mistakes, it will notify the plan in writing of these mistakes. At this time, the IRS informs the plan sponsor that the plan will cease to be a governmental 457(b) plan on the first day of the plan year that begins more than 180 days after the date of the IRS written notice. If the plan corrects these compliance errors before the first day of the plan year after the 180-day period, it will retain its status as a 457(b) plan, and future contributions will continue to be tax deferred. Compliance errors are best avoided by following the terms of the plan document and establishing written policies and procedures for operating the plan.

[54] Treas. Reg. §1.457-10(a)(2)(ii).
[55] Treas. Reg. §1.457-10(a)(2)(i).
[56] I.R.C. §457(f); Treas. Reg. §§1.457-9(a), 1.457-11.

However, if the plan ceases to remain a governmental 457(b) plan after the IRS compliance deadline, amounts contributed after the plan status has changed will become taxable to participants and included in gross income in the year of the deferral. Any amounts deferred (as well as corresponding earnings) prior to the year that the plan becomes ineligible:

- Continue to be treated as if they were held in a governmental 457(b) plan
- Are not included in the participants' or beneficiaries' gross income until they are distributed[57]

457(b) Plan Submissions to IRS For Voluntary Compliance

The IRS has recognized that failures to follow plan terms will occur due to the complexity of establishing and maintaining a retirement plan. As a result, the IRS established the first retirement plan correction program back in 1991. Over the next several years, it created several other programs for different types of plans and errors. Finally in 1998, all of the various programs were consolidated into a program called the Employee Plans Compliance Resolution Service (EPCRS), which is administered by the IRS through its revenue procedures. Using this program, many plan errors can be self-corrected without applying to the IRS for approval, while other error resolutions must be submitted to the IRS for approval. EPCRS was most recently updated in its entirety through Revenue Procedure 2019-19, but the IRS continues to issue additional revenue procedures from time to time, making modifications to EPCRS.

Unfortunately, EPCRS does not apply to 457 plans. However, governmental 457(b) plans may be submitted to the IRS to correct errors outside of EPCRS by applying similar correction principles outlined in EPCRS. In such cases, the Employee Plans Voluntary Compliance (VC) team retains complete discretion to accept or reject these requests. If accepted, the VC team will issue a special closing agreement. It is important to note that governmental plan sponsors do not have to make a submission to the VC to voluntarily address problems with their 457(b) plans; they can self-correct at any time on their own, and this is encouraged.

The VC will not consider any issue relating to the form of a written 457(b) plan document. Plan sponsors who want the IRS to review their 457(b) plan document or consider any other document form issue may request a private letter ruling (reference Revenue Procedure 2020-4 or its annual successor revenue procedure for details).

[57] I.R.C. §457(b); Treas. Reg. §1.457-9(a).

Additional Information

Additional information has been included as exhibits in this Guide to clarify the federal rules and guidance that govern governmental 457(b) plans. Plan sponsors are encouraged to closely review state and local laws that may apply to these plans and consult their own internal legal counsel on any issues that need further clarification.

Exhibit A
Glossary of Terms

Age 50 Catch-up permits participants to defer an amount, in addition to the maximum deferral limit up to the limit specified in the IRC [Section 414(v)] as indexed, to their deferred compensation account beginning in the year they attain age 50. This amount will not count against the deferral limit in effect for the year.

Alternate payee is the participant's spouse, former spouse, child or other dependent who is entitled to all or a portion of a participant's plan benefit under a court-issued domestic relations order.

Annuity is a contract (issued by an insurance company or within a retirement system) to make a series of guaranteed regular payments, usually over the lifetime of the participant and/or the participant's beneficiary (joint survivor option) or for a fixed period of years.

Automatic enrollment arrangements (programs) permit a plan to automatically enroll new hires and current employees who have not voluntarily enrolled in the 457(b) plan. The plan sets a prescribed deferral amount, such as 3% of compensation, which can be automatically increased in subsequent years. Employees may elect not to have automatic deferrals made to the plan, or they may change the percentage or amount of the automatic deferral contribution.

