NTSAA 403(b) Compliance Resolution Summit

Best Practices Manual

2nd edition

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Second Edition

Acknowledgements

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Introduction

In June of 2009, the National Tax Sheltered Accounts Association (NTSAA) organized and sponsored the first NTSAA 403(b) Compliance Resolution Summit (Summit) to address the pervasive service issues in the 403(b) marketplace. Several 403(b) product providers (vendors), third party administrators (TPAs), distributors, consultants and technology firms along with invited guests from the Association of School Business Officials (ASBO), the American Society of Pension Professionals and Actuaries (ASPPA), the Internal Revenue Service (IRS) and the Investment Company Institute (ICI) participated in frank and open discussions on acknowledged marketplace problems. The goal of the Summit was to identify problems and suggest reasonable measures that the involved parties might be able to use to satisfy compliance requirements and solve systemic issues.

The first Summit was so successful that it was agreed that the event would become an annual meeting for professionals working with 403(b) plans to share experiences and address some unique problems that affect the marketplace. The focus of each Summit will be to develop best practices for handling developing situations that are unique to 403(b) plans. In reaching this goal, the participants identify the issues that can be addressed only with external support (i.e.; need regulatory or statutory relief) and those issues that can be modified by marketplace response. The participants then develop best practices for those problems that the marketplace can address.

This "Best Practices" manual is the product of the first and second Summits and the efforts of the Task Force members that contributed their time and work toward the completion of the goals outlined at that Summit.

The Summits' attendees agreed that if most employers, product providers and TPAs adopt as many of the best practices outlined in this manual as possible, the entire 403(b) marketplace would benefit. It is hoped that employers (plan sponsors) would find administrative burdens significantly reduced and simplified; plan participants would benefit from more timely responses to transaction requests and product providers and TPAs would be able to substantially reduce the procedural and systemic burdens required to satisfy the compliance requirements inherent in the final 403(b) regulations. It was recommended that employers sponsoring 403(b) plans encourage product providers and service providers acting under their 403(b) plans to adapt to these recommendations and standardizations to the extent it is reasonable to do so.

Finally, understanding and communicating the role of each party involved in providing advice, products and services to the 403(b) marketplace are keys to a successful marketplace synergy. Responsibilities must be acknowledged, redundancies must be eliminated and acceptable standardization of transactional instructions, data formats, procedures and timelines will ease the congestion in the marketplace and lead toward a more efficient plan support. ASPPA and NTSAA hope that the materials contained in this manual will further that effort. The NTSAA also acknowledges and thanks the Task Force Members that spent so much time in the preparation of this manual. Those members and other individuals that served as resources to the Task Forces are listed on the inside front cover of this Manual.

Readers are invited to utilize the material in any way necessary to contribute to the final result – 403(b) plans that are both compliant and easier to manage.

NTSAA does not hold this manual out to be the only way in which 403(b) transactions can be processed or that it covers every possible situation. It recognizes that reasonable parties can disagree on how to handle some matters. This is the second edition of this manual. NTSAA encourages those in the 403(b) industry who may have comments on or even disagreements with some of the contents of manual to communicate with NTSAA and assist with possible future editions to improve upon this manual, make it more useful, and take into account new developments and issues.

Overall Objective

The intent of this manual is to suggest best practices for employers, product providers and TPAs that simplify processing of post-regulation transactions that occur in *non-ERISA 403(b) plans*, including distributions from 403(b) plans and rollovers, loans and hardship withdrawals, exchanges and plan-to-plan transfers and addressing issues related to deselected providers and "orphan accounts" held by those providers. Attendees at the Summits believed these goals would be best accomplished through education, communication and standardization.

It is hoped that this manual will provide clarity and guidance assisting employers, consultants, third party administrators ("TPAs"), distributors and product providers with the information necessary to properly understand the parties' respective obligations so that communications can be clear and concise and required tasks can be focused toward a common goal. To assist with the communication effort, this manual includes a glossary of terms (see "Glossary" located in the back of this manual) as used throughout so that the marketplace terminology will have a consistent meaning for all users. To simplify administration of non-ERISA 403(b) plans, the Task Forces were tasked with the following:

For employers/plan sponsors:

