

# Non-Governmental 457(b) Plan Operational Errors and Corrections

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**PRACTICES** Employee Benefits and Executive Compensation

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In connection with reviewing and correcting plan errors, plan sponsors of non-governmental 457(b) plans should be aware that there is generally no IRS-approved correction program for such plans. Although the IRS has indicated in its plan correction guidance—the Employee Plans Compliance Resolution System (“**EPCRS**”)—that it will accept 457(b) plan correction filings on a provisional basis, such corrections are generally limited to governmental plan sponsors. However, it is within the IRS’s authority and discretion to review submissions from non-governmental 457(b) plans.

In the event that a 457(b) plan sponsor discovers a plan error, plan counsel should be contacted as soon as possible in order to review the facts and circumstances of the error and to determine the appropriate correction course. A few common 457(b) plan errors include:

- **Improper rollovers:** Non-governmental 457(b) plans may only roll over assets to another non-governmental 457(b) plan and, therefore, a rollover to any other type of plan, including an individual retirement account, would result in a plan error.
- **Excess deferrals:** 457(b) plans are subject to annual individual and plan IRS contribution limits. Amounts that are contributed in excess of such limits will result in a participant excess deferral, which must be distributed and is taxable to the participant.
- **Improper catch-up contributions:** Age 50 catch-up contributions are not permitted under non-governmental 457(b) plans and should not remain in the plan if inadvertently contributed.

As the IRS retains complete discretion to accept correction requests, plan sponsors should consider engaging outside counsel to discuss any plan errors further with the IRS on a no-names and confidential basis.

As part of its review, the IRS can ultimately issue a closing agreement providing for reasonable sanctions and a required plan correction.

457(b) plan errors that are not corrected may result in the IRS determining that the plan must convert to an ineligible plan, subjecting participants to immediate taxation. Due to this potential punitive result, it is important that 457(b) plan sponsors continue to monitor their plans for any possible errors with their service provider and counsel. By timely correcting plan errors, plan sponsors can avoid unnecessary penalties, fees, and participant taxes.