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457(b) Plans

457(b) Plans

What is a 457(b) Plan?

- A 457(b) Plan is an eligible non-qualified, tax deferred compensation plan under section 457(b) of the Internal Revenue Code and a retirement savings plan available to state and local government employers and certain tax exempt non-government 501(c) employers that are not churches
- Contributions are pre-tax with no Federal income tax paid until distribution, however state income tax may apply. Earnings grow tax deferred until distribution
- Not generally subject to ERISA (non-government 457(b) plans are subject to certain parts of ERISA)
- Although 457(b) plans may allow Roth Contributions, MetLife does not provide this feature for certain products

457(b) Plans

457(b) Plan Ownership

- The trustee or custodian holds a governmental plan's annuity contract, or custodial accounts for the exclusive benefit of plan participants and their beneficiaries.
- Assets maintained by a non-governmental tax exempt employer remain the property of the employer. Non-governmental plans may have a rabbi trust but are not required to.

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457(b)

Withdrawals/Distributions

- Withdrawals from the plan are generally limited to a triggering event such as attaining age 59½ , separation from service or for unforeseeable emergency withdrawals.
- Emergency withdrawals are subject to more stringent requirements than hardship distributions from 403(b) or 401(k) plans; Unlike 403(b) or 401(k) plans, emergency withdrawals from a 457(b) plan do not allow for the purchase of principal residence or college tuition expenses.

457(b)

Reasons for Withdrawals/Distributions

An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from:

- illness or accident of the Participant, the Beneficiary, or the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a))
- loss of the Participant's or Beneficiary's property due to casualty
- the need to pay for the funeral expenses of the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a))
- or, other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's or Beneficiary's control, or which applicable law may define as an unforeseeable emergency.

457(b)

Withdrawals/Distributions

- Taxable distributions are subject to ordinary income taxation, although there is no 10% penalty for withdrawals before age 59½*
- Before taking withdrawals/distributions, participant should consult with tax and legal advisers

*Unless attributable to rollovers from a plan subject to the 10% tax penalty.

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Rollover or Direct Transfers

- Governmental employers must allow eligible rollover distributions to IRAs, 401(a), 403(a), 403(b), and other governmental 457(b) plans
- If a plan accepts rollovers/transfers from a non 457(b) plan, it must provide for separate accounting since distribution before the participant reaches the age of 59½ may be subject to a 10% distribution penalty
- A governmental 457(b) plan may make direct transfers into a defined benefit governmental plan to allow for the purchase of permissive service credit, subject to certain restrictions

Section 457(b)

Rollover or Direct Transfers

- An “eligible retired public safety officer”, subject to certain restrictions, may exclude up to $3,000 per year from taxable gross income for amounts that are transferred directly from a governmental 457(b) plan to the provider of accident, health or long term care insurance for the payment of premiums that provide coverage for the retiree, spouse and dependents

Section 457(b)

Governmental 457(b) Catch-up Deferrals

- A governmental 457(b) plan may allow age-50 catch-ups of an additional $6,500 in 2022.
- The plan may allow a special "last 3-year catch-up," which allows you to defer in the three years before you reach the plan's normal retirement age:
  - twice the annual 457(b) limit (in 2022, $20,500 x 2= $41,000), or
  - the annual 457(b) limit, plus amounts allowed in prior years that you didn't contribute.

If a governmental 457(b) allows both the age-50 catch-up & the 3-year catch-up, you can use the one that allows a larger deferral, not both.

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Section 457(b)

Non-Governmental Plan Participation

- Non-governmental 457(b) plans must be “top hat” plans maintained primarily for a group of management or highly compensated employees
- To establish itself as a ”top hat” plan, an employer must file a one-time statement with the U.S. Department of Labor within 120 days of establishment

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Section 457(b)

Non-Governmental Plan Funding

- A non-governmental 457(b) plan must be unfunded in order to avoid taxation of amounts credited under the plan.
  - Plan assets are not held in trust for employers, but remain the property of the employer
  - Assets cannot be set aside for the exclusive benefits of participants
- Employee deferrals in non-governmental plans are frequently placed in "rabbi trusts".
  - A rabbi trust creates security for employees because the assets within the trust are typically outside the control of the employers and are irrevocable
  - The trust is funded, but the trust assets remain available to creditors.

