THE ACCE ADVANTAGE | Benefits for Members by Members

457b Opportunities & Responsibilities

Recent regulatory changes and feedback we've been receiving from members prompt us to remind you of steps you may want or ***need*** to take regarding the 457b investment option. Many members take advantage of the 457b plan offered by ACCE, but the rules and opportunities apply, regardless of which program you're in.

Confusion abounds! Some of the misinformation out in the marketplace regarding 457b plans stems from the fact that the IRS uses roughly the same label and numbers when referring to plans available to government employees as are used for programs available to non-profit entities. The rules vary significantly, however, for the two sectors. If you "google" 457b, you might discover pages containing rules related to government workers that simply don't apply to you. There are other IRS directives also under the "457" label. Frankly, some financial advisors don't know the difference. So, what do you need to know in order to make the right decisions related to 457b accounts?

Who?

Keep in mind that not all members of your staff are eligible for 457b programs; only chief executives and "select group of management."[1] may be enrolled. This non-qualified investment plan was established by the Federal government for you and your relatively highly paid management team, not as a replacement for qualified benefit plans offered to your entire staff. Keep in mind that however you define the select group of employees eligible for the 457b plan, total eligible employees should not exceed 10% of staff.

How Much?

457b Plans are becoming a more valuable and attractive method for investing in your retirement future because the amount you may invest is ***in addition*** to amounts you may be eligible to put away through a 401(k) or retirement plan. Each year, you may save up to the maximum annual elective deferral limit ($20,500 in 2022) into your 457b program, regardless of the amount you defer and invest through a qualified plan. That's right – ***you can do both!***

A catch-up provision allows those of you who are more "seasoned" to place even more money into your 457b account. The catch-up rules for a 457b are *different* than those applying to a 401(k) plan. Instead of a per

[1] The employer defines the select group or highly compensated employees.

year dollar amount catch-up for the over-50 crowd, as allowed under 401(k) rules, the 457b program allows a participant to *truly* catch up. Over the course of the three years prior to the normal retirement age as defined by the plan document[2], you may contribute amounts equal to the difference between the money you *actually* deferred in the plan and the amount you were *allowed* to submit during years in which your organization had a 457b plan in place. So, if you deferred $13,000 into the plan during a year in which the limit was $19,500, you can add the difference ($6,500) to the normal maximum you would be allowed during your last three years on the job. The catch-up limit for any given year in which you are funding the missed deferrals is equal to the regular annual limit. Meaning, if the annual limit is $20,500 then you can do a second $20,500 catch-up assuming you left that much on the table from previous years.

The annual and catch-up limits apply to the total amount you put in as an employee and the amount your employer may choose to match. When it comes to 457b programs, the IRS doesn't recognize any difference in the source of the money; the limit is the limit.

How Often?

Additional confusion in the marketplace relates to ***when*** an employee may start, and make contributions to, a 457b plan. In general, a plan like this can be set up any time you can get your executive committee or board to approve one. It's not a big deal or major expense at the front end. A board resolution and a call to ACCE will get the very modest paperwork in process.

You can make contributions at a time that is convenient for you – i.e. bonus time, after reaching FICA withholding max, at the end of a fiscal year, feeling guilty about lack of savings, etc. No withholding schedules must be set up in advance.

When Is It Mine?

Sometimes, the biggest obstacle to establishing a 457b plan is the fear that such an investment is somehow unsecure, since the asset technically remains with the employer until such time as it is received by the employee. ACCE has been in the 457b business for a long time – over 40 years. We have never experienced or been informed of a default by an employer on a 457b amount owed to an employee. While the account remains an asset of the employer and, as such, vulnerable to creditors under the law, the potential for such loss is minimal.

[2] The ACCE 457b plan defines normal retirement age as 67.

There are, of course, rules about when you take the money out of these accounts and the tax consequences when you do. The 457 vehicle was crafted in order to assist non-profit executives to achieve retirement goals, not as a mid-career tax evasion scheme. Prior to retirement, you'll need to designate an "initial election" for your anticipated withdrawal schedule. You can't make withdrawals from the account prior to retirement, without creating a fully taxable event. If you leave your current job and move to an employer that does not offer a 457b plan, you can keep the plan alive at your former employer indefinitely, but you can't make further contributions. Some departing employees who aren't at retirement age simply cash out their plans and take the one-time "hit" on their taxes.

Unfortunately, the assets of a 457b plan can't be rolled into a qualified plan like a 401(k), or even into a personal IRA. You may, however, roll the money into another non-governmental 457b plan at another organization.

Where?

The ACCE 457b program through The Principal Financial Group is ***uniquely*** flexible. Investors may choose from a very deep and wide array of designated mutual funds. The funds in the ACCE-Principal lineup provide a range of risk and performance expectations to satisfy all participant needs.

What Other Options Are There?

There are few tax deferred retirement investment options available to those who lead chambers and other non-profit entities. This is a very deliberate attempt by the IRS to discourage large golden parachutes for big associations and charities. They also want to encourage smaller associations (like chambers) to offer qualified plans covering all of their employees, so the avenues open to you for "creative" deferred compensation are limited.

Outside of the 457(b) plan, deferred compensation programs must include "substantial risk of forfeiture", which means just what it says - there must be a "substantial" risk that they won't get the money. For example, compensation held under a 457(f) plan is subject to a "substantial risk of forfeiture" if the right to such compensation is conditioned on the future performance of substantial services, such as continued employment until a date certain (unless the employee dies or becomes disabled, two recognized exceptions) - e.g., "golden handcuffs". IRS regulations indicate that non-compete agreements and consulting agreements are presumed not to be substantial, so there is significant risk in relying upon them. "Rolling risks of forfeiture" (i.e., where an employer or executive may at a certain point prior to the date payment would otherwise be made further extend the period of service) are also questioned by the IRS under 457(f) (and are subject to limiting special rules under new Code section 409A). In addition, the IRS has informally

indicated that salary deferrals, as opposed to employer non-elective deferrals, will be presumed not to be subject to a substantial risk of forfeiture (they tend to disbelieve that an employee would subject his or her own funds to a substantial risk of loss). Finally, amounts paid only on involuntary termination, and forfeited on voluntary termination, might constitute severance pay, which is exempt from 457(f) (see 457(e)(11)), but the IRS will look closely at the arrangement to make sure it is bona fide severance pay and not disguised deferred compensation.

Why Not?

With very little administrative burden, zero start-up or administrative cost, extreme flexibility for participants, and no required employer contribution… why would you not encourage your chamber to adopt a 457b program. Perhaps the only reason not to would be because of worries about the solvency of your organization. Not a small factor, but also not a common concern. If you need assistance pulling your organizational finances together, ACCE may be able to help too.