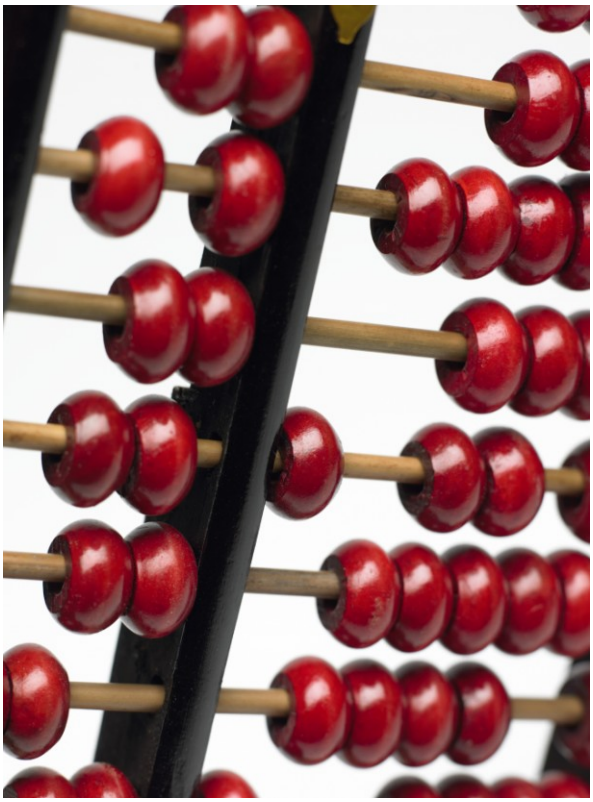
- To help them understand their obligation to operate the plan in accordance with the terms of the written plan document
- To help them understand the importance of communicating their plan's features to participants and product providers
- To help them understand the importance of educating employees on the value of participating in a 403(b) plan
- To help them identify what type of services are being provided by the TPA and what services are NOT being provided by the TPA
- To help them understand how TPA fees can affect the plan and participants
- If there is no TPA, to help employers/plan sponsors identify the entity or individual to which or whom transactional responsibilities have been assigned.
- To identify common operational problems and suggest appropriate correction methodologies
- That are 501(c)(3) plan sponsors seeking to qualify for the ERISA "safe harbor" exemption, then help them understand their limitations under the exemption and suggest procedures to protect the exemption
- To provide educational information, including definitions and explanation of the requirements for various types of transactions to help with an understanding of both the similarities and the differences between such transactions as rollovers, transfers and exchanges
- To achieve consistency of procedures with respect to the processing of transactions for 403(b) plans
- To help communicate the plan and the benefits of participating in the plan to employees

For product providers and TPAs:

- To use internal forms and procedures to help the employer operate the employer's plan in accordance with the terms of the employer's written plan document
- To standardize transaction forms to reduce the number of forms currently required to process transactions
- To provide educational information, including definitions and explanation of the requirements for various types of transactions to help with an understanding of both the similarities and the differences between such transactions as rollovers, transfers and exchanges
- To standardize the calculations necessary to determine the amount eligible for a loan
- To standardize, wherever possible, the operation of plans under the safe harbor rules for hardship withdrawals
- To recognize and develop alternative procedures for transactions that can be processed based on available information and do not require signature
- To achieve consistency of procedures with respect to the processing of transactions for 403(b) plans
- To standardize service descriptions and fee disclo-

sures to provide more meaningful information to plan sponsors in evaluating the level and cost of administrative services
- To simplify and standardize TPA fee collections and payments
- To standardize plan defect correction protocols
- To develop standardized procedures that support 501(c)(3) organizations' efforts to maintain the limited involvement "safe harbor" from ERISA
- To understand the value of using SPARK 403(b) data formats in transmitting plan data and establish protocols for best usage of SPARK data formats.
- To help communicate the plan and the benefits of participating in the plan to employees

With these goals as directives, this manual is designed to provide the recommendations of the Task Forces by identifying and discussing marketplace issues, then offering best practices recommendations with specificity. To further assist readers, there are checklists, additional educational information and forms located in the "Best Practices Support Materials" in the back of this manual.



Communicating the Plan to Employees

Marketplace Issues

While many employers offer 403(b) plans to employees, most do not adequately educate the employees on the importance of retirement savings or promote participation in the 403(b) plan as a valuable employee benefit. Many fail to recognize the correlation between higher participation rates and earlier retirement patterns for older workers. Employees often want information or assistance, but restrictions on access to advisors and the lack of general retirement information and plan specific information provided through the workplace creates barriers for obtaining help. Finally, efforts to ensure compliance with the technical rules may have inadvertently created obstacles for employers who might otherwise provide encouragement and education to potential plan participants. Procedures implemented by administrators often act as barriers for participants and materials designed to provide notice for employees may be too technical for employees to understand. Proper universal availability notices could satisfy all of the technical requirements while also providing information and encouraging participation.

Best Practices Recommendations

There is a technical requirement for employers to provide "meaningful notice" to eligible employees at least once per year. Most employers have strategies for satisfying this requirement; however, these strategies are usually focused on satisfying the technical requirements rather than on meaningful communication with employees. Employers should have a standardized notice that could satisfy the technical requirements while also providing clear and concise plan information to eligible employees. Employers should also be encouraged to provide additional information to employees to encourage them to participate in the employer's 403(b) plan. The materials should include information on retirement planning, basic financial education and coordinating additional retirement resources, such as Social Security and pension benefits. Generic education materials and guidelines for implementing an education program should be provided to encourage more employers to educate employees on the benefits of saving for retirement. Finally, employers and their administrators should also ensure that enrollment procedures do not act as a deterrent to plan participation.

- A specimen "universal notice" is included in the "Best Practices Support Materials" section located in the back of this manual. It is recommended that either the employer or TPA complete the form with accurate information. Employers should use at least two (2) different methods of delivering the notice to ensure that all eligible employees actually receive the notice. Suggestions for proper notice delivery are also included in the "Best Practices Support Materials."
- Employers or TPAs should develop a strategy for documenting the process and procedures for notifying eligible employees every year.
- Instructions to employees on the enrollment process should be incorporated with employee educational programs and be made available in seminar format, as presentations and on-line.
- A generic educational slide presentation is included in the "Best Practices Support Materials" section of this manual. It is prepared by the Retirement Plan Council of ASBO International, a non-profit association of school business officials and other education professionals. 501(c)(3) employers are encouraged to utilize the presentation to prepare one appropriate for their needs.
- Guidelines for implementing an employee retirement planning educational program are included in the "Best Practices Support Materials" section of this manual. These guidelines were also prepared by ASBO International and reviewed by the Team Leaders

of the NTSAA Task Force for use in this manual.