Beneficiary(ies) is a person or persons designated by the participant or the plan who is entitled to benefits under the plan after the death of a participant or alternate payee.

Custodial account generally refers to an account established to hold 457(b), 403(b), qualified plan or IRA assets. The custodian must be a bank or qualified nonbank trustee.

Deemed IRA is a separate account or annuity under a 457(b) plan or other employer-sponsored qualified plan that is treated and administered as an individual retirement account (IRA). A deemed IRA can be either a Roth or traditional IRA, and required IRA language must be included as part of the plan document.

Deferral means the amount of compensation deferred under an eligible plan by or on behalf of a participant during the calendar year.

Designated Roth contributions (DRCs) are voluntary after-tax salary deferrals that can be made to 401(k), 403(b) and governmental 457(b) plans. Governmental 457(b) plan sponsors may elect to allow employee contributions to designated Roth accounts in their plans, but this is not a mandatory plan provision. Designated Roth contributions should not be confused with deemed IRA or Roth deemed IRA contributions

or with voluntary employee after-tax contributions that may be made to other types of retirement plans (but not governmental 457(b) plans).

Differential pay (military) is wages some employers pay an employee who is on active duty in the Uniformed Services, which represents all or a portion of the pay the employee would have received if still working for the employer instead of serving in the military. Differential pay paid to all participants on active military duty for more than 30 days is not required to be treated as compensation for purposes of determining contributions and benefits under a plan. However, the plan may permit employees to make contributions to the 457(b) plan based on differential wage payments made after December 31, 2009.

Direct rollover (or trustee-to-trustee transfer) is a direct transfer of assets from an eligible governmental plan to a traditional IRA or another eligible retirement plan and is not includible in the gross income of a participant, spousal or nonspousal beneficiary or spousal alternate payee, with the exception of a rollover to a Roth IRA, until distributed from the receiving plan or IRA.

Distributable event is an event that is stated in the plan document that permits participants to receive distributions from their deferred compensation account. These distributions may or may not be eligible for rollover to another eligible plan or IRA.

EGTRRA (Economic Growth and Tax Relief Reconciliation Act) is legislation that was enacted in 2001 that made significant changes to Section 457(b) deferred compensation programs.

Eligible automatic contribution arrangement (EACA) is an optional plan provision that permits automatically enrolled participants who opt out of the plan to withdraw their automatic contributions within 90 days after the first automatic contribution is made to the plan for them.

Eligible governmental employer is an entity that is a state (including the District of Columbia), a political subdivision of a state or any agency or instrumentality of a state. The federal government, along with Indian Tribal Governments, their agencies and instrumentalities, may not establish and maintain 457(b) plans. However, nongovernmental tax-exempt employers (except for churches) may establish 457(b) plans. These plans are subject to different rules than the governmental 457(b) plans and are not discussed in this Guidebook.

Eligible governmental deferred compensation plan is a 457(b) plan that meets the requirements of IRC Section 457(b) and Treasury Regulations §§1.457-3 to 1.457-10 that is established and maintained by an eligible governmental employer.

Eligible rollover distribution is a distribution received from qualified pension or annuity plans, including section 457(b) plans maintained by a governmental employer, that are eligible to be rolled over tax-free to an IRA or qualified plan. They are subject to a flat 20% federal tax withholding rate. The 20% tax withholding rate is required, and the participant cannot choose not to have income tax withheld from eligible rollover distributions.

ERISA (Employee Retirement Income Security Act of 1974) governs most private sector retirement plans in the United States and was enacted to safeguard employee benefit plan participants and their beneficiaries. Governmental employers are not subject to Title 1 of ERISA.

Excess deferral is the amount that is deferred into a 457(b) plan during a calendar year that exceeds the annual maximum deferral limit for that year.

