

## 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

- May be relied upon until finalized
- 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





# Short-Term Deferral Exemption

- Not subject to 457(f) if benefits paid within 2<sup>1/2</sup> 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

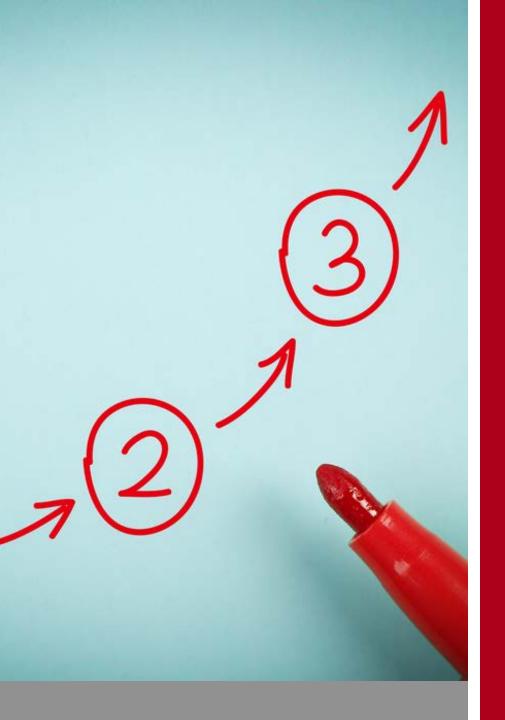


# Covenants Not to Compete

FACTS & CIRCUMSTANCES are important.

HYPOTHETICALS – What does the audience think?

- 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
- 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:

- Initial deferrals must be made before calendar year of services
- 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)





### Bona Fide Severance Pay

Concept borrowed from Section 409A. Required elements:

- 1. Written agreement
- Involuntary severance or window program
- 3. Payment by 12/31 of 2<sup>nd</sup> 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

- Can leave reasonably be expected to be used?
- 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!** 



### Brief ACA Update

IRS is really struggling with the Employer mandate.

- National Taxpayer Advocate, January 2017 concerns
- TIGTA audit results, April 2017



#### **Contact Us**

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