- Employers should identify potential communication partners, including the TPA, product providers or their financial advisors, and consultants who are willing to assist the employer in providing education to employees using generic materials that do not focus on individual products or investment strategies. Employers should consider membership in NTSAA/ASPPA when evaluating potential communication partners because members are bound by a code of ethics and have expertise in the 403(b) marketplace.
- In a coordinated effort with its education partner, the employer should present a turnkey education package with one face to employees. These efforts should include coordinating the different product provider efforts, simplifying the enrollment process, and introducing and defining the role of the product provider (or its representative) and the role of the TPA.
- Education materials and the universal availability notice must be updated as appropriate. Procedures should be developed to review materials to ensure that timely and accurate information is being provided.

Communicating Plan Features

Marketplace Issues

While most employers have adopted 403(b) plan documents, many have not shared those documents with the product providers, the financial representatives servicing the plan participants, the plan participants and in some cases, the plan administrator. This creates problems because transactions often require information to be shared between authorized product providers as in loans or exchanges, or are based on plan features, such as catch up provisions or financial hardship distributions. In the absence of information on plan provisions, some employers are overwhelmed with requests for information or authorization requests for transactions related to their plans. Many product providers, unable to provide services that were previously provided based solely on participant information, have to contact employers and/or plan administrators for information to complete transactions. For various reasons, some employers fail to respond or provide incorrect information because they do not understand the purpose of the questions or they do not have the information sought. Having executed a plan document, many employers fail to communicate the terms of that document to the plan participants and to the employer's compliance partners.

Best Practices Recommendations

It is important that the features of the employer's written plan document be provided to the product providers. It would be useful if this, the first and most important element in resolving compliance issues, could be done in a standardized format acceptable to the industry. This should obviate the requests by providers for employers to complete each provider's "plan feature" form or summary sheet.

- A sample Plan Features Grid is included in the "Best Practices Support Materials" section located in the back of this manual. It is recommended that employers complete this form or have their TPA complete this form and distribute it to all product providers authorized under the plan document. Of course, it will be essential to keep the form updated for changes made. Revised forms should be dated and distributed to all providers.
- Use of the Plan Feature Grid will describe plan features on a consistent basis for all providers. It should also significantly reduce provider requests for complete plan documents[1] and/or plan adoption agreements. Consistency within the marketplace would accelerate processing as each provider would be "working" from the same Plan Feature Grid, the terminology would be consistent and each provider would not "interpret" the employer's plan.[2]
- Employers should require that the approved providers under the plan communicate the plan features to their financial advisors representing the provider(s) under the plan. This would also minimize improper transaction requests. For example, if loans are not included as a feature in the plan document, properly informed financial advisors would not advise participants to seek loans.
- When adopting the plan or amending the plan, plan language should be designed to limit features available under the plan to those that are available under the annuity contract(s) or custodial account(s) in which each participant's interest under the plan is held in order to prevent a de facto conflict between

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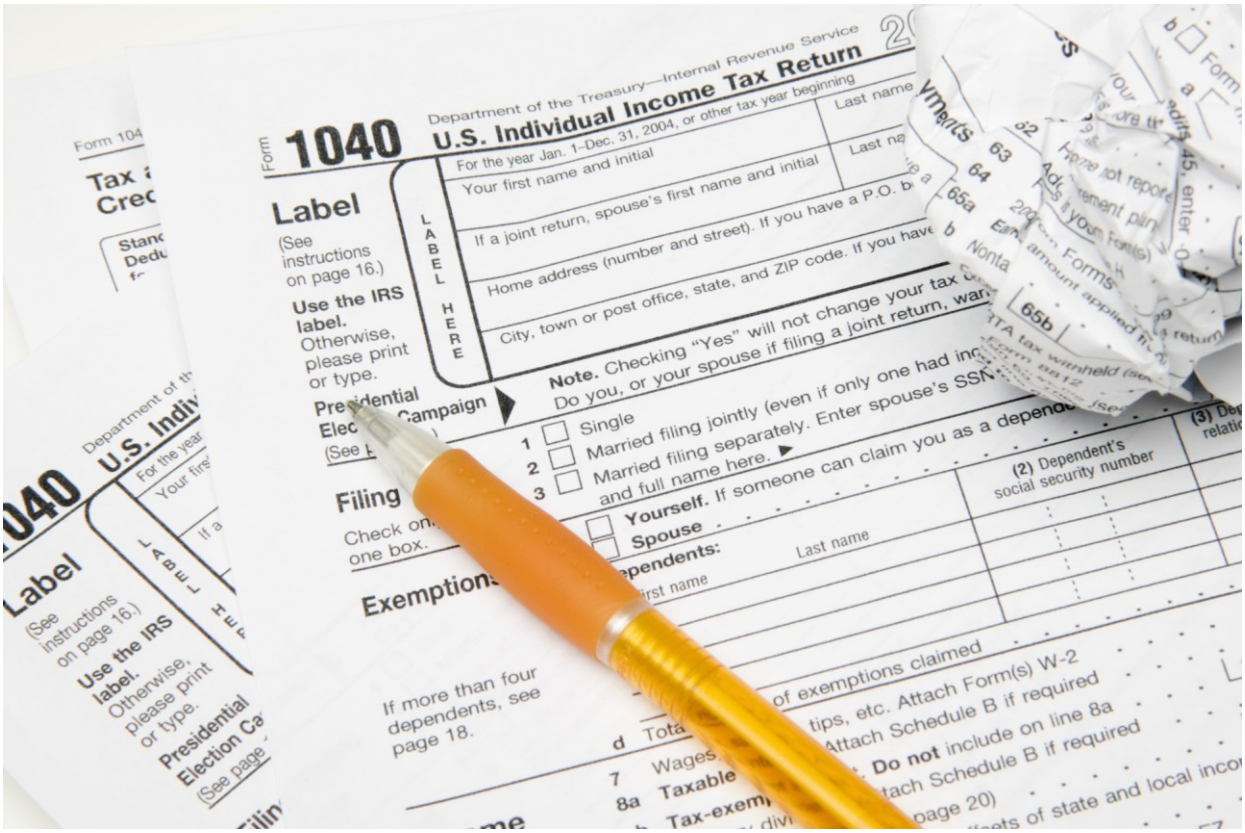
[1] *Many product providers at the Summit indicated that they would accept the information provided on the Plan Feature Grid as an adequate source of information on an employer's plan. However, some providers indicated that their legal counsel may still require a complete copy of the plan for review if the employer is asking for indemnification or other legally binding acceptance of responsibility by the provider.*

