Austin Peay State University

Deferred Compensation Plans

POLICIES

Issued: February 2, 2017
Responsible Official: Vice President for Finance and Administration
Responsible Office: Human Resources

Policy Statement

It is the policy of Austin Peay State University to provide supplemental retirement programs for employees as allowed by the Internal Review Service.

Purpose

The purpose of this policy is to provide guidance to the University when it enters into agreements to establish deferred compensation plans or programs for the benefit of their employees. Such plans or programs are permitted by Internal Revenue Code sections 403(b), 401(k), and 457. The following provisions apply:

- Section 403(b): Pre-Tax
- Section 401(k): Pre-Tax
- Section 457: Pre-Tax
- Roth 401(k): After-Tax

Procedures

General

A. Internal Revenue Service Requirements
   1. It is intended that all provisions of this guideline be consistent with provisions of the Internal Revenue Code, regulations, and other authoritative issuances of the Internal Revenue Service with respect to plans permitted by Internal Revenue Code Sections 403(b), 401(k)-Traditional and Roth, and 457 as amended from time to time.
      a. Any provision of this Plan is invalid to the extent such provision is not consistent with Internal Revenue Service provisions.
   2. Unless otherwise provided in this guideline, it is intended that Internal Revenue Service provisions be controlling on such matters as limitations on contributions,

withdrawal of contributions, payment of benefits, rollovers, and similar matters.

3. Notwithstanding the above sections, the President shall be empowered to establish reasonable requirements for the administration of the guideline, so long as such requirements do not conflict with any Internal Revenue Service provisions.
4. It is the intention of the Board of Trustees that an "excess contribution" as defined by the Internal Revenue Service provisions be returned to the participant as soon as administratively possible.
   a. Returned excess contributions would be reported as taxable income.

B. Third Party Administrators
1. The University may enter into an agreement with an approved company, financial institution, or other party which offers a program qualifying as a Section 403(b), 401(k), 457, and/or Roth 401(k) plan, hereinafter referred to as Third Party Administrators (TPA’s).
2. All participant contributions shall be paid to the approved TPA or TPA’s as selected by the employee.
3. The University will not recommend or endorse a TPA or TPA’s program and will make no guarantee or assurances regarding the vendor.

C. Investment Options
1. Investment Options providing participants a range of diversified funding options will be maintained by the TPA or TPA’s.
2. All responsibility for investment performance shall be between the employee and TPA.

D. Plan Period
1. Where a "plan year" or other official period is needed, the plan year for the University shall be the calendar year.

E. Participation Agreements
1. Each employee desiring to participate in a deferred compensation plan shall complete the appropriate Participation Agreement and applicable enrollment process.
2. All 401(k), 457 and Roth 401(k) deferral increases, decreases, or cancelations shall be performed by the participant directly with the TPA’s website or customer service call center.

3. All 403(b) deferral increases, decreases, or cancelations shall be submitted on the appropriate form to the Human Resources Office.
4. All forms containing changes (e.g., address, beneficiary, etc.) should be transmitted to the TPA directly.

F. Minimum and Maximum Deferral Calculations
   1. Minimum deferral amounts:
      a. 403(b) Plan - $200.00 per year
      b. 401(k) Plan - $20.00 per month
      c. 457 Plan - $20.00 per month
   2. Maximum deferrals for 403(b), 401(k), and 457 plans are subject to applicable Internal Revenue Service (IRS) Limits.

G. Limitations and Contributions
   1. Participants who also participate in other qualified plans sponsored by an employer in which the participant has a controlling ownership interest (this includes employee and employer contributions to 401(k), 401(a), 403(b), simplified employee pension (SEPs), and Keogh plans) are required to report to the University contribution information.
      a. The contribution amounts to other plans must be combined with the Retirement Plan contributions to determine whether the 415(c) limit has been reached. This is in accordance with Internal Revenue Service regulations.
   2. All 403(b), 401(k), and 457 contributions must be coordinated so that excess contributions are not made.
   3. Contributions (deferrals) for employees who also participate in the Optional Retirement Plan (ORP) are subject to additional limitations/restrictions.
   4. Deferrals for 403(b), 401(k) and 457 plans may be deducted from regular or longevity pay. "Advance" deferrals are not permitted (e.g., deferrals cannot be made before the money is earned).
   5. The University may decline to enter into any agreement that could, in the University's opinion, cause the employee to exceed permissible contribution levels.

H. Longevity Deferrals
   1. Participants may elect to defer regular pay and/or a portion of their longevity bonus paycheck.

a. A deferral from the longevity paycheck may be directed to the 403(b), 401(k), and 457 plan; however, it may not be divided among the plans.
b. Due to the required deduction of the applicable Social Security taxes, the full longevity amount may not be deferred.
c. A participant who elects to defer any portion of the longevity paycheck will be required to complete a Participation Agreement specifically for longevity each year.

