



Power Up for Changes in Executive Compensation

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Today's Objectives:

As a result of this Session, you will understand the executive compensation opportunities presented by the 2016 proposed regulations under Section 457(f).



Section 457 Rules

1. Section 457(b) eligible plans
 - a) Limited deferrals
 - b) No risk of forfeiture
 - c) Look like a 401(k) or 403(b)
2. Section 457(f) plans
 - a) No limits on deferrals
 - b) Risk of forfeiture
 - c) Very flexible



Section 457(f) Proposed Regulations

Issued June 2016

1. May be relied upon until finalized
2. Final regulations will apply for calendar years beginning after finalization date



Substantial Risk of Forfeiture

The crux of section 457(f) and the bane of NFPs

- What is a substantial risk of forfeiture?
- Why does this requirement exist?
- Brief history of 457(f) – 409A – Proposed 457(f) regulations

Substantial Risk of Forfeiture

Four opportunities under the Section 457(f) proposed regulations

1

Short-term deferral exemption

2

Covenants not to compete

3

Rolling risks of forfeiture

4

Elective deferrals



Short-Term Deferral Exemption

- Not subject to 457(f) if benefits paid within $2^{1/2}$ months of year-end in which risk of forfeiture lapses
- Similar rules as under Section 409A



Covenants Not to Compete

They're back!! Three conditions –

1. Written agreement
2. Employer verification
3. Bona fide arrangement



Covenants Not to Compete

FACTS & CIRCUMSTANCES are important.

HYPOTHETICALS – What does the audience think?

1. Retiring Maine ED moving to Florida
2. CFO with some proprietary knowledge



Rolling Risks of Forfeiture

They're back!! Five conditions:

1. Written Agreement
2. Future substantial services or covenant not to compete
3. At least two additional years
4. Future payment more than 125% greater than otherwise would be made
5. New Agreement at least 90 days before current lapse



Elective Deferrals

Same conditions as for a rolling risk of forfeiture except:

1. Initial deferrals must be made before calendar year of services
2. New hires must execute deferral agreement within 30 days of hire for future services

BUT – SUBSTANTIAL RISK OF FORFEITURE MUST STILL EXIST!

Items that are NOT Deferred Compensation under Section 457(f)

1

Bona fide
severance pay
plans

2

Bona fide
vacation pay
plans

3

Bona fide death
benefit plans

4

Bona fide
disability pay
plans



Bona Fide Severance Pay

Concept borrowed from Section 409A. Required elements:

1. Written agreement
2. Involuntary severance or window program
3. Payment by 12/31 of 2nd calendar year following year of severance
4. Severance pay does not exceed two times the employee's annualized compensation



Bona Fide Sick Leave or Vacation Pay Plan

Primary purpose must be to
provide for sick or vacation leave

1. Can leave reasonably be expected to be used?
2. Can employee exchange unused leave for cash?
3. Any restraints on ability to carry forward and exchange for cash?



Brief ACA Update

For now – status quo!

Employer mandate applies

Employer reporting applies

GET 2016 REPORTS DONE!

2017

Brief ACA Update

IRS is really struggling with the Employer mandate.

1. National Taxpayer Advocate, January 2017 concerns
2. TIGTA audit results, April 2017



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