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## Request for Comments on the Desirability of Guidance Relating to Section 457 Nonqualified Deferred Compensation Plans of State and Local Government and Tax-Exempt Employers

### Notice 96-63

This notice invites public comment on possible changes to procedures relating to requests for private letter rulings under § 457 of the Code. These changes may include (1) the publication of model amendments for existing § 457 plans in lieu of the issuance of rulings on individual plan amendments reflecting changes applicable to plans that meet the requirements of § 457(b) under the Small Business Job Protection Act of 1996, P.L. 104-188 (“SBJPA”), and (2) the creation of a Master and Prototype plan program for plans that meet the requirements of § 457(b).

### BACKGROUND

Section 457 plans are nonqualified, deferred compensation plans established by state and local government and tax-exempt employers. These employers may establish either eligible plans that meet the requirements of § 457(b) or ineligible § 457(f) plans. The plans are subject to the specific requirements and deferral limitations of § 457 of the Code. Under § 457(a), compensation deferred pursuant to eligible plans that meet the requirements of § 457(b) and the income attributable to such deferred compensation is not taxable until the taxable year in which the deferred amounts are actually paid or made available to the plan participant or other beneficiary. In contrast, compensation deferred under a plan described in § 457(f) is included in the participant’s or beneficiary’s gross income for the first taxable year in which there is no substantial risk of forfeiture of the rights to the compensation. In addition, prior to the enactment of the SBJPA,

§ 457(b)(6) mandated that eligible plans under § 457(b) be unfunded and that plan assets not be set aside for the exclusive benefit of participants.

The SBJPA changed certain requirements for plans under § 457(b). Section 457(g), added by § 1448 of the SBJPA, now mandates that all assets and income of eligible state and local government plans (but not eligible plans of tax-exempt entities) must be held in trust for the exclusive benefit of participants and their beneficiaries. The trust requirement applies immediately to eligible plans established after August 20, 1996. For government plans already in existence on that date, the effective date of the § 457(g) requirement is January 1, 1999. However, a trust may be added to existing government plans at any time.

In addition, all plans that meet the requirements of § 457(b) may implement changes to § 457(e) made by § 1447 of the SBJPA. Section 457(e)(9) provides that certain benefits will not be treated as made available by reason of certain elections with regard to distributions from eligible § 457(b) plans. Also, § 457(e)(15) provides a cost-of-living adjustment for the maximum deferral amount under §§ 457(b)(2) and (c)(1) of the Code. These amendments made by § 1447 of the SBJPA apply to taxable years beginning after December 31, 1996.

The Service is considering issuing model language that will provide plan sponsors of eligible plans that meet the requirements of § 457(b) with a streamlined method for amending their plans to comply with the new requirements of § 457. This model language can be adopted by existing eligible plans in lieu of receiving a new ruling under § 457(b). This approach will provide time and cost savings to employers who have previously received favorable ruling letters with respect to their § 457(b) plans.

In addition, the Service is considering the establishment of a ruling program for master and prototype § 457(b) plans that will consider the statutory changes to § 457 under the SBJPA. The Service believes that this type of program is particularly well suited to ruling requests under § 457(b). For example, under such a program, if a state creates a plan, it can then be adopted by the political subdivisions, agencies and instrumentalities of that state, without the need for individual rulings for each state employer that adopts the same plan. In addition, the prototype plan program

could be used by banks, insurance companies and mutual fund companies, who may be interested in receiving advance rulings for plans that meet the requirements of § 457(b).

### REQUEST FOR PUBLIC COMMENT

The Service is now evaluating possible changes to the advance letter ruling program for eligible § 457 plans. Accordingly, the Service requests comments concerning the usefulness of the model language and master and prototype plan approaches, and welcomes comments on any other useful approaches the Service might consider. Comments can be addressed to CC:DOM:CORP:R (Notice 96-63), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 96-63), Courier’s Desk, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

### DRAFTING INFORMATION

The principal author of this revenue procedure is Cheryl Press of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice, contact Cheryl Press at (202) 622-6030 (not a toll-free number).