I. Changing Deferrals
1. Changes in the amount of regular paycheck deferrals may be made by submitting a new Participation Agreement within the timeframe established by the TPA and University.

J. Changing Investment Options
1. Changing the Investment of Future Deferrals
   a. Participants may change the investment options of future deferrals at any time by calling the TPA's customer service department or completing the transaction on the TPA's website.
   b. The investment of money on deposit (already in account) is not affected by initiating a future change.
   c. Employees will need to complete a separate transaction for the 403(b), 401(k), and 457 if they participate in more than one plan.
2. Transferring Money on Deposit
   a. Participants may change the investment options of money on deposit (already in account) at any time by calling the TPA's customer service department or completing the transaction on the TPA's website Transfers are processed by the investment companies.
   b. The investment of future deferrals is not affected by transferring money already on deposit.
   c. Employees will need to complete a separate transaction for the 403(b), 401(k), and 457 if they participate in more than one plan.
3. All responsibility for investment performance shall be between the employee and the vendor.

K. Effect of a Leave of Absence on Deferrals
1. The deferred compensation program requires payroll deductions (reductions); therefore, participants may not

pay contributions directly to the TPA or University in order to receive matching funds that may be available.

2. When a participant returns from an unpaid leave of absence, deferrals can restart with the paycheck following his/her return to work.
3. The deferred compensation program does not contain a catch-up provision for employees who have been returned to a paid status retroactively.
   a. Therefore, double deductions are not permitted. Example: An employee on unpaid leave returns to work, but notification is not provided to Human Resources and/or Payroll for the affected pay period. When the next paycheck is processed, it will reflect a deferral and match (if funded) for only the current pay period.

L. Termination/Cancelation of Deferrals

1. An employee wishing to terminate his/her participation in a 401(k), 457 and Roth 401(k) shall complete the cancelation directly with the TPA's customer service call center or website.
2. All 403(b) cancelations shall be submitted on the appropriate form to the Human Resources Office.
3. Following cancelation of participation in deferred compensation plan, administrative fees will continue to be charged for each month in which the principle is sufficient to cover the fee. Insufficient principal will result in final termination of participation in the plan.
4. Previous deferrals may not be withdrawn unless the employee meets one of the conditions for withdrawal (see Sections II. D. and III. D.).

M. University Endorsement

1. The administration of the University will not endorse or recommend in a positive or negative manner any TPA or TPA program.
2. The University may make available information which could be useful in a selection decision by an employee.
3. This provision does not prohibit recommendation or evaluation by groups of employees or representatives of groups of employees.

N. Retirement Age

1. For purposes of this guideline, "normal retirement" will be the age used by the Tennessee Consolidated Retirement System (TCRS).

2. Once an employee reaches or passes the normal retirement age, for purposes of calculating limitations on contributions for purposes of this Plan, such computation should be made assuming retirement at the end of the year for which the calculation is being made.

Section 403(b)

A. The University and its employees thereof may enter into agreements to participate in tax-deferred annuity plans or programs consistent with Section 403(b) of the Internal Revenue Code and related provisions of the Internal Revenue Code, regulations, rulings, etc., and subject to the provisions of this policy and 403(b) Retirement Plan Document.

B. 403(b) Eligibility
   1. All employees within the University are eligible to participate in Section 403(b) programs.

C. Employer
   1. For the purposes of a Section 403(b) program, the employer shall be the University.

D. Withdrawals & Loans
   1. Early in service withdrawals and loans shall not be permitted consistent with 403(b) Retirement Plan Document and Internal Revenue Service provisions.

Section 401(k), 457, and Roth 401 (k)

A. The University and its employees may enter into agreements to participate in tax-deferred annuity plans or programs consistent with Section 401(k) and 457 of the Internal Revenue Code, regulations, and other authoritative issuances of the Internal Revenue Service, the Tax Reform Act of 1986, and the Employee Retirement Income Security Act of 1974 (ERISA) with respect to plans permitted by Internal Revenue Code Section 401(k) and 457 as amended from time to time.

B. 401(k), 457, and Roth 401(k) Eligibility
   1. All employees within the University are eligible to participate in the State's 401(k), 457, and Roth 401(k) deferred compensation programs.
   2. Contingent upon eligibility and appropriate funding each fiscal year, only regular full-time and regular part-time employees may be eligible to receive matching funds in addition to the employee’s 401(k) contributions. The match for eligible Roth 401(k) participants will be

directed to the 401(k) account.

