



Deferred Compensation Program

IRS FORMS W-2 AND 1099 GUIDANCE FOR EMPLOYERS

These instructions have been prepared to assist with your administration of your co-op's deferred compensation plan.

-  Prospective participants should be encouraged to consult an attorney or personal tax advisor to develop a tax strategy before electing their form of payment or taking any other action with respect to their participation in a nonqualified deferred compensation plan.
-  If you have any questions, please contact the Homestead Advisers Deferred Compensation team at deferredcomp@homesteadadvisers.com.

IMPORTANT: Homestead Advisers offers nonqualified deferred compensation plans as an additional service to members for their employees and directors and provides certain administrative support services. However, Homestead Advisers does not sponsor or act as the plan administrator of these plans, assume liability for their operation, or provide legal or tax advice in conjunction with the plans. Co-ops and participants are responsible for any tax or legal consequences associated with their adoption, operation or participation in these plans.

Any tax information contained in this communication (or in any attachment) was not intended or written to be used or referred to, and cannot be used or referred to (i) for the purpose of avoiding penalties under the Internal Revenue Code, or (ii) in promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment). Nothing contained in this document should be relied on as tax or legal advice. Consult your co-op's attorney or tax advisor before taking any action with respect to your co-op's plan.

IRS Forms W-2 and 1099 Guidance for Employers with Nonqualified Deferred Compensation Plans

The following information is provided for educational purposes to help you understand the requirements for preparing Internal Revenue Service (IRS) Forms W-2 and 1099 for employees and directors participating in your co-op's nonqualified deferred compensation plans.

The IRS (and state agencies) have very specific requirements regarding the differences between a W-2 employee and a 1099 contractor, and penalties may be levied for incorrect classification. This information is general in nature and is not intended to be all-inclusive.

IMPORTANT: All co-ops should obtain guidance from their tax, accounting and legal advisors before taking action with respect to completing and submitting tax forms.

Determining Which IRS Reporting Form to Use

In general, you will use Form W-2 for co-op employees and Form 1099 for directors when reporting salary deferrals and benefit distributions. However, for participants of Governmental Deferred Compensation 457(b) Plans, distributions are reported on Form 1099-R. Please refer to the "Taxation of Benefits of Governmental Deferred Compensation 457(b) Plans" section of this material for additional information.

- **For Employees** — If your co-op has employees participating in your nonqualified deferred compensation plan, you must recognize salary deferrals and/or distributions on their Form W-2 by the January 31 deadline. The amount withheld in connection with the nonqualified plan is included (when appropriate) in boxes 2, 11, 17 and 19. Deferred compensation distributions are reported on Form W-2 even after the employee has retired or terminated employment at the co-op.
- **For Directors** — Directors are considered independent contractors who provide services for your co-op but are not employees. You don't report withholding or Social Security/Medicare wages because you don't withhold income taxes for independent contractors and you don't deduct Social Security and Medicare from their payments. The co-op should not provide a Form 1099 to reflect the deferral of fees earned for services as a director. However, you must file Form 1099-NEC for each year that the director receives a distribution by the January 31 deadline. The distributions are reported as nonemployee compensation in boxes 7 and 18 (if applicable for state income).

1099-DIV and 1099-B Forms Issued by the Investment Company

The investment company (e.g., mutual fund company) holding cooperative assets for the nonqualified plans may forward annual IRS forms reporting dividends (1099-DIV) and/or distributions (1099-B) to your co-op and the IRS.

Form 1099-DIV reports any dividends earned on share balances from a deferred compensation account. Because the accounts are assets of the co-op, do not forward Form 1099-DIV to the participant. Form 1099-DIV should be forwarded to your co-op's accounting department for its use in preparing the co-op's year-end accounting.

Form 1099-B reports any distributions from a deferred compensation account. Because the accounts are assets of the co-op, do not forward Form 1099-B to the participant. Form 1099-B should be given to your co-op's accounting department for use in preparing the co-op's annual financial statement.