[2] *Some plan administrators have prepared a database of their employer clients' plan features, which the providers may access to obtain the information. However, these databases vary throughout the marketplace.*



plan and contract or account terms. For example (and ONLY as a sample provision), a plan could provide "Unless required to satisfy the requirements of section 403(b) of the Internal Revenue Code and regulations issued there under, no provision or feature under this Plan shall be made available to a Participant unless the terms of the annuity contract(s) or custodial account(s) to which a Participant's account is subject permit and can accommodate such provision or feature." It should be understood that not all providers offer all options under their contracts or accounts, and plan sponsors should work with their providers to be certain which options are available, and for that to be consistent with the plan document , and communicate any relevant limitations to plan participants. Use of the Plan Feature Grid may help with that.

Correcting Plan Errors

Marketplace Issues

Prior to 1998, there were very few options for employers to correct defects in their retirement plans, including excess deferrals and contributions to 403(b) plans. Through several enhancements, the current correction program, referred to as the EPCRS program, now provides guidance on acceptable methods for correcting certain plan errors. However, the correction methodologies require cooperation between employers, product providers, TPAs and employees and conflicts arise over how corrections should be made. The various organizations interpret guidance differently and tend to create solutions that may not conform to available guidance, including information provided in the EPCRS program, regulations and rulings. A consistent approach to common problems in the 403(b) marketplace is necessary.

Employers often do not understand the definition of "Universal Availability"; how to communicate it to their employees; and what IRS looks at for satisfying the "written meaningful notice" requirement. Since this defect could cause plan failure, it is important for all employers to clearly understand their responsibilities.

Best Practices Recommendations for Selected Errors

Correcting Universal Availability. The regulations require that all eligible employees must be notified of their ability to participate in their employer's 403(b) plan. Many employers do not understand what the "Universal Availability" requirements are, how to communicate it to their employees; and what IRS looks at for satisfying the "written meaningful notice" requirement. For example, current IRS statistics indicate that eight (8) out of ten (10) public school 403(b) plans have incorrectly excluded substitute teachers and other part-time workers. In more than one out of seven IRS audits of college and university 403(b) plans, auditors are finding that plans have incorrectly excluded adjunct professors. The following recommendations are made:

- A good faith effort must be made to reach **all** eligible employees, not just regular or full time employees.
- Multiple options to provide the notice should be evaluated as only one (1) may not be reasonable or meaningful. Alternative suggestions for delivering the notice are included in the "Best Practices Support Materials" section of this manual.
- The meaningful notice is required once a year, but multiple notifications may be required to reach all eligible employees hired throughout the year.
- The employer should document what was done. The IRS will ask for the methodology in satisfying this rule.
- If the 1000 hour rule is used to exclude certain employees from participation, employers must monitor the actual hours worked by employees. Noting that the employee is "part-time" is not sufficient.
- If Universal Availability requirements are not met, EPCRS requires the employer to make a contribution into the 403(b) accounts of all eligible employees that were not provided the option to defer. This contribution is made to the plan as a QNEC (qualified nonelective contribution).
- Since the EPCRS program includes the exclusive correction methodology for failures of universal availability, only the correction method indicated in EPCRS should be used. Employers should document the correction and how it was determined.
- If the Employer is correcting this failure, make sure the plan either permits employer contributions or is amended to accept employer contributions, even if this is the only "employer type" contribution that is being made to the plan.