C. Employer
   1. For purposes of the 401(k), 457, and Roth 401(k), the employer shall be the University.
   2. The President is empowered to set appropriate administrative guidelines and procedures necessary to coordinate administration with the State of Tennessee.

D. Withdrawals
   1. To make a withdrawal, the participant should contact the TPA or access his/her online account to obtain instructions and the applicable withdrawal form.
   2. A request for withdrawal will be reviewed by the Human Resources Office.
   3. If the withdrawal is approved and it is for reasons other than retirement, termination of employment, death, or attainment of age 59 ½, the TPA will notify the University to stop deferrals.
   4. Withdrawals shall be permitted for the following reasons:
      a. Retirement
      b. Death
      c. Disability
      d. Age 59 ½ - not available for 457 deferrals
      e. Termination of employment
      f. Financial hardship (as defined by the plan)
   5. Financial Hardship:
      a. Consideration for a hardship withdrawal will be based on the following definitions:
         1. 401(k) Plan Hardship Definition - An immediate and heavy financial need caused by one or more of the following:
            1. Unreimbursed medical expenses incurred by the participant or a dependent of the participant,
            2. Purchase of the participant's primary residence,
            3. Payment of college tuition for the next year for the participant or a dependent of the participant,
            4. Funeral expenses for an immediate family member of the participant which exceed life insurance coverage, or
            5. Official notification of implementation of eviction or foreclosure proceedings regarding the participant's primary residence.

2. 457 Plan Hardship Definition - A severe financial hardship resulting from:
    1. Sudden and unexpected illness or accident of the participant or a dependent;
    2. Loss of the participant's property due to uninsured casualty; or
    3. Other similar or extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.
    4. Examples of non-qualifying circumstances shall include but not be limited to the following:
        1. Purchase of a home or car;
        2. Educational expenses;
        3. Payment of child support or alimony;
        4. Bankruptcy or wage garnishment;
        5. Past due credit card bills; or
        6. Payment of taxes or tax penalties.

6. Withdrawals may not include employer contributions or earnings accrued on the account.
    a. Federal regulations require that all deferrals be canceled for the remainder of the current year and for one calendar year thereafter.
    b. An employee who qualifies for a loan in the 401(k) plan may be required to apply for such loan before applying for a hardship withdrawal from the plan.
7. Hardship withdrawals are subject to regular income tax and may be subject to the 10% early distribution tax penalty. Such distributions are not eligible for forward income averaging tax treatment or rollover.
8. Withdrawals Required Due to Age
    a. Per IRS regulations, employees must begin drawing benefits no later than April 1 of the year following the age of 70 ½ or retirement.
    b. If the employee does not meet the required distribution provisions, a penalty tax is imposed equal to 50% of the amount that the employee should have withdrawn that year.
9. Withdrawals Following Termination of Employment
    a. Accounts smaller than $3,500 - A lump sum withdrawal or rollover to another tax deferred plan (if employee qualifies) is permitted for such smaller amounts.
    b. Accounts larger than $3,500 - Employee may leave account in the State's plan.

10. Charges on Withdrawals
    a. Participants should contact the TPA to determine if there are any surrender charges on their current investment options.
11. Taxes on Withdrawals
    a. Basic information
        1. Must be reported when payments or withdrawals are received as income in the year(s) received.
        2. Income from plan reported to both participant and IRS on appropriate tax form for each year payments are received.
    b. Withholding taxes
        1. Normally applied as payments are received. Amount of withdrawal and amount of taxes reported on W-2 statement for 457 plan and on a 1099-R form for 401(k) plan.
        2. Rate of taxation
            1. 457 plan - flat 28% rate
            2. 401(k) plan - 20% on lump sum distributions and any other type of distribution received from plan which would be eligible for rollover.
            3. Withdrawals not subject to flat withholding tax - calculated as if recipient were married with 3 dependents unless a withholding certificate has been filed for a different amount. W-4 form is used for 457 payments and W-4P form is used for 401(k) payments.
        3. Early distribution tax penalty
            1. A 10% tax penalty is assessed on 401(k) withdrawals made before age 59 ½ except when distributions meet IRS exceptions.
            2. It is the participant's responsibility to make the determination and payment of the early distribution tax penalty.
12. 401(k) Loans
    a. Active employees who have accumulated $4,000 or more in the plan may borrow up to half of the account balance.
    b. Loans may not include employer contributions or matches.
    c. The minimum loan is $2,000; the maximum, $50,000.
    d. Employees are required to sign documents stipulating repayment via payroll deductions, normally in 5 or less years.

e. Both the principal and interest go back into the employee's 401(k) account. Employees should contact the Company for information on loan limitations and fees or for a copy of the loan brochure.

