Employee Retirement and Deferred Compensation Plans

&

Fiduciary Responsibilities of Retirement Plan Administrators

Presented by:
Jeffery A. Acheson, QPFC, AIF®
Partner
Schneider Downs Wealth Management Advisors, LP
SD Retirement Plan Solutions Division
What is a Retirement Plan?

- Contributions In
- Money Invested
- Distributions Out
How to Differentiate Between Retirement Plan Types

Is the Plan...

• Defined Contribution or
• Defined Benefit

And, is it...

• Qualified or
• Non-Qualified
Defined Contribution Plan

Plan defines contribution amount

Benefit amount determined by:
1. Contributions made
2. Investment earnings
Defined Benefit Plan

Plan defines benefit

Contribution amount determined by:
1. Benefit amount
2. Duration of benefit (mortality)
3. Investment earnings
“Qualified” Plans Enjoy Special Tax Benefits

• Participants are not currently taxed on contributions
  – For-profit employers can deduct the contributions

• Investment earnings are tax-deferred

• Benefits taxed at distribution

• Benefit distributions can be rolled over to another qualified plan or IRA
Qualified Vs. Non-Qualified Plans

Qualified

- Required to cover a broad group of employees

Non-Qualified

- Must limit coverage to select group of management
Qualified VS. Non-Qualified Plans

Qualified

Subject to Many Rules & Regulations

Non-Qualified

Subject to Few Rules
Qualified VS. Non-Qualified Plans

Qualified

- Must be funded
  - In a trust
  - Out of reach of both the employer and the employer’s creditors

Non-Qualified

- Cannot be “formally” funded
  - Unsecured promise to pay
  - Asset segregation allowed (Rabbi Trust)
  - Subject to claims of employer’s creditors
Specific Types of Plans

- **Qualified**
  - Defined Benefit
  - Defined Contribution
    - Money Purchase
    - Profit Sharing
    - 401(k)
    - 403(b)

- **Non-Qualified**
  - 457(b)
  - 457(f)
Overview: Nonqualified Plans

• **457(b)**
  - Full and immediate vesting allowed
  - Not “income” taxable until withdrawn
  - Employer & Employee contributions permitted
  - Employer contributions may be discretionary
  - Contributions not coordinated with other plans (more later)

• **457(f)**
  - Taxed when vested “regardless” of distribution schedule
  - Employees could contribute (but why would they?)
  - Employer contributions may be discretionary
  - Contributions not coordinated with other plans (more later)
The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>Who Can Establish?</th>
<th>Maximum Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>457(b)</td>
<td>- Governmental Employers</td>
<td>- Governmental - None</td>
</tr>
<tr>
<td></td>
<td>- Public Utility Companies</td>
<td>- Tax-Exempt – Select group of management or Highly</td>
</tr>
<tr>
<td></td>
<td>- Elementary &amp; Secondary Schools</td>
<td>Compensated Employees (HCEs)</td>
</tr>
<tr>
<td></td>
<td>- Public Universities &amp; Colleges</td>
<td>- excluding church related group</td>
</tr>
<tr>
<td></td>
<td>- City, County &amp; State Hospitals</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Certain Non-Governmental Tax-Exempt Employers</td>
<td></td>
</tr>
<tr>
<td>457(f)</td>
<td>- Same as 457(b)</td>
<td>- Select group of management or key HCEs</td>
</tr>
<tr>
<td></td>
<td>- Usually used by tax-exempt employers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Rarely by governmental employers</td>
<td></td>
</tr>
</tbody>
</table>
# The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>Contribution Limits</th>
<th>Contribution Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Employer</td>
<td>Individual</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>457(b)</td>
<td>▪ Employer contributions offset employee deferral limits</td>
<td>▪ Employer &amp; employee contributions combined cannot exceed the lessor of 100% of compensation or $17,500 in 2013 (prior to any potential catch-up options)</td>
</tr>
<tr>
<td>457(f)</td>
<td>▪ No limit</td>
<td>▪ No limit</td>
</tr>
</tbody>
</table>
## The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>Catch-Up Contributions Age 50+</th>
<th>Roth Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>▪ Governmental - $5,500</td>
<td>▪ Yes*</td>
</tr>
<tr>
<td>457(b)</td>
<td>▪ Tax-Exempt – Not Available</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▪ Both Govt &amp; T/E</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Additional catch-up provision available within 3 years of NRA equal to lessor of:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• (1) 2x normal limit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• (2) Normal limit minus unused amounts from prior years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▪ Not Applicable</td>
<td>▪ No</td>
</tr>
</tbody>
</table>