Section 457(b)

Loans

- Loans in 457(b) plans of non-governmental tax exempt employers are not permitted
- Although 457(b) governmental plans allow for loans, MetLife does not provide administrative services for this feature

Differences between 457(b) plans of Governmental and Non-Governmental Employers

	Governmental Employer	Non-Governmental Employer / Tax Exempt Employer
Funding Status of Plan	Assets must be held in a 457(g) Trust custodial account or annuity contract for exclusive benefit of participant and beneficiaries	Plan must be unfunded. All amounts must remain the property of the employer until made available to participants or beneficiaries. Rabbi trust may be used to protect from employers refusal to pay deferred compensation obligation
ERISA Title 1 Reporting and Disclosure Requirements	N/A	N/A if one time statement filed with DOL within 120 days of plan establishment
Participant Eligibility	Determined by employer. May be Discriminatory.	Determined by employer; must be limited to select group of management or highly compensated employees
Participant Investment Direction	Yes, plan permitting	Yes, plan permitting investment instruction by participants
Catch-up Contributions for Participants 50 and older	Permitted after contribution limit is exceeded; not permitted in three years prior to reaching normal retirement age if catch-up provision is used	Not permitted
Incoming rollovers and transfers	Plan may agree to accept pre-tax rollovers from other qualified plans such as 401(a), 403(b), IRAs if separate accounting is provided	Plan may agree to accept from other non-governmental plans, subject to IRS 457(b) regulations

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Differences between 457(b) plans of Governmental and Non-Governmental Employers

	Governmental Employer	Non-Governmental Employer / Tax Exempt Employer
Benefits Protected from Employer Bankruptcy	Yes	No
Benefits Protected from Participant Bankruptcy (IRS claims excluded)	Maybe under state spendthrift trust laws or applicable state statutes	Maybe, through state law exemption
Loans	May be permitted (MetLife does not provide)	Not permitted
Minimum age for allowable in-service distributions*	Withdrawals prior to age 59½ are generally prohibited unless you sever from employment prior to attaining age 59½.	Withdrawals are generally prohibited unless you sever from employment.

*The minimum age was reduced to 59½ for governmental 457(b) plan elective distributions prior to severance by Division M, Section 104(b) of the Further Consolidated Appropriations Act, 2020.

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Differences between 457(b) plans of Governmental and Non-Governmental Employers

	Governmental Employer	Non-Governmental Employer / Tax Exempt Employer
Federal Income Tax withholding and reporting of distributions	10% of taxable amount withheld not eligible for rollover to a qualified plan unless participant opts out of withholding or increases withholding percentage. 20% of eligible rollover distributions not rolled over to another qualified plan. Tax Reporting done on IRS Form 1099	Distributions considered wages under 3401(a) subject to income tax withholding. Tax reporting on IRS Form W-2. 10% of taxable amount of distribution withheld to beneficiaries unless non-annuitized distribution, otherwise wage withholding rates apply, unless beneficiary opts out of withholding or increases withholding percentage.
State Income Tax Withholding and Reporting of Distributions	If Federal income tax withheld, some states require withholding	Distributions to participants withheld using published state supplemental wage withholding or graduated wage withholding tables If Federal income tax withheld, some states require withholding

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Differences between 457(b) plans of Governmental and Non-Governmental Employers

	Governmental Employer	Non-Governmental Employer / Tax Exempt Employer
Outgoing rollovers and Transfers	May be permitted to governmental Defined Benefit plans to purchase service credit. Plan must permit eligible rollover distributions to IRAs or other retirement plans.	May be permitted to other non-governmental 457(b) plans, subject to IRS 457(b) requirements
IRS Premature Distribution Penalty prior to Age 59½	N/A to distributions to regular 457(b) contributions. May apply to taxable portion of distributions rolled into plan from other qualified plans such as 401(a), 403(b), IRAs	N/A
Designated Roth Accounts	Yes (MetLife does not provide)	No

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Disclosure

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