

*Internal Revenue Service  
Tax Exempt and  
Government Entities  
Employee Plans Division*



## 403(b) and 457 Retirement Plans

**with plan feature comparison chart**

*Compare features  
of retirement plans  
(including 401(k)  
plans) for tax exempt  
and government  
employers.*



403(b)



457



# 403(b) and 457 Retirement Plans

**T**his brochure outlines features of 403(b) and 457 retirement plans in an easy-to-read chart.

*403(b) PLANS are adopted by public and private schools, colleges, universities, churches, public hospitals, and charitable entities tax exempt under section 501(c)(3) of the Internal Revenue Code (IRC).*

*457 PLANS are deferred compensation plans described in the IRC section 457.*

*They are available to certain state and local governments and non-governmental entities that are tax exempt under IRC 501.*





## Common errors found in the operation of 403(b) plans include:

**Excess IRC 402(g) contributions, which includes violating the 15-year catch-up rule limitations.**

The amount of salary reduction contributions exceeds the annual dollar limitation (\$13,000 for 2004). The excess may be the result of poor internal controls, or failure to aggregate deferrals made to other 403(b) or 401(k) plans. Violations of the 15-year catch-up rule occur when the employee has exceeded the \$15,000 lifetime limitation, or when the employee is not employed by an eligible employer.

**Universal availability: IRC 403(b)(12)(A).**

Excluding eligible employees from participation, usually part-time employees that would qualify to participate. Eligible employees are not given the right to make salary reduction contributions. Employers often misapply eligibility and coverage conditions to employees who are otherwise eligible to make salary reduction contributions under IRC section 403(b)(12).

**Excess IRC 415 contributions.**

Generally, the sum of elective deferrals and employer contributions cannot exceed the greater of \$41,000 or 100% of includible compensation for 2004.

**Plan loans that violate IRC 72(p).**

Common violations include: failure to make required payments when due resulting in default of the entire loan, poor documentation, and loans from multiple vendors that in the aggregate exceed the IRC 72(p) limits.

**Hardship distribution failures.**

Common violations include: inadequate documentation that the distribution is the result of a financial hardship, and distributions from multiple vendors that in the aggregate exceed the amount needed to relieve the hardship.

# 403(b) and 457 Retirement

PLAN	SPONSOR/ ELIGIBLE EMPLOYER	ELIGIBLE PARTICIPANTS
<b>401(k)</b>	<ul style="list-style-type: none"><li>• all non-government employers</li></ul>	<ul style="list-style-type: none"><li>• common law employees</li></ul>
<b>403(b)</b>	<ul style="list-style-type: none"><li>• public education employers</li><li>• 501(c)(3) organizations</li></ul>	<ul style="list-style-type: none"><li>• common law employees</li></ul>
<b>457(b) Governmental</b>	<ul style="list-style-type: none"><li>• state and local governments</li></ul>	<ul style="list-style-type: none"><li>• common law employees</li><li>• independent contractors</li></ul>
<b>457(b) Tax-Exempt Organizations</b>	<ul style="list-style-type: none"><li>• any 501(c) tax-exempt organization</li></ul>	<ul style="list-style-type: none"><li>• select group of management or highly compensated employees</li><li>• independent contractors</li></ul>
<b>457(f) Government and Tax-Exempt Organizations</b>	<ul style="list-style-type: none"><li>• state and local governments</li><li>• any 501(c) tax-exempt organization</li></ul>	<ul style="list-style-type: none"><li>• common law employees</li><li>• independent contractors</li></ul>

# Plans – Plan Feature Comparison Chart

WRITTEN PLAN DOCUMENT REQUIRED	DETERMINATION LETTER AVAILABLE	MASTER AND PROTOTYPE SUBMISSION AVAILABLE	BASIC CONTRIBUTION LIMITS
yes	yes	yes	<ul style="list-style-type: none"> <li>• <b>elective deferrals</b> 402(g)               <ul style="list-style-type: none"> <li>– \$13,000 (2004) increasing to</li> <li>– \$15,000 (2006)</li> </ul> </li> <li>• <b>employer &amp; employee</b> \$41,000 or 100% of compensation</li> </ul>
• not for IRS purposes (see DOL rules)	no	no	<ul style="list-style-type: none"> <li>• <b>elective deferrals</b> 402(g)               <ul style="list-style-type: none"> <li>– \$13,000 (2004) increasing to</li> <li>– \$15,000 (2006)</li> </ul> </li> <li>• <b>employer &amp; employee</b> \$41,000 or 100% of includible compensation</li> </ul>
yes	no	no	<ul style="list-style-type: none"> <li>• <b>employer &amp; employee</b> <ul style="list-style-type: none"> <li>– \$13,000 (2004) increasing to</li> <li>– \$15,000 (2006)</li> </ul> </li> </ul>
yes	no	no	<ul style="list-style-type: none"> <li>• <b>employer &amp; employee</b> <ul style="list-style-type: none"> <li>– \$13,000 (2004) increasing to</li> <li>– \$15,000 (2006)</li> </ul> </li> </ul>
• generally, written agreement such as an employment contract	no	no	<ul style="list-style-type: none"> <li>• <b>generally, no limit on employer or employee contributions</b></li> </ul>

