



FSLG | Federal, State, and Local Governments

Government Entity Retirement Plans

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Government Entity Retirement Plans

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Government Entity Retirement Plans

Tax Exemption for the
Trust: IRC 501(a)

A payroll accounting
expense for the
Employer: IRC 404

Tax Deferral for the
Employee: IRC 401(a);
403(b); 457(b)



Defined Benefit & Defined Contribution

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Retirement Plans:

- 401(a)
- 403(b)
- 457(b)
- Simple IRA
- SEP
- Payroll deduction IRA



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Constructive Receipt

Taxable when received or made available to an employee

Tax-Deferred

Amounts that are not taxable compensation at the time of the transaction

Employer Contributions

Amounts contributed for the benefit of employees by employers

Salary Reduction Agreement

Allows for amounts recognized as a cash or deferred election because the employee elects to reduce cash or elects to forego an increase in cash compensation.



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Mandatory Employee Contributions

Amounts required to be deducted from employee salary and credited to a retirement account.

Substantial risk of forfeiture.

- *Exists when rights to compensation are conditioned upon future performance of substantial services by any individual.*
- *Requirements of employer contained in Rev. Rulings 77-462, 81-31, 81-36, 87-10 and 2006-43.*

Employer "Pick-Up"

Contribution amounts designated as employee contributions paid or "picked up" by the employer to allow for favorable tax treatment as employer contributions exempt from income tax.



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401(a) Defined Benefit Plans

Provide a predictable benefit to achieve the estimated retirement needs of employees.

Employer contributions that are made under a salary reduction agreement are deferred from income tax but are subject to FICA tax.

Government employees recognize the 401(a) plan as the public retirement system where employer & employee make required minimum contributions

Employee contributions made under a salary reduction agreement that are **not** designed to comply with § 414(h)(2)), (see Rev. Rul. 2006-43 re salary reduction not ER-pickup) are taxable for FIT & FICA.

Employer contributions to these plans are usually deferred from income tax until distributed and exempt from social security and Medicare tax.

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Tax-sheltered Annuity 403(b) IRC § 170(b)(1)(A)(ii)

Defined contribution plans:

- a separate account per employee
- benefit depends upon contributions and investment results or expenses
- over the life of the retirement account

- Public Schools
- Certain tax-exempt organizations
- Certain ministers
- Participants may defer amounts from income tax up to an annual limit.
- Annual limit for certain employees with >15 yrs service may be more
- Catch-up contributions may be made for employees ≥ 50 yrs.
- See Publication 571 "Tax-Sheltered Annuity Plans (403(b) Plans"

<http://www.irs.gov/Retirement-Plans>



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Section 457(b) Plans IRC § 170(b)(1)(A)(ii)

Defined contribution plans:

- a separate account per employee
- benefit depends upon contributions and investment results or expenses
- over the life of the retirement account

•Governmental 457(b) plans must be funded, with assets held in trust for the benefit of employees.

•Plan assets and income of all other eligible plans must remain the property of the employer.

•Established by state and local governments or tax-exempt organizations

•Plans eligible under 457(b) may defer amounts from income tax up to annual limits.

•Catch-up contributions may be made to employees age 50 or older.



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"A substantial risk of forfeiture exists where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or the occurrence of a condition related to a purpose of the transfer, and the possibility of forfeiture is substantial if such condition is not satisfied."

← *Key term*

Section 1.83-3(c)(1) of the regulations re: substantial risk of forfeiture

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Employer contributions to 457(f) plans are includible in income in the year they are no longer subject to any *substantial risk of forfeiture*.

They are subject to income tax withholding in the year they are actually or *constructively* paid.



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10 Recommended Internal Control Procedures

- | | |
|---|---|
| 1. <i>Record Keeping</i> | 6. <i>Document Loan, Hardship, and Unforeseeable Certifications</i> |
| 2. <i>Operate in Accordance with the Plan</i> | 7. <i>Conversions for Sick & Vacation</i> |
| 3. <i>Make Timely Plan Amendments</i> | 8. <i>Early Retirement Severance</i> |
| 4. <i>Test for Universal Availability</i> | 9. <i>Self-Assess</i> |
| 5. <i>Check Catch-Up Limits</i> | 10. <i>Report & Disclose</i> |

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More about Plan Amendments

- Remedial Amendment Period
- Operational Changes
- 180 Day Rule for 457(b)

403(b) Universal Availability:

Elective deferrals for any employee must be extended to all employees

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403(b) provides for an optional special catch up

Annual catch up limit =

- lessor of \$3k, vs \$15k minus prior catch ups, or
- \$5k x years of service minus prior basic deferrals

457(b) provides for an optional special catch up the lessor of twice the years dollar limit or the underutilized prior years ceiling limits

403(b) Catch Up Pitfalls:

It is not uncommon to miss a step in the calculation!

457(b) Catch Up Pitfalls:

- Plan definition for normal retirement age,
- Timely election of normal retirement age,
- Election to defer not timely Calculating the underutilized prior years ceiling

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403(b) concerns:

Failure to have salary reduction agreement signed prior to compensation is made available.

Problem area:

When participants have a cash option or, the employer will contribution a post service contribution to the 403(b) plan

457(b) concerns:

Late elections also - 457(b) plans election must be signed prior to the first day of the month in which paid or made available.

Reporting & Disclosure:

Typically handled by the 3rd party vendors for 403(b) & 457(b) plans but confirm completion and confirm agreement for record keeping.

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Government Entity Retirement Plans

Each of these 9 website references begin with:

<http://www.irs.gov/>

1. *Retirement-Plans/Plan-Sponsor/Types-of-Retirement-Plans-1*

2. *Retirement-Plans/Plan-Sponsor*

3. *Government-Entities*

4. *Retirement-Plans/Policies,-Procedures-and-Internal-Controls-Self-Audit*

5. *Retirement-Plans/IRC-457(b)-Deferred-Compensation-Plans*

6. *Retirement-Plans/IRC-403(b)-Tax-Sheltered-Annuity-Plans*

7. *Retirement-Plans/403(b)-Plan-Fix-It-Guide*

8. *Retirement-Plans/Correcting-Plan-Errors*

9. *Retirement-Plans/COLA-Increases-for-Dollar-Limitations-on-Benefits-and-Contributions*



Government Entity Retirement Plans

EP Colleen.A.Wedebrand@irs.gov

Employee Plans (EP) assists with:

- Existing Tax Law & Regulations
- New Laws & Regulations

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IRS Pub. 4484 *Choose a Retirement Plan*

IRS Pub. 963 *Federal State Reference Guide* Chapter 6

Publication 571 "Tax-Sheltered Annuity Plans (403(b) Plans"

Rev. Rulings 77-462, 81-31,81-36, 87-10 and 2006-43

Rev. Rul. 2006-43, Rev Rul 2013-12



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