* This is a design option the plan may or may not permit
The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>When Must the Plan Be Established</th>
<th>Who Directs Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>457(b)</td>
<td>The plan may be established anytime during the calendar year</td>
<td>Participant</td>
</tr>
<tr>
<td>457(f)</td>
<td>The plan may be established anytime during the calendar year</td>
<td>Employer/Trustee directed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Plan may permit participant direction</td>
</tr>
</tbody>
</table>
The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>Are Loans Available</th>
<th>Vesting</th>
</tr>
</thead>
<tbody>
<tr>
<td>457(b)</td>
<td>▪ Governmental – Yes</td>
<td>▪ Employee salary deferrals</td>
</tr>
<tr>
<td></td>
<td>▪ Tax-Exempt – No</td>
<td>▪ full and immediate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Employer contributions may vest over time according to plan terms</td>
</tr>
<tr>
<td>457(f)</td>
<td>▪ No</td>
<td>▪ “Any” vesting schedule</td>
</tr>
</tbody>
</table>
## The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>*Distributions: Up to 70 ½</th>
<th>*Distributions: After - 70 ½</th>
</tr>
</thead>
</table>
| 457(b) | - Severance from employment  
          - Death or Disability  
          - Unforeseeable emergency**  
          - Small inactive accounts**  
          - Plan termination  
          - QDROs | - Required Minimum Distribution  
          • by April 1st of calendar year in which participant becomes 70 ½  
          • OR calendar year in which they retire if later |
| 457(f) | - Distributions must be made on any monies that become vested. | - No Required Minimum Distribution |

* No tax penalty on any distribution  **If stated in the plan language
The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>How Are Distributions Taxed?</th>
<th>Eligible Rollovers</th>
</tr>
</thead>
<tbody>
<tr>
<td>457(b)</td>
<td>▪ Traditional Account – as Ordinary Income</td>
<td>▪ Governmental Employees upon triggering event:</td>
</tr>
<tr>
<td></td>
<td>▪ Roth Account – Tax-Free</td>
<td>• Plan termination</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Death</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Separation from service</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Disability</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Over Age 59 ½</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Tax-Exempt - No</td>
</tr>
<tr>
<td>457(f)</td>
<td>▪ Ordinary Income</td>
<td>▪ Not permitted</td>
</tr>
</tbody>
</table>
# The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>Portability: Rollovers Among Plans</th>
<th>Advantages</th>
</tr>
</thead>
</table>
| 457(b) | - Applies to Governmental 457s only:  
  • Qualified Plan*  
  • 403(b) Plan  
  • 457(b) Governmental Plan  
  • SEP/IRA  
  • IRA(except a SIMPLE IRA)  
  • Roth IRA** | - If an employer offers a 403(b) or 401(k) plan in addition to a 457(b), an employee can defer the maximum to both plans  
- Employers may restrict participation to select key employees or management |
| 457(f) | - Not Allowed                      | - Employers may restrict participation to select key employees or management |

*Except to a SIMPLE 401(k)

**The pre-tax amount of a rollover is taxable in the year in which the rollover occurs.
## The Face Off: 457(b) VS. 457(f)

<table>
<thead>
<tr>
<th>Plan</th>
<th>Impact of Legislation</th>
<th>IRS Form 5500 Filing</th>
</tr>
</thead>
</table>
| 457(b)| ▪ EGTRRA increased contribution limits and repealed coordination with qualified plan contributions  
▪ PPA made higher limits permanent  
▪ IRC 409(a) exempts 457(b)                                      | ▪ One-time, one page notice of plan adoption is filed with DOL to document “Top-Hat” exemption from ERISA                                               |
| 457(f)| ▪ Full IRC 409(a) compliance as of 1/1/09.  
▪ **Serious consequences for non-compliance!!** | ▪ Same as above with exception for public institutions                                                                                             |
“457(f) plans are a mixed bag”