Correcting Excess Deferrals and Excess Employer Contributions. The Code and EPCRS program provide very clear guidance on correcting Excess Deferrals (see the Glossary for a definition of Excess Deferral). However, many employers attempt to correct this type of error by "changing an employee's Form W-2. This method is incorrect and will not be recognized by the IRS.

- Employers should refer to the Quick Reference Chart, which describes proper correction methods, included

in the Best Practices Support Materials section.

- Employers, product providers and TPAs should establish consistent procedures that conform to the proper correction methodology for each type of excess.
- Employees should be educated on the procedures so they know what to expect and how to cooperate. The consequences should also be made clear to the employees.
- Employees must make proper withholding elections and identifying from which investment product the excess will be distributed.
- Corrective distributions must be approved by the Employer or authorized TPA.
- If the product provider is the payor, then the product provider must issue a Form 1099R identifying the distribution as a return of an excess.
- All parties must follow the same process as outlined under the Code, regulations and EPCRS program.

Correcting Mistaken Contributions. A mistaken contribution (also identified as a mistake of fact in the draft LRMs (List of Required Modifications) for the prototype document) is money remitted to a product provider or other vendor in error. It is not an excess contribution or allocation error. An example of a mistaken contribution is a contribution forwarded to the wrong product provider or an amount that did not conform to the amount requested by the employee on the salary reduction form.

Since this is not addressed in EPCRS or the regulations, it was determined that best practices require that the parties:

- Clearly define what is a mistaken contribution
- Establish a procedure that ensures there is no harm to the participant (they must be restored to where they would have been prior to the error)
- It is correct to leave the earnings in the account, since this is not a correction of an excess, where earnings are a part of the correction procedures.
- Participants should be notified and sign off.
- IRS has indicated that this is not a Mistake of Fact subject to the one year limitation under Rev. Rule 91-4. However there has been some disagreement as to whether those rules apply. This needs to be addressed by the IRS due to pending requirements that certain mistake of facts may need to be reported in the near future.
- Procedures to correct the mistake, including suggested language and forms should be created.

Correction for No Written Plan by 12/31/2009. Many employers did not adopt a written plan document by the required execution date of December 31, 2009. Technically, this results in a document failure and could jeopardize the tax deferred status of the plan. To ameliorate this situation:

- The employer should adopt a written plan using the current date for the adoption date, even though they may enter an effective date of 1/1/2009. It is important that the written plan reflects how the plan has been operating from 1/1/2009 up to the date it is adopted.
- In the alternative, another option as suggested under the preamble to the final regulations is to use the "paperclip" documentation method. Under this document method, the employer collects copies of all the underlying custodial account, annuity contract, enrollment forms, brochures, etc. and determines the provisions of the plan based on the content of those materials. The employer then formalizes the plan document (amending and restating as of the current date). The IRS has indicated this method may have inherent risks because of potential conflicting terms in the various documents.
- The IRS has indicated that EPCRS will be updated at some point to include a document correction methodology, but employers should not wait to adopt a plan. The relief, when available, will cover late adopters.
- Until the IRS modifies EPCRS, and has published recommended procedures for correcting this specific 403(b) document failure, the general principles of the current EPCRS Revenue Procedures apply.

Correcting Unauthorized Transactions. An unauthorized transaction occurs when a transaction is processed that was not approved by the employer or their TPA. These fall into two groups of errors; (1) unauthorized and processed incorrectly and (2) unauthorized and processed correctly.

For transactions that were processed incorrectly:

- The employer must use specific procedures set forth in EPCRS, or
- By using the general correction procedures under EPCRS.
- If the error and correction are not currently identified under EPCRS, the employer should submit with information on the suggested method of correction for

an approval from the IRS.

- Product providers and TPAs must also review procedures, if applicable to assure that the incorrect process does not occur again.

For transactions that were processed correctly:

- Product providers and TPAs must review procedures to ensure it cannot happen again. The correction in this case would be changing the procedures for transactions.

Correction for Improper Plan Terminations. While the final regulations do authorize plan terminations, the actual process of accomplishing a plan termination is in fact extremely difficult to accomplish, especially for non-ERISA plans. At the time of the 2nd Summit, additional guidance on plan terminations had not been available from the IRS leaving many unanswered questions.[3] The major issue remains the inability of the employer to distribute 403(b)(7) custodial accounts under the terminated plan. Since participants and beneficiaries are the legal owners of these accounts, employers may not force the accounts to be distributed. Accordingly, the correction for this issue is uncertain.

- The plan document must be updated to reflect the final regulations and any other required amendments, including language that fully vests all benefits and permits plan termination, as well as any required legislative changes.
- All contributions to the plan must stop and the plan should be frozen.
- No new contributions to any 403(b) plans may be made for a period of at least 12 months (under the regulations)
- Employers should proceed with ANY 403(b) plan termination with caution as there is no clear way to satisfy the requirement that ALL plan assets will be distributed unless the IRS changes the requirements or provides alternative relief from the requirements.

Correction for No Funding Vehicle**.** Sometimes contributions are remitted before an annuity contract or custodial account has been established by a plan participant. Some product providers have established procedures for this situation, but others have not. This creates problems for employees and employers. The most common error relates with respect to elective deferrals, but this also affects employer contributions.