Includible compensation, for plan purposes, is the participant's wages and other taxable compensation for services performed for the eligible employer as defined in IRC Section 415(c)(3); usually defined as

compensation reported in box 1 of Form W-2 for the calendar year plus elective deferrals to 403(b), 457(b), 401(k) and Section 125 or 132(f) plans.

Independent contractor is an individual who performs services for the eligible employer but is not considered an employee.

Indirect rollover (60-day rollover) allows a participant, spousal beneficiary, or spouse or former spouse alternate payee to retain the tax-deferred status of the distribution that they receive from the 457(b) account by rolling this distribution to another eligible plan in which they participate [i.e., IRA, 401(a), 401(k), 403(b), or governmental 457(b) plan] within 60 days from the date they receive the distribution.

Ineligible plan is a plan that is established and maintained by an eligible employer, subject to IRC Section 457, but does not comply with IRC Section 457(b) and Treasury Regulations §§1.457-3 through 1.457-10. These plans are subject to both IRC Section 457(f) and IRC Section 409A and normally only benefit select "top hat" employees of the employer.

In-plan Roth conversions are an optional feature 457(b) plans may adopt after December 31, 2010, which permits participants to roll their non-Roth funds into the same plan's designated Roth account. Plans which adopt in-plan Roth conversions may designate that any vested amounts held in a non-Roth account account may be eligible for an in-plan Roth conversion. The plan may permit these amounts to be converted and rolled over to the plan's designated Roth account without the participant being eligible for a distribution from the plan – provided the other requirements for in-plan Roth conversions are met — or may restrict their availability to only those participants who experience a distributable event under the plan.

Loan permits a participant or beneficiary to borrow from his/her account under a bona fide lender-borrower loan process, pursuant to IRC Section 72(p), without the loan proceeds being subject to federal income taxes.

Normal retirement age (NRA) is an age or range of ages designated by the plan for purposes of the Special 457(b) Catch-Up provision. The plan may permit the participant to elect their own NRA. NRA must be spelled out in the plan document, either as a specified age or a range of ages, beginning with age 65, or if earlier, the earliest age the participant can retire with a full and immediate benefit from the primary pension plan and ending not later than age 70½. The plan document may designate an earlier NRA for police or firefighters only, which can be no earlier than age 40 or a range of ages between 40 and 70½. An entity sponsoring more than one eligible 457(b) plan cannot permit participants to have more than one NRA under all plans that it sponsors.

Participant(s) is an employee who is currently or has previously (current employee or former employee) deferred compensation into the plan by salary deferral agreement or by nonelective employer contributions and has not received a full and complete distribution from his/her account. Only individuals who perform services for the employer as an employee or independent contractor are eligible to defer income into the plan.

Participation agreement (or salary deferral agreement) is the written agreement that an employee completes and signs to participate in the plan. It designates the amount the employee elects to have withheld from his/her paycheck and contributed to the plan.

Pension Protection Act of 2006 (PPA '06) made permanent the EGTRRA retirement plan provisions that were due to expire after 2010. It also contained provisions for automatic enrollment programs and clarified a number of existing provisions such as service credit purchases with transfers from governmental 457(b) plans.

Permissive service credit purchases are direct transfers from the 457(b) plan to qualified governmental defined benefit plans that enable a participant to enhance his/her benefits in the defined benefit plan by purchasing additional service credits or by repaying previously refunded contributions and earnings due to a forfeiture of service credit under the plan. Service credits may be purchased in cash or by using amounts that have been directly transferred in a nontaxable transfer from 457(b), 403(b), and 401(k) plans to the governmental defined benefit plan.

Plan document is a written document or set of documents adopted by the plan sponsor to establish and maintain the eligible 457(b) plan and its trust. The plan document sets forth the terms for eligibility for participation and benefits as well as the rules and requirements for operating the plan in compliance with all applicable laws and regulations. All eligible 457(b) plans of an employer are treated as single eligible plan.