13. Applying for Benefits
    a. Benefits may be distributed in one of three ways:
        1. lump sum
        2. periodic payments, or
        3. in an annuity.
    b. Employees may not change the method of payment selected.
        1. Withdrawal application forms may be obtained from the TPA.
        2. Annuity payment estimates and materials describing payment options are available on request.
    c. Employees should obtain current information before selecting a payment schedule due to the fact that the provisions of this guideline may be revised by Congress.
    d. Payment Options
        1. Lump Sum Payment
            1. Used to withdraw entire account balance.
            2. May be only option available to participants with less than $3,500 in plan.
            3. May be most beneficial option for participants who have more than 5 years in the plan and qualify for forward income averaging.
        2. Periodic Payments
            1. May be withdrawn in equal annual or monthly payments for a specified number of years.
            2. Withdrawal period limited to life expectancy.
            3. May be directly deposited into checking or savings accounts.
        3. Annuity Payments
            1. Investments risks for future years assumed by insurance company.
            2. Payments made to participant or beneficiary regardless of investment returns.
            3. Types of annuity options:
                1. Designated Period Annuity - Certain amount paid for specified period (e.g. 5, 10, 15 years).

2. Life Annuity - A certain amount paid to the participant for his/her lifetime. No payments made to beneficiary.
3. Life Annuity with Period Certain Feature - A certain amount paid to the participant's as long as he/she lives and also payments paid to a beneficiary for the "period certain" should participant's death occur prior to the end of the period.
4. Life Annuity with Joint & Survivor Feature - A certain amount paid to the participant for as long as he/she lives and continued payments to beneficiary after participant's death at 100% or 50% of original payment, depending on option elected.

14. Five Year or Ten Year Forward Averaging
    a. Eligibility is contingent upon a participant receiving a qualifying lump sum distribution from a 401(k) plan after age 59 ½ and having 5 or more years in the plan. Participants born on or before 12/31/35 may be eligible for ten year averaging. Questions should be addressed to the TPA.
    b. Tax calculated as if money was received over 5 years and is calculated separately from tax on any other income.
15. Rollovers from Other Plans
    a. Employees who previously participated in another government's Section 457 plan may apply to have the assets of the prior plan transferred to the State's 457 plan.
    b. Employees who participated in another 401(k) plan may apply to have their distribution from that plan transferred to the 401(k) plan; however, the employee must be enrolled in the State of Tennessee Plan prior to applying for the transfer.
16. Plan to Plan Transfers and Rollovers to Other Plans
    a. Upon separation from employment, a participant may move deferred compensation into another plan under the following provisions:
        1. 457 Plan
            1. The other plan accepts such transfers.
        2. 401(k) Plan
            1. If a participant is eligible to withdraw accumulations, these may be moved to an IRA or a qualified retirement plan.

3. A distribution is eligible for transfer unless it is:
    1. Part of a series of substantially equal periodic payments made for the participant's life or life expectancy of the participant and his/her beneficiary,
    2. Part of a series of substantially equal periodic payments made for a specified period of 10 or more years,
    3. A withdrawal a participant is required to take due to age.

b. Money may be transferred directly to the new plan or the participant may receive a check from the 401(k) plan and make a rollover to the new plan.
c. Participants must arrange direct transfers when an application is submitted for withdrawal from the plan.
d. The plan must apply 20% withholding to any distribution which would have been eligible for direct transfer.
e. Prior service in Tennessee Consolidated Retirement System (TCRS) may be purchased with a rollover from the 401(k) plan when the participant becomes eligible to make a withdrawal from the 401(k) plan. Excess amounts may be rolled into an IRA or reported as taxable income. TCRS should be contacted for additional information.
f. Participants who move their 401(k) accounts into IRAs may want to set up special "conduit accounts" in the event they later become eligible to roll funds back into a qualified retirement account. (Withdrawals from IRAs are not eligible for income averaging.) Additional information on rollover and transfer rules may be obtained from the IRS.

17. Non-Assignability of Benefits
    a. 457 Plan
        1. Deferrals are assets of the State of Tennessee until paid to the participant or beneficiary.
        2. Amounts cannot be assigned or attached to satisfy debts or obligations of an individual.
    b. 401(k) Plan
        1. Accumulations are part of a qualified pension plan.
        2. Assets are exempt from execution, attachment, garnishment, or other process, other than levies issued by the IRS.
        3. Benefits cannot be given to an ex-spouse as marital property or as alimony.

Revision Dates

APSU Policy 5:007 – Issued: February 2, 2017

Subject Areas:

Academic	Finance	General	Human Resources	Information Technology	Student Affairs
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Approved

President: signature on file