The recommended correction to have the contributions invested as soon as possible is:

- The product provider should set up an account upon receipt of authorization by the employer followed by appropriate application from the employee, if possible. It should be noted that nothing in the regulations cover this proposed solution.
- Employer must provide information to establish the account and sign an application in place of the participant, where such employee refuses or cannot be located on a timely basis.
- If an account is established, the employer must document the process followed.
- If this is a Non-ERISA plan, product providers must review their agreements to ensure that the establishment of an account without the employee's signature is covered.
- Treasury Department must address CIP procedures under the Patriot Act Q & As to expand the employer establishment of a NonERISA 403(b) account. Currently the Q&A's are limited to SEP-IRAs, SIMPLE-IRAs, and missing participants in an ERISA plan.
- Product providers should also establish procedures for establishing an account, including verifying it is allowed under the underlying vendor agreement and identify appropriate default investments.
- If the Plan is subject to ERISA, employers must also satisfy the deposit rules (7 day safe harbor for small plans) for elective deferrals where failure could cause a prohibited transaction penalty in addition to payment of lost earnings on late deposits.

[3] *The IRS released Rev. Rul. 2011-07 which addressed some issues relating to 403(b) plan terminations and distribution of annuity contracts from such plans; however, the more difficult problem of distributing custodial accounts from terminated plans was not addressed.*

Communicating Plan Administration

Marketplace Issues

All 403(b) plans require some level of administrative support. Prior to the issuance of the final 403(b) regulations, most ERISA-exempt 403(b) plan sponsors performed some tasks required to establish and support their 403(b) programs and the product providers acted under their respective annuity contracts and custodial accounts to establish individual accounts, keep records, make distributions, withhold and report taxes for their 403(b) annuitants/custodial account holders. However, the final 403(b) regulations clearly indicated that plan sponsors had obligations and responsibilities not previously associated with sponsoring 403(b) plans. One consequence is that employers have had to recognize additional responsibility and (potential liability) for administrative functions of their 403(b) plans. This fact is a key factor in compliance as the information necessary to properly administer the plans often does not reside solely with the employer, but may be spread among several parties. Therefore, compliance may only be accomplished if the involved parties know how the plan is being administered and which parties have the information necessary to properly evaluate a transaction.

To further complicate this issue, providers of administrative services are not all providing the same services to the 403(b) plans that they administer. In general, an administrator or TPA is a person or organization that acts as a conduit for information between the plan sponsor and any vendors that may provide investment products under the 403(b) plan. The TPA then uses this information to perform the day-to-day administrative functions required under the plan document, such as monitoring contributions and investment allocations. Services may be provided based on optional plan features, such as certifying hardships or coordinating loans from different product providers. However, not all organizations identifying themselves as a TPA provide every administrative service required under the plan. Consequently, product providers often do not know, from plan to plan, which services are being provided by an administrator, by the employer or are expected to be provided by the product provider. As a consequence, there is little consistency in the marketplace and product providers often duplicate services being provided by administrators, sometimes with conflicting results. This lack of communication can cause delays, errors, and inconsistent results for participants.

Finally, organizations providing TPA services must be paid for their services. However, the fees for such services will vary based on the level of services being provided by the administrators. Unfortunately, employers often fail to understand what services their administrators are providing and therefore cannot determine if fees are reasonable. Further, employers are often not the parties paying the fees and so are not motivated to review fees or determine if the fees charged are reasonable for the services provided.

Best Practices Recommendations

Plan sponsors must understand the different types of administrators, so that they can select TPAs or single providers that provide the services necessary to support their 403(b) plan or *understand that the employer will be responsible for any services not provided by the TPA or single provider*. (Some product providers may provide services equivalent to a TPA where they are the sole provider or operate under agreements with certain other providers. In that case, references to the TPA below would include such providers acting as administrators.) Further, it is essential that the TPA for each 403(b) plan be identified and communicated to the authorized product providers. Finally, it is essential to know which party is responsible for administering the specific features of the employer's 403(b) plan. This should be done on a standardized form acceptable to the industry. This should eliminate repetitive and conflicting requests for transaction authorizations.

- Employers should review the Checklist for Third Par-

ty Administrator (TPA) Selection form (see "Best Practices Support Materials" section) which describes the different types of TPAs and the differences in the services that each type of organization is providing in the 403(b) marketplace. Employers should determine which type of TPA is desired and then find a TPA that provides the appropriate level of service. This checklist will also provide helpful information when comparing the services and fees of TPAs.

- Employers should use the TPA Services Grid (see "Best Practices Support Materials" section) when evaluating the bids or proposals of multiple 403(b) administrators. This grid identifies important services that TPAs provide based on the features of the plan. The grid may be used as part of a bid or RFP by requiring bidding TPAs to complete the Grid, or employers may gather information provided by TPAs onto the Grid so that they can compare the services that are being offered in a standard, unbiased format.
- Once a TPA is selected, or if none is selected, employer (or preferably the TPA) should complete the Plan Features Grid (see "Best Practices Support Materials" section). For purposes of this section, the focus is on the columns under the heading "Party Responsible for Monitoring." The party responsible for monitoring each identified feature on the Grid should be indicated by a mark. A copy of the completed Plan Features Grid should be provided to every product provider authorized under the plan document.
- Product providers should forward a copy of the Plan Features Grid to their financial representatives servicing the plan participants and make certain that any participant communications accurately reflect the information on the Grid. This information will help the participants know what features the plan includes and where to send plan transaction requests.