Plan-to-plan transfers are nontaxable transfers of assets from one governmental 457(b) plan trustee to another 457(b) governmental plan trustee. Plan-to-plan transfers can be initiated by participants or employers between eligible 457(b) governmental plans of the same employer, between 457(b) plans of a former and new employer or from the eligible 457(b) plan to a qualified governmental defined benefit plan for purchase of permissive service credits. Except for transfers to governmental defined benefit plans to purchase service credits, plan-to-plan transfers cannot be made from governmental 457(b) plans to 401(a), 401(k), 403(b), 457(b) plans of tax-exempt entities, 457(f) plans, or IRAs and vice versa.

Qualified default investment alternatives (QDIAs) are default investment alternatives used in ERISA participant-directed plans when participants fail to provide investment direction. QDIAs relieve ERISA plan fiduciaries from liability for the investment performance of the default investments if certain notice, disclosure and other requirements are met.

Qualified domestic relations order (QDRO) is an order, judgment or decree generally issued by a state domestic relations court [a domestic relations order, or "DRO" (including approval of a property settlement agreement)], made pursuant to state domestic relations law (including a community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a participant and that has met the requirements of IRC Section 414(p)(1)(A)(i) and (B) and the plan to be deemed qualified (a DRO that has been approved as a QDRO).

Qualified military service is any service in the Uniformed Services (Army, Navy, Marines, Air Force, Coast Guard or their reserve components, as well as the National Guard called up by the federal government) that entitles an individual to re-employment rights under USERRA (Uniformed Services Employment and Reemployment Rights Act) because of their military service.

Required minimum distribution (RMD) is the federal statute [under IRC Section 401(a)(9)] that establishes the latest date that a participant or beneficiary (spousal or nonspousal) must begin taking minimum payments from a retirement plan. Participants are generally required to begin taking RMDs by April 1 of the calendar year following the year they attain age 72, or (except for 5% owners) the year of retirement, if later. Governmental 457(b) plans were one of the plan types afforded the option of waiving the 2009 RMDs.

Rollovers are generally distributions from a 401(a), 403(b), 457(b) plan or IRA that are eligible to be contributed to another eligible retirement plan or IRA. Rollover distributions require the participant to be eligible for a distribution under the terms of the plan such as severance of employment. There are two types of rollovers, direct and indirect (defined separately in this section). Certain distributions, such as those for unforeseeable emergencies, deemed distributions for defaulted loans, required minimum distributions, corrective distributions and payments expected to last more than 10 years, are not eligible for rollover.

Salary deferral agreement (or participation agreement) is the agreement that an employee completes and signs to participate in the plan; it is also used to designate the amount of income the employee elects to defer from his/her paycheck.

Severance of employment occurs when a participant dies, retires or otherwise has a severance from employment with the eligible employer.

Special 457(b) Catch-Up is an optional plan provision that allows participants to contribute underutilized (unused) deferrals to the employer's plan from prior years in any or all of the three consecutive calendar years immediately prior to the year the participant reaches the plan's normal retirement age. It applies only to underutilized deferrals to the 457(b) plan of the employer sponsoring the 457(b) plan in which the underutilized deferrals occurred. It does not apply to underutilized deferrals to another employer's 457(b) plan.

457(g) trust is a written document that constitutes a valid trust under state law. The terms of the trust must require that the assets and income of the trust are for the exclusive benefit of 457(b) participants and their beneficiaries. Custodial accounts and annuity contracts are treated as trusts. An annuity contract does not include a life, health or accident, property, casualty or liability insurance contract.

Trustee-to-trustee transfers (or direct rollovers) are direct transfers of assets from eligible governmental plans to an IRA or another eligible retirement plan when the participant is eligible for a distribution. They are not includible in the gross income of a participant or beneficiary until distributed to the participant or beneficiary from the receiving plan. A 20% federal tax withholding does not apply to amounts that are directly rolled over to another retirement plan or IRA.

Underutilized deferrals represent the amount that the participant was eligible to defer to the plan in prior years but didn't. Underutilized deferrals are calculated by determining the maximum amount that the participant was eligible to defer in each of the years that he/she was eligible to participate in the plan and then deducting the amount actually deferred. The remaining amount represents the total underutilized deferrals that can be contributed under the Special 457(b) Catch-Up provision. The calculation of underutilized deferrals can involve prior contributions to other retirement plans in addition to the 457(b) plan.

