

**§ 1.457-3 General introduction to eligible plans.**

(a) *Compliance in form and operation.* An eligible plan is a written plan established and maintained by an eligible employer that is maintained, in both form and operation, in accordance with the requirements of §§ 1.457-4 through 1.457-10. An eligible plan must contain all the material terms and conditions for benefits under the plan. An eligible plan may contain certain optional features not required for plan eligibility under section 457(b), such as distributions for unforeseeable emergencies, loans, plan-to-plan transfers, additional deferral elections, acceptance of rollovers to the plan, and distributions of smaller accounts to eligible participants. However, except as otherwise specifically provided in §§ 1.457-4 through 1.457-10, if an eligible plan contains any optional provisions, the optional provisions must meet, in both form and operation, the relevant requirements under section 457 and §§ 1.457-2 through 1.457-10.

(b) *Treatment as single plan.* In any case in which multiple plans are used to avoid or evade the requirements of §§ 1.457-4 through 1.457-10, the Commissioner may apply the rules under §§ 1.457-4 through 1.457-10 as if the plans were a single plan. See also § 1.457-4(c)(3)(v) (requiring an eligible employer to have no more than one normal retirement age for each participant under all of the eligible plans it sponsors), the second sentence of § 1.457-4(e)(2) (treating deferrals under all eligible plans under which an individual participates by virtue of his or her relationship with a single employer as a single plan for purposes of determining excess deferrals), and § 1.457-5 (combining annual deferrals under all eligible plans).

**§ 1.457-4 Annual deferrals, deferral limitations, and deferral agreements under eligible plans.**

(a) *Taxation of annual deferrals.* Annual deferrals that satisfy the requirements of paragraphs (b) and (c) of this section are excluded from the gross income of a participant in the year deferred or contributed and are not includible in gross income until paid to the participant in the case of an eligible governmental plan, or until paid or otherwise made available to the participant in the case of an eligible plan of a tax-exempt entity. See § 1.457-7.

(b) *Agreement for deferral.* In order to be an eligible plan, the plan must provide that compensation may be deferred for any calendar month by salary reduction only if an agreement

providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available. A new employee may defer compensation payable in the calendar month during which the participant first becomes an employee if an agreement providing for the deferral is entered into on or before the first day on which the participant performs services for the eligible employer. An eligible plan may provide that if a participant enters into an agreement providing for deferral by salary reduction under the plan, the agreement will remain in effect until the participant revokes or alters the terms of the agreement. Nonelective employer contributions are treated as being made under an agreement entered into before the first day of the calendar month.

(c) *Maximum deferral limitations—(1) Basic annual limitation.* (i) Except as described in paragraphs (c)(2) and (3) of this section, in order to be an eligible plan, the plan must provide that the annual deferral amount for a taxable year (the plan ceiling) may not exceed the lesser of—

(A) The applicable annual dollar amount specified in section 457(e)(15): \$11,000 for 2002; \$12,000 for 2003; \$13,000 for 2004; \$14,000 for 2005; and \$15,000 for 2006 and thereafter. After 2006, the \$15,000 amount is adjusted for cost-of-living in the manner described in paragraph (c)(4) of this section; or

(B) 100 percent of the participant's includible compensation for the taxable year.

(ii) The amount of annual deferrals permitted by the 100 percent of includible compensation limitation under paragraph (c)(1)(i)(B) of this section is determined under section 457(e)(5) and § 1.457-2(g).

(iii) For purposes of determining the plan ceiling under this paragraph (c), the annual deferral amount does not include any rollover amounts received by the eligible plan under § 1.457-10(e).

(iv) The provisions of this paragraph (c)(1) are illustrated by the following examples:

*Example 1.* (i) *Facts.* Participant A, who earns \$14,000 a year, enters into a salary reduction agreement in 2006 with A's eligible employer and elects to defer \$13,000 of A's compensation for that year. Participant A is not eligible for the catch-up described in paragraph (c)(2) or (3) of this section, participates in no other retirement plan, and has no other income exclusions taken into account in computing includible compensation.

(ii) *Conclusion.* The annual deferral limit for A in 2006 is the lesser of \$15,000 or 100 percent of includible compensation, \$14,000. A's annual deferral of \$13,000 is permitted under the plan because it is not in excess of

\$14,000 and thus does not exceed 100 percent of A's includible compensation.

*Example 2.* (i) *Facts.* Assume the same facts as in *Example 1*, except that A's eligible employer provides an immediately vested, matching employer contribution under the plan for participants who make salary reduction deferrals under A's eligible plan. The matching contribution is equal to 100 percent of elective contributions, but not in excess of 10 percent of compensation (in A's case, \$1,400).

(ii) *Conclusion.* Participant A's annual deferral exceeds the limitations of this paragraph (c)(1). A's maximum deferral limitation in 2006 is \$14,000. A's salary reduction deferral of \$13,000 combined with A's eligible employer's nonelective employer contribution of \$1,400 exceeds the basic annual limitation of this paragraph (c)(1) because A's annual deferrals total \$14,400. A has an excess deferral for the taxable year of \$400, the amount exceeding A's permitted annual deferral limitation. The \$400 excess deferral is treated as described in paragraph (e) of this section.

*Example 3.* (i) *Facts.* Beginning in year 2002, Eligible Employer X contributes \$3,000 per year for five years to Participant B's eligible plan account. B's interest in the account vests in 2006. B has annual compensation of \$50,000 in each of the five years 2002 through 2006. Participant B is 41 years old. B is not eligible for the catch-up described in paragraph (c)(2) or (3) of this section, participates in no other retirement plan, and has no other income exclusions taken into account in computing includible compensation. Adjusted for gain or loss, the value of B's benefit when B's interest in the account vests in 2006 is \$17,000.

(ii) *Conclusion.* Under this vesting schedule, \$17,000 is taken into account as an annual deferral in 2006. B's annual deferrals under the plan are limited to a maximum of \$15,000 in 2006. Thus, the aggregate of the amounts deferred, \$17,000, is in excess of the B's maximum deferral limitation by \$2,000. The \$2,000 is treated as an excess deferral described in paragraph (e) of this section.

(2) *Age 50 catch-up—(i) In general.* In accordance with section 414(v) and the regulations thereunder, an eligible governmental plan may provide for catch-up contributions for a participant who is age 50 by the end of the year, provided that such age 50 catch-up contributions do not exceed the catch-up limit under section 414(v)(2) for the taxable year. The maximum amount of age 50 catch-up contributions for a taxable year under section 414(v) is as follows: \$1,000 for 2002; \$2,000 for 2003; \$3,000 for 2004; \$4,000 for 2005; and \$5,000 for 2006 and thereafter. After 2006, the \$5,000 amount is adjusted for cost-of-living. For additional guidance, see regulations under section 414(v).

(ii) *Coordination with special section 457 catch-up.* In accordance with sections 414(v)(6)(C) and 457(e)(18), the age 50 catch-up described in this paragraph (c)(2) does not apply for any