

**Deferred  
Compensation –  
Section 457**

The ESC, either alone or by contract with other political subdivisions, may create and administer for its employees a deferred compensation plan, the federal income tax treatment of which is governed by Section 457 of the Internal Revenue Code of 1986, and its subsequent amendments, and may assess a fee on each participating employee for administering the plan. *Gov't Code 609.001(11), .102, .112*

Such a deferred compensation plan shall be established and administered in accordance with Government Code Chapter 609, Subchapter B.

*Gov't Code Ch. 609*

The ESC may contract with an employee for the deferment of any part of the employee's compensation.

Except as provided by Government Code 609.5025, to participate in a deferred compensation plan, an employee must consent in the contract to automatic payroll deductions in an amount equal to the deferred amount.

*Gov't Code 609.007(a), (c)*

Plan Administrator

An ESC that creates a deferred compensation plan shall designate a plan administrator for the plan. ESCs that create a single plan shall designate jointly a plan administrator for the plan. A plan administrator may be an employee, a nonprofit corporation, an individual, a trustee, a private entity, another political subdivision, or an association of political subdivisions. *Gov't Code 609.103*

"Plan administrator" means the person responsible for administering a deferred compensation plan. *Gov't Code 609.001(5)*

*Duties Regarding  
Qualified  
Vendors*

A plan administrator shall:

1. Develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor. *Gov't Code 609.113(a)*
2. Determine the minimum and maximum number of vendors that may be qualified vendors at any given time. *Gov't Code 609.114*
3. Develop and implement requirements for qualified vendors and their employees concerning disclosure, reporting, standards of conduct, solicitation, advertising, relationships with participating employees, the nature and quality of services provided to those employees, and other matters. *Gov't Code 609.116*

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Qualified Investment Product	To be classified as a qualified investment product for a deferred compensation plan, an investment product must be approved by the plan administrator to receive investments under the plan. The approval of an investment product for a 457 plan must be in writing. A qualified investment product may be offered only by a qualified vendor of the deferred compensation plan. <i>Gov't Code 609.003</i>
Roth Contribution Programs	The ESC may, if authorized by federal law, establish a program in accordance with the applicable federal law under which an employee may designate all or a portion of the employee's contribution under a 457 plan as a Roth contribution at the time the contribution is made or convert all or a portion of the employee's previous contribution under the plan to a Roth contribution. <i>Gov't Code 609.1025</i>
<b>Annuities – Section 403(B)</b>	The ESC may enter into a salary reduction agreement only if the qualified investment product is an eligible qualified investment. <i>Art. 6228a-5, Sec. 5(a), V.A.T.S.</i>
Definitions	<p>“Eligible qualified investment product” means a qualified investment product offered by a company that is eligible to offer the product under V.A.T.S. Article 6228-5, Section 6. <i>Art. 6228a-5, Sec. 4(2), V.A.T.S.</i></p> <p>“Qualified investment product” means an annuity or investment that:</p> <ol style="list-style-type: none"><li>1. Meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;</li><li>2. Complies with applicable federal insurance and securities laws and regulations; and</li><li>3. Complies with applicable state insurance and securities laws and rules.</li></ol> <p><i>Art. 6228a-5, Sec. 4(4), V.A.T.S.</i></p> <p>“Salary reduction agreement” means an agreement between an ESC and an employee to reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product. <i>Art. 6228a-5, Sec. 4(5), V.A.T.S.</i></p>
Eligible Company	An insurance company is eligible to offer qualified investment products to the employees of ESCs under these provisions if the company satisfies the following criteria:
	<ol style="list-style-type: none"><li>1. The company is licensed by the Texas Department of Insurance and is in compliance with minimum capital and surplus</li></ol>

requirements, including applicable risk-based capital and surplus requirements prescribed by rules adopted by the department; and

2. The company has experience in providing qualified investment products and has a specialized department dedicated to the service of qualified investment products, as determined by the ESC.

A company that offers qualified investment products other than annuity contracts, including a company that offers custodial accounts under Section 403(b)(7), Internal Revenue Code of 1986, is eligible to offer qualified investment products to employees of educational institutions under these provisions.

*Art. 6228a-5, Sec. 6(a), (b), V.A.T.S.*

Payroll Deduction

To the greatest degree possible, ESCs that enter into a salary reduction agreement with employees shall require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts.

*Art. 6228a-5, Sec. 5(f), V.A.T.S.*

Prohibitions

An ESC may not:

1. Refuse to enter into a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction is an eligible qualified investment except as provided below at item 8 and Exceptions;
2. Require or coerce an employee's attendance at any meeting at which qualified investment products are marketed;
3. Limit the ability of an employee to initiate, change, or terminate a qualified investment product at any time the employee chooses;
4. Grant exclusive access to an employee by discriminating against or imposing barriers to any agent, broker, or company that provides qualified investment products;
5. Grant exclusive access to information about an employee's financial information, including information about an employee's qualified investment products, to a company or agent or affiliate of a company offering qualified investment products unless the employee consents in writing to the access;
6. Accept any benefit from a company or from an agent or affiliate of a company that offers qualified investment products;

7. Use public funds to recommend a qualified investment product offered by a company or an agent or affiliate of a company that offers a qualified investment product; or
8. Enter into or continue a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an eligible qualified investment, including the investment product of a company whose certification has been denied, suspended, or revoked without first providing the employee with notice in writing that:
  - a. Indicates the reason the subject of the salary reduction agreement is no longer an eligible qualified investment; and
  - b. Clearly states that by signing the notice, the employee is agreeing to enter into or continue the salary reduction agreement.

*Exceptions*

An ESC may refuse to enter into a salary reduction agreement with an employee if:

1. The eligible qualified investment product that is the subject of the salary reduction agreement is offered by a company that does not comply with the ESC's administrative requirements;
2. The ESC imposes the administrative requirements uniformly on all companies that offer eligible qualified investment products; and
3. The administrative requirements are necessary to comply with employer responsibilities imposed by:
  - a. Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;
  - b. Any other provision of the Internal Revenue Code of 1986 that applies to Section 403(b);
  - c. Any regulation adopted in relation to a law described by item (a) or (b) that is effective after December 31, 2007; or
  - d. Any change to V.A.T.S. Article 6228a-5 that becomes effective after January 1, 2007.

*Art. 6228a-5, Sec. 9, V.A.T.S.*