Unforeseeable emergency is defined as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary or the participant's or beneficiary's spouse or dependent; loss of the participant's or beneficiary's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. Unforeseeable emergencies may also be caused by imminent foreclosure on or eviction from the employee's home or medical and funeral expenses. Distributions for unforeseeable emergencies may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise or by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

USERRA (Uniformed Services Employment and Reemployment Rights Act) is a federal law designed to prevent employers from discriminating or retaliating against any employee or future employee with regard to hiring, retention, promotion or any employment benefit because of military service.

Exhibit B
Required 457(b) Plan Provisions

The following table identifies the provisions of the 457 regulations and subsequent laws and guidance that the plan sponsor must comply with for the plan to be considered an eligible governmental deferred compensation plan. These provisions generally must be incorporated into the plan document.

Topic/Reference	Required §457(b) Plan Provisions
Compliance in form and operation §1.457-3	An eligible plan must be established in writing and contain all the material terms and conditions for benefits under the plan. If optional provisions are included in the plan, they must meet, both in form and operation, the requirements set forth in the Internal Revenue Code and regulations.
Agreement for deferral §1.457-4(b)	The salary deferral agreement must be entered into prior to the first day of the calendar month in which the amount deferred would otherwise be paid to the employee (cash basis) or otherwise made available. For new employees, the deferral agreement must be entered into before the first day the employee performs services for the employer.
Maximum deferral §1.457-4(c)	The maximum amount that an employee can contribute to the eligible plan is established in the Internal Revenue Code, which is the lesser of a specified dollar amount ($19,500 in 2020) or 100% of includible compensation. The employer could establish a lower dollar limit than the IRC maximum, but this would be unusual.
Excess deferrals §1.457-4(e)	Excess deferrals (deferrals that exceed the annual maximum deferral limits) are taxable to the participant in the year the deferral was made to the plan. The plan must provide for distribution of the excess deferrals (and net income) as soon as administratively practicable after the excess is identified.
Timing of distribution §1.457-6	An eligible plan cannot distribute assets to a participant or beneficiary unless there is a distributable event such as severance from employment, attainment of age 59½ (from the Bipartisan American Miners Act of 2019; the 457(b) regulations have not yet been amended to reflect this change), unforeseeable emergency withdrawals, de minimis distributions (small account balances) and loans.

Topic/Reference	Required §457(b) Plan Provisions
Required minimum distribution rules §1.457-6(d)	The plan must comply with the required minimum distribution (RMD) rules specified in IRC Section 401(a)(9). In general, the plan is required to begin RMDs to a participant by April 1 of the calendar year following the later of the calendar year the participant attains age 72* or retires.
Trust, custodial account or annuity §1.457-8	Assets of an eligible governmental 457(b) plan must be held in a governmental 457(g) trust, custodial account or annuity contract.
Contribution of differential pay IRC §3401(h); §414(u)(12)	For payments made after December 31, 2008, differential pay to employees on active military duty must be counted as compensation for retirement plan purposes and may be contributed to the plan.
Survivor benefits for employees who die on active military duty IRC §401(a)(36)	Survivors of employees who die while on qualified military duty are entitled to any additional benefits the plan would have provided if the employee had returned to work with his or her former employer and then terminated employment because of death.

* The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") increased the age component of the required beginning date (RBD) for required minimum distributions (April 1 of the calendar year following the year) from age 70½ to age 72 with respect to individuals who attain age 70½ after December 31, 2019. The 457(b) regulations have not yet been amended to reflect this change.

Exhibit C
Optional 457(b) Plan Provisions

The following table identifies provisions of the 457 regulations and laws enacted since the issuance of the final regulations that may be adopted by the plan but are not required for eligible governmental deferred compensation plans. Any optional provision included in the plan must meet the relevant requirements under section 457, its regulations and subsequent laws and guidance.