CATCH-UP CONTRIBUTIONS	AGE 50 CATCH-UP CONTRIBUTIONS	LOANS PERMITTED	TIMING OF DISTRIBUTIONS
no	<ul style="list-style-type: none"> <li>• <b>414(v)</b> <ul style="list-style-type: none"> <li>– \$3,000 (2004)</li> <li>increasing to</li> <li>– \$4,000 (2005)</li> <li>– \$5,000 (2006)</li> </ul> </li> </ul>	yes	generally, <ul style="list-style-type: none"> <li>• death</li> <li>• 59 1/2</li> <li>• severance from employment</li> <li>• disability</li> </ul>
<ul style="list-style-type: none"> <li>• <b>402(g)(7) catch-up</b> <ul style="list-style-type: none"> <li>– selected employers</li> <li>– employee must have 15 years of service</li> <li>– limited to lesser of: \$3,000; \$15,000 less previously excluded special catch-up; \$5,000 multiplied by years of service minus previously excluded deferrals</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>414(v)</b> <ul style="list-style-type: none"> <li>– \$3,000 (2004)</li> <li>increasing to</li> <li>– \$4,000 (2005)</li> <li>– \$5,000 (2006)</li> </ul> </li> </ul>	yes	generally, <ul style="list-style-type: none"> <li>• death</li> <li>• 59 1/2</li> <li>• severance from employment</li> <li>• disability</li> </ul>
<ul style="list-style-type: none"> <li>• <b>special 457 catch-up</b> <ul style="list-style-type: none"> <li>– 3 years prior to the year of normal retirement age</li> <li>– limited to lesser of: twice the basic annual limit [\$26,000 (2004) increasing to \$30,000 (2006)]; or basic annual limit plus under-utilized basic annual limit in prior years</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>414(v)</b> <ul style="list-style-type: none"> <li>– \$3,000 (2004)</li> <li>increasing to</li> <li>– \$4,000 (2005)</li> <li>– \$5,000 (2006)</li> </ul> </li> </ul>	yes	<ul style="list-style-type: none"> <li>• 70 1/2</li> <li>• severance from employment               <ul style="list-style-type: none"> <li>– special rules for independent contractors</li> </ul> </li> <li>• minimum required distribution</li> </ul>
<ul style="list-style-type: none"> <li>• <b>special 457 catch-up</b> <ul style="list-style-type: none"> <li>– 3 years prior to the year of normal retirement age</li> <li>– limited to lesser of: twice the basic annual limit [\$26,000 (2004) increasing to \$30,000 (2006)]; or basic annual limit plus under-utilized basic annual limit in prior years</li> </ul> </li> </ul>	no	no	<ul style="list-style-type: none"> <li>• 70 1/2</li> <li>• severance from employment               <ul style="list-style-type: none"> <li>– special rules for independent contractors</li> </ul> </li> <li>• minimum required distribution</li> <li>• special distribution elections</li> </ul>
no	no	no	<ul style="list-style-type: none"> <li>• taxable when no substantial risk of forfeiture</li> </ul>

OTHER DISTRIBUTIONS	ROLLOVER	TRUSTEE-TO-TRUSTEE TRANSFER	TERMINATION OF PLAN	EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM (EPCRS)
<ul style="list-style-type: none"> <li>hardship</li> <li>QDRO (qualified domestic relations order)</li> </ul>	<ul style="list-style-type: none"> <li>yes, same as 401(a)</li> <li>must satisfy distribution requirements</li> </ul>	yes	yes	yes
<ul style="list-style-type: none"> <li>hardship</li> <li>QDRO (qualified domestic relations order)</li> </ul>	<ul style="list-style-type: none"> <li>yes, same as 401(a)</li> <li>must satisfy distribution requirements</li> </ul>	<ul style="list-style-type: none"> <li>purchase permissive service – government plans in-service</li> <li>403(b) to another 403(b) in-service</li> </ul>	no	yes
<ul style="list-style-type: none"> <li>unforeseeable emergency</li> <li>small in-active accounts</li> <li>QDRO (qualified domestic relations order)</li> </ul>	<ul style="list-style-type: none"> <li>yes, same as 401(a)</li> <li>must satisfy distribution requirements</li> </ul>	<ul style="list-style-type: none"> <li>purchase permissive service</li> <li>government 457(b) to another government 457(b)</li> </ul>	yes	<b>no</b> – special 180-day rule to correct for government – submission accepted on a provisional basis outside EPCRS
<ul style="list-style-type: none"> <li>unforeseeable emergency</li> <li>small in-active accounts</li> <li>QDRO (qualified domestic relations order)</li> </ul>	no	<ul style="list-style-type: none"> <li>tax exempt 457(b) to another tax exempt 457(b)</li> </ul>	yes	<b>no</b> – may be accepted outside EPCRS as IRS develops experience
<ul style="list-style-type: none"> <li>taxable when no substantial risk of forfeiture</li> </ul>	no	no	no	no

# 403(b) and 457 Information Resources

## ■ [www.irs.gov/ep](http://www.irs.gov/ep)

- Click on **RETIREMENT SOURCE FOR PLAN SPONSORS/EMPLOYERS**, and then access **403(B)/457 PLANS** under **TYPES OF PLANS**.

- *403(b)/457 Online Resource Guide* provides information on these plans including IRC and regulations, recent law changes, correction program information, FAQs, published guidance, and educational services.

## ■ **Customer Assistance**

for technical and procedural answers to your retirement plan tax law inquiries.

- (877) 829-5500

- [www.irs.gov/ep](http://www.irs.gov/ep)

Access **EP CUSTOMER SERVICES** under **RELATED TOPICS**.

- **Internal Revenue Service**  
**Tax Exempt and Government Entities**  
**Customer Account Services**  
**P.O. Box 2508**  
**Cincinnati, OH 45201**