<table>
<thead>
<tr>
<th>The Good News</th>
<th>The Bad News</th>
</tr>
</thead>
<tbody>
<tr>
<td>...better than 457(b)</td>
<td>...worse than 457(b)</td>
</tr>
<tr>
<td>▪ No limit on amount of deferral</td>
<td>▪ Amounts are subject to taxation as soon as</td>
</tr>
<tr>
<td></td>
<td>they are no longer subject to a “substantial</td>
</tr>
<tr>
<td></td>
<td>risk of forfeiture”</td>
</tr>
<tr>
<td>▪ No restrictions on when amounts</td>
<td></td>
</tr>
<tr>
<td>may be distributed</td>
<td></td>
</tr>
</tbody>
</table>

...better than 457(b)

...worse than 457(b)
“Substantial risk of forfeiture”

- Section 457 says it means that the right to compensation is conditioned on “future performance of substantial services”
  
  - More commonly referred to as “vesting”
  
  - Usually a very easy concept to apply:
    
    - The individual vests after performing certain years of service
      
      » (plan inception or actual contribution options)
    
    - The individual vests at given age
      
      » (Golden Handcuffs concept)
    
    - Vesting can also occurs upon death, disability, plan termination or change of control

**Vesting has nothing to do with the financial security of the plan**
Best Practices for ERISA Fiduciaries

Comment: Consider adopting ERISA Fiduciary Best Practices whether your plan is ERISA governed or exempt

- If ERISA governed, understand:
  - Who are the fiduciaries?
  - The primary duties of an ERISA fiduciary
  - The liabilities associated with being a Fiduciary
  - Structured plan governance
  - Current trends in the Non-Profit Sector
Best Practices for ERISA Fiduciaries

• Who Are The Fiduciaries?
  – Are they Named Fiduciaries or Functional Fiduciaries?
    • DOL set to promulgate a new definition of ERISA fiduciary status in late 2013/early 2014
  – Examples of Named and Functional Fiduciaries
    • Plan Sponsor
    • Plan Administrator (ERISA 3(16))
      • Not to be confused with the Plan’s TPA, Recordkeeper or Directed Trustee
    • Plan Advisor (ERISA 3(21))
    • Plan Investment Manager (ERISA 3(38))
    • Anyone who has discretionary authority over plan or plan assets
      • (e.g. Administrative/Investment Oversight Committee, Board of Directors/Trustees)
Best Practices for ERISA Fiduciaries

• Primary Duties of an ERISA Fiduciary
  • Act solely in participants’ best interests
  • Carry out duties prudently
  • Follow the plan documents
  • Pay only reasonable plan expenses
  • Diversify plan investments
Best Practices for ERISA Fiduciaries

• Understand The Liabilities Associated With Being A Fiduciary
  • Direct
  • Contractual
  • Functional
  • Associated (i.e. “Co-Fiduciary”)
  • Personal
Best Practices for ERISA Fiduciaries

• **Structured Plan Governance**
  - Create an formalized Retirement Plan Oversight Committee (RPOC)
  - Determine the initial need for and on-going role of outside advisors
  - Provide committee members with fiduciary training
  - Adopt a “detailed” Investment Policy Statement (IPS) and RPOC Charter
  - Determine preferred tools, formats and frequency for consistent Plan and investment oversight and review
  - Calendar regular RPOC meetings
  - Document, Document, Document
  - Communicate, Communicate, Communicate
Best Practices for ERISA Fiduciaries

• Current Trends in the Non-Profit Sector
  • Comprehensive benchmarking of fees, investment performance, participant utilization and projected retirement readiness
  • Auto-Features
  • ER contribution optimization
  • Scalable advice and guidance tools
  • QDIA scrutiny
  • PLATFORM CONSOLIDATION
Thank you for your time

presented by:

Jeffery A. Acheson, QPFC, AIF®

Partner

Schneider Downs Wealth Management Advisors, LP
SD Retirement Plan Solutions Division

41 South High Street
Suite 2100
Columbus, Ohio 43215

jacheson@schneiderdowns.com
614-586-7259

www.sdwealthmanagement.com