Topic/Reference	Optional §457(b) Plan Provisions
Age 50 Catch-Up §1.457-4(c)(2)	The plan may permit Age 50 Catch-Up contributions in accordance with IRC Section 414(v) to be made by participants beginning in the calendar year they attain age 50. This additional contribution and the Special 457(b) Catch-Up cannot be made in the same calendar year.
Special §457 Catch-Up §1.457-4(c)(3)	A participant may be allowed to contribute underutilized deferrals, up to two times the annual limit, during one or more of the participant's last three consecutive taxable years ending before the year in which the participant attains normal retirement age (NRA).
Optional normal retirement age for police and firefighters §1.457-4(c)(3)(v)	A special rule may be included in the plan to allow qualified police or firefighters to designate an earlier NRA than under the general rule (no earlier than age 65 or, if earlier, the age the participant is eligible to retire from their primary plan without an actuarially reduced benefit), but not earlier than age 40. The plan can designate a specific age (e.g., age 40) or a range of ages between 40 and 70½ for the NRA of these particular groups.
Deferral of sick, vacation and back pay §1.457-4(d); 1.415(c)-2(e)(5)	**Deferral of sick, vacation and back pay for current employees:** The plan may permit a participant to elect to defer accumulated sick pay, accumulated vacation pay or back pay to the plan, provided the contribution limits for the year are not exceeded. **Post-severance deferrals:** The plan may also provide for post severance deferrals. These amounts must be paid to the plan by the later of 2½ months after severance from employment or the last day of the calendar year in which the severance occurs. These contributions are coordinated with the contribution limits in effect for the calendar year.

Topic/Reference	Optional §457(b) Plan Provisions
Unforeseeable emergency withdrawals §1.457-6(c)	The plan may permit plan participants and beneficiaries to receive unforeseeable emergency withdrawals that meet the requirements of the regulations and IRS Notice 2007-7 and Revenue Ruling 2010-27.
Withdrawal of elective deferrals from eligible automatic contribution arrangements (EACA) IRC §414(w)(2)	This provision permits automatically enrolled participants who opt out of the plan to withdraw their automatic contributions and earnings within 90 days after the first automatic contribution is made to the plan for them. EACA distributions are not eligible for rollover.
Withdrawal of elective deferrals for active duty military personnel IRC §414(u)(12)(B)	The plan may permit employees who are active military duty for more than 30 days to withdraw their elective deferrals from the plan. Employees who make these withdrawals generally may not make contributions to the plan for six months from the date the elective deferrals were distributed.
Benefit accruals for death and disability resulting from active military service IRC §414(u)(9)	The plan may, but is not required to, treat an employee who dies or becomes disabled while on qualified military duty as having been rehired by the employer on the day before the date of death or disability and having terminated employment on the actual date of death or disability. This provision entitles such an employee to any restoration benefits available under the plan such as counting qualified military service for vesting and benefit accrual purposes.
Distributions of smaller accounts (de minimis distributions) §1.457-6(e)	A provision may be included to allow the distribution of small account balances, no greater than the dollar limit established in IRC Section 411(a)(11)(d), when the account has been inactive (no new deferrals during the past two years) and the participant has not received a distribution under this de minimis distribution provision in the past. These distributions can be established as an automatic distribution (authorized by the plan sponsor) or at the direction of the participant. These distributions are eligible to be rolled over into another eligible plan or IRA.
Loans from eligible plans §1.457-6(f)	A loan program may be established as part of an eligible deferred compensation program that follows the same rules as loans from qualified plans under IRC Section 72(p) and regulation 1.72(p)-1.