Changing Your TPA

Marketplace Issues

Problems also arise when employers change the plan's administrator (TPA) and do not notify the product providers, the plan participants or the former TPA. In the absence of such notification, all parties continue to interact with the former TPA, but plan transactions are not processed or approved. Delays occur, contributions are not processed, information is not provided and a logjam develops.

Best Practices Recommendations

Every relationship with a TPA is different and will be subject to the terms of whatever the service agreement between the employer and the TPA provides. The following are general recommendations based on successful transitions that have been made in the 403(b) marketplace:

Before looking for a new TPA, employer should identify services desired, either through an RFP process or another process consistent with your organization's policies and procedures (See Checklist for Third Party Administrator (TPA) Selection form and TPA Services Grid in the "Best Practices Support Materials" section of this Manual):

- Employer should evaluate the services proposed by the prospective TPA to determine whether they are consistent with the plan's needs before making any decisions, and definitely before signing any service agreement.
- Since the possible range of TPA services may vary, employers should ask for a detailed description of the new TPA's service offerings and the fees associated with those services. If the new TPA is selected through the RFP process, the TPA's proposal, along with any subsequent negotiations, should provide sufficient information.
- Once a decision is made to change the TPA, the parties must create a timeline to ensure a smooth transition for employees and approved product providers. The timeline should extend from 45 to 60 days. (In some cases there may be reasons to pursue a shorter transition.) Employees and product providers should also be informed.
- Contributions and distribution requests must be sent to the correct location, based upon the TPA service model that you have selected.
- When the current TPA is terminated, problems transferring plan data to the new TPA may arise. All parties must anticipate this and allow for the time it will take to (a) identify the data that will be transitioned; and (b) move this data correctly and completely. Employer must work with both TPA firms to determine an agreed timeframe and format for this exchange. Terms of the service agreement with the current TPA may impose limits on one or more of these variables.
- Employer should determine what authority is re-

quired, if any, to implement the change in TPA. This may include a Board resolution that terminates the current TPA and contracts with the successor TPA.

- Employer must ensure there is no gap in compliance oversight between the former TPA and new TPA. This may require instructions to product providers regarding how to handle transaction requests received during any gap period between TPAs.
- Employer should establish the new contact at the new TPA and identify the best method of communication.
- If there is a change in the TPA or any change in administrative responsibilities, the change should be reflected on the Plan Feature Grid and the revised Grid should be sent to all authorized product providers.
- The plan participants should also be notified of any changes to the TPA and the effective date of the change with new contact information should be included in the notification.
- Communicate the effective date of the TPA change with all approved product providers and give them necessary contact information on the new TPA. If product providers are required to share data with the TPA in a particular format (such as SPARK data, or other confidential participant account data), an agreement directly between the TPA and the product provider may be required, if one does not already exist.
- Employer should complete and sign new service agreement with the new TPA, which should include any services that you have agreed upon as well as a description of general support in the event of problems, errors or IRS audits.
- The new TPA should send any necessary documentation to affected participants and product providers.
- Employer should determine if the new TPA will undertake any responsibilities that employer currently has. If yes, a plan to transition such responsibilities should be established.
- Employer should determine any changes for contribution or distribution processing including web access, banking issues, data movement and service requests.
- Employer should require the new TPA to report progress throughout the transition so that it can be monitored.

Distributions

Marketplace Issues for NonERISA 403(b) Plans

Coordinating information for proper distributions from 403(b) plans has been one of the most difficult issues for the non-ERISA 403(b) marketplace. Historically, the product provider and participant (or beneficiary) were often the only two parties involved in any distribution transaction. Product providers generally held all participant account information under private contract with the plan participant and distributions were made in accordance with that contract. Generally, employers did not have access to the account information and neither did an employer's representative. As a result, there was no structure in place to involve a third party to coordinate information from multiple sources prior to "authorizing" a distribution to ensure compliance.

The marketplace responded to this situation in a variety of ways immediately following the issuance of the final regulations.. Some providers insisted that, under state contract law, they were still responsible under their contracts with the individuals to review all distribution requests and authorize transactions. Some would not act on employer or TPA directions unless individuals also consented and waived their privacy rights under the contract. Other providers required employers to "sign off" on every transaction, while others required indemnification from the employer/TPA against any actions that participants might take against the provider for following the instructions of the employer/TPA.

Not to be outdone, TPAs and employers took equally diverse positions. Many employers refused to respond to any inquiries claiming no responsibilities under the plan (clearly a wish to follow history). Others hired TPAs to review and coordinate provider actions and TPAs had inconsistent approaches to plan management. Some planned to be involved in each transaction; some were only involved in contributions and remitting to vendors; and some gave employers choices as to services to be provided based on fees charged. However, there was often little communication with the providers or participants about what role(s) the TPAs were performing. Accordingly, there was little consistency in approach or knowledge. Providers were trying to develop operational systems and processes that could work with thousands of employers and hundreds of TPAs.

There was no blueprint for coordination and the congestion that developed from the conflicting paths created a bottleneck that disrupted the marketplace in 2009.