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However, if any distributions were subsequently paid to individual employees from your co-op’s general assets, a Form W-2 must be provided to those participants. The amount of the distribution in box 2 on Form 1099-B should be indicated in the total of other income on Form W-2, including boxes 1 (Wages, tips, and other compensation); 11 (Nonqualified plans); 16 (State wages, tips etc. – if applicable); and 18 (Local wages, tips etc. – if applicable). Similarly, if any distributions were subsequently paid to directors from your co-op’s general assets, a Form 1099-NEC must be provided to those participants.

Taxation Basics for Nonqualified Compensation Plan Deferrals and Distributions

There are differences on tax withholding rules from plan to plan for deferrals as shown in the following table:

	Executive Compensation 457(b) Plan	Top Hat Plan	Governmental 457(b) Plan	Global Executive Plan	Performance Incentive 457(f) Plan
Tax withholding on salary deferrals	FICA* and FUTA* taxes are paid as the participant’s deferred compensation is earned and deferred				Benefits are subject to FICA* and FUTA* tax withholding in the year they are no longer subject to a substantial risk of forfeiture

**Under the Federal Insurance Contributions Act (FICA), gross wages are taxed for Social Security up to the annual IRS wage limit and for Medicare (which has no annual limit). Employers and employees each pay one-half of the total FICA taxes. Under Federal Unemployment Taxes Act (FUTA), employers must pay unemployment taxes for their employees who have earned at least \$1,500 in wages during any calendar quarter in the current or previous year. Employees do not pay FUTA taxes.*

Generally, distribution withholding rules for nonqualified compensation plans are similar to the withholding rules for ordinary income. Participants owe ordinary income taxes when they receive distributions of the deferral amounts plus any notional interest or investment earnings credited to the account.

Qualified pension plan tax withholding rules do not apply; therefore, there is no mandatory 20% withholding requirement for distributions from nonqualified deferred compensation plans. In addition, distributions are not subject to the early withdrawal penalty for withdrawals before a participant reaches age 59½.

However, because distributions are considered deferred wages and reported on form W-2, you must withhold federal income taxes. Such withholding can be at the current “supplemental wage rate” or based on Form W-4 as completed by the employee. As withholding for state and local taxes varies from state to state, check with your accounting or payroll advisor for the rules applicable to your plan participants.

Taxation of Benefits for the Executive Compensation 457(b), Top Hat and Global Executive Plans

Benefits for these plans are generally included as taxable income in the year the benefits are actually paid or made available to a participant. A benefit is made available when the participant has satisfied the requirements to receive a benefit, even if the participant has not actually received a payment. For example, if a participant has not made an election for payment of benefits before leaving the co-op, 100% of the deferred compensation account value would be made available. The account value is considered taxable income even if the participant has not received any of the funds.

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Taxation of Benefits for Governmental Deferred Compensation 457(b) Plans

Generally, the taxation rules applicable to distributions from a Governmental Deferred Compensation 457(b) Plan are similar to 401(k) plan distribution rules. All distributions are reported as taxable income in the year they are paid to participants.

Report distributions on Form 1099-R as is done in the case of a distribution from a qualified plan. FICA/FUTA taxes are paid as amounts are earned and deferred. Amounts subject to FICA/FUTA once are not subject to additional withholding when paid to the participant.

Taxation of Benefits for Performance Incentive 457(f) Plan

Benefits are subject to withholding only when no longer subject to a substantial risk of forfeiture as defined in the co-op's Performance Incentive 457(f) Compensation Plan. Regular wage withholding rules apply (i.e., withhold based on marginal tax rate and Form W-4 as completed by the participant). Report employee distributions on Form W-2.

FICA and FUTA taxes can be paid as late as the end of the year in which the substantial risk of forfeiture has lapsed. Earnings up to the point of the lapse of the risk of forfeiture are subject to withholding at the same time as the plan benefits become payable to the participant.

For Samples of IRS Forms and More Information on Reporting Requirements

Visit the IRS website ([irs.gov](https://www.irs.gov)) for examples of all reporting forms, along with instructions on how to complete and transmit these forms. IRS Publication 15a provides information relating to reporting of deferred compensation payments.