Topic/Reference	Optional §457(b) Plan Provisions
Frozen and terminated plans §1.457-10(a)	The plan may provide for a plan freeze or plan termination. Frozen plans no longer accept ongoing contributions from all participants or may limit contributions to existing participants. If an employer is no longer eligible to maintain a governmental 457(b) plan, the employer may freeze the plan (no further contributions are made) or terminate the plan and make distributions to the plan participants. Participants will not be eligible for a distribution from the frozen plan until they have a distributable event, such as severance from employment. Distributions from frozen plans may be eligible for rollover. Terminated plans must distribute all plan assets to all participants and beneficiaries within a reasonable period of time after the plan is terminated. Distributions may be eligible for rollover.
Plan-to-plan transfers §1.457-10(b)(1)	An eligible plan may permit certain nontaxable and non-tax-reportable plan-to-plan transfers of participant and beneficiary assets to another eligible governmental plan, if both plans provide for such transfers and certain other conditions are met. Plans may permit the following types of non-taxable transfers:
-10(b)(2)	Post severance of employment transfer between eligible governmental plans — participant must have a severance of employment with the transmitting plan and be performing services for the employer sponsoring the receiving plan.
-10(b)(4)	Transfers among eligible governmental plans of the same employer — if an employer offers more than one eligible governmental plan, participants and beneficiaries may be allowed to transfer their assets between these plans without a severance of employment.
-10(b)(8)	Exception for purchase of permissive service credit — an eligible plan may permit an in-service transfer of assets from an eligible plan to a qualified governmental defined benefit plan for the purpose of buying permissive service credit [as defined in IRC Section 414(d)].
Portability of lifetime income options **IRC §457(d)(1)**	If a lifetime income investment is no longer authorized to be held as an investment option under the plan, the plan may allow qualified distributions of the lifetime income investment, or distribution of a lifetime income investment in the form of a qualified plan distribution annuity contract.

Topic/Reference	Optional §457(b) Plan Provisions
Qualified domestic relations orders (QDROs) §1.457-10(c)	The plan sponsor may determine that a domestic relations order is a qualified domestic relations order [as defined in IRC Section 414(p)] allowing the plan to make distribution to an alternate payee prior to the date that the participant is entitled to a distribution. A domestic relations order submitted for a 457(b) plan has to meet only the requirements of IRC Section 414(p)(1)(A)(i) and (B) to be deemed qualified, although the plan can impose other requirements. The distributed amount under a QDRO is taxable to the spousal or ex-spousal alternate payee.
Rollovers into the eligible 457(b) plan §1.457-10(e)	Eligible government 457(b) plans may accept eligible rollover distributions from other eligible retirement plans, including 401(a), 401(k), 403(b), other governmental 457(b) plans and IRAs only if the rolled-in amount and subsequent earnings are maintained in a separate rollover account. The rules of the 457(b) plan apply to the rolled-in amounts (plus associated investment earnings), which must be maintained in a separate account. However, an additional 10% early withdrawal tax may apply to distributions prior to age 59½ from a 457(b) rollover account that accepts rollovers from 401(a), 401(k) and 403(b) plans or IRAs unless an exception applies.
Anytime distributions from rollover accounts IRS Revenue Ruling 2004-12	The plan may, at the request of the participant, distribute amounts from the rollover account prior to the participant being eligible for a distribution from the plan. These distributions will be subject to the taxation rules that apply to rollover distributions that are not rolled over to another retirement plan or IRA.
Deemed IRAs §1.457-10(f); §1.408(q)-1	A plan sponsor may adopt a deemed IRA provision as part of the eligible plan design. The deemed IRA can be either a traditional or Roth IRA and must comply with the requirements as outlined in the final deemed IRA regulations.
Designated Roth contributions IRC §402A	Designated Roth contributions are after-tax elective salary deferrals that are contributed to the plan's designated Roth account within the elective deferral account. Special rules apply to designated Roth contributions.
In-plan Roth conversions IRC §402A; Notice 2010-84 & 2013-74	In-plan Roth conversions occur when a participant rolls over pre-tax assets from a non-Roth account into a designated Roth account within the same plan. These in-plan Roth conversions are available whether or not the participant has experienced a distributable event, as a matter of plan design.

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NRM-0363AO.12 (10/20)