Marketplace Issues for 403(b) Plans Relying on DOL Safe Harbor Exemption

When the final 403(b) regulations were issued by the IRS, most understood that a non-profit organization[4] offering a 403(b) program to their employees would be required to take a more active role in the administration and operation of the plan to satisfy the compliance requirements of the regulations. For example, under the IRS regulations, most believed that the employer would be responsible for ensuring that loans held with multiple providers did not exceed the aggregate loan limitation and that distributions were not made prior to the occurrence of a distributable event.

However, this perspective leads to a natural conflict with certain provisions of ERISA, a federal law regulating employee benefits. [5] All retirement plans, including 403(b) plans, are subject to ERISA; however certain 403(b) plans are specifically exempted under the statute. Plans sponsored by governmental entities and "church plans" as defined in ERISA section 3(33) are statutorily

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[4] *For the purpose of this section it is assumed that the Employer is a non-governmental, non-church or church related 501(c)(3) organization.*

[5] *Employee Retirement Income Security Act of 1972, a federal law that governs employee benefits, including 403(b) plans, unless a statutory or regulatory exclusion exempts coverage.*

exempted from ERISA and DOL regulation 29 CFR § 2510.3-1(f) exempts certain 403(b) plans in which the employer has a very limited involvement ("safe harbor plans"). This regulation provides a limited list of activities that an employer may perform to support a 403(b) plan, while not subjecting the plan to ERISA. Issued in 1979, it is generally considered to be as "clear as mud," and the DOL has issued surprisingly little guidance since to clarify the regulation.

In a recent frenzy of activity, the DOL issued a series of field assistance bulletins ("FABs") to "assist" employers in complying with applicable DOL requirements. The first was FAB 2007-02 which confirmed that tax-exempt employers could comply with the final 403(b) regulations and remain within the safe harbor exemption from ERISA. The DOL noted that "the new § 403(b) regulations offer employers considerable flexibility in shaping the extent and nature of their involvement in the plan. Therefore, the question of whether any particular employer, in complying with the § 403(b) regulations, has established or maintained a plan covered under Title I of ERISA must be analyzed on a case-by-case basis applying the criteria set forth in 29 C.F.R. § 2510.3-2(f) and section 3(2) of ERISA".

While this provided some clarification, it led to several additional questions as employers tried to comply with the final 403(b) regulations without losing the safe harbor exemption. Additional clarification was most recently provided in FAB 2010-01. Using a Q and A format, the FAB identified specific transactions and activities an employer could engage in that would cause a plan to lose its safe harbor status. In general, the guidance indicated, that employers could exercise no discretion over the administration of the plan or over assets held under the plan. Accordingly, except for certain ministerial functions specifically permitted under the initial regulation that were deemed necessary to implement the 403(b) program, most other discretionary tasks cannot be performed by the employer in a safe harbor plan, nor can they be performed by a delegate of the employer. Since the marketplace has shifted towards greater employer involvement in maintaining 403(b) plans, this creates a conundrum for employers wishing to maintain safe harbor 403(b) plans.

Best Practices Recommendations

Since the Code only permits distributions to be made from 403(b) plans following the occurrence of at least one "distributable event" as listed in the Code,[6] it should be necessary that the occurrence of a listed event be confirmed prior to a distribution to ensure compliance with the Code and regulations.

Some providers requested the development of checklists that include required elements for forms so that product providers or TPAs could process distribution transactions properly using provider forms and paperwork. Providers could then compare their distribution forms against the checklists, correct for deficiencies and enable distribution transactions to be completed without duplicative paperwork. The following are recommendations intended to coordinate practices of TPAs, employers and product providers for consistent processing of distribution transactions for each type of "distributable event." Where there is a difference between "best practices" for safe harbor 403(b) plans and 403(b) plans that are not seeking to preserve the exemption from ERISA either because they are automatically exempt from ERISA, such as public education plans or church plans, or because they are NOT exempt from ERISA, such as plans sponsored by 501(c)(3) organizations that include employer contributions, such differences will be noted.

Age 59½

- Acceptable proof of age can be submitted to the product providers directly from the plan participants such as driver's license, passport, state photo ID or other acceptable identification with birth date.
- If providers have an acceptable record of participant's date of birth in their records (as may have been required by FINRA or under the Patriot Act when establishing the account), the distribution request can be processed without any additional proof of age.
- Once provider has confirmed that plan permits distributions at age 59½ (from Plan Features Grid), neither employer nor TPA authorization is necessary.

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[6] *See IRC 403(b)(7) for restrictions on custodial accounts and 403(b)(11) for restrictions on annuity contracts. Amounts held in annuity contracts as of 12/31/88 are not subject to the distribution restrictions. The final 403(b) regulations do impose additional restrictions on distributions from annuity contracts issued on and after January 1, 2009. See Treas. Reg. 1.403(b)-6(b).*

Only proof of age is needed.

Severance of Service with Employer

- Employer is the best source for information on employment status. However, the only question that should be asked is whether or not the individual is still an employee of the employer. The name of the individual providing the information and the date of the contact should also be recorded. There is no need for additional authorizations, signatures, statements, disclaimers, etc. from the employer.
- If a TPA is acting on behalf of the employer, the provider may get the information on employment status from the TPA unless the provider has been notified that the TPA will not provide that information. Generally, there will be no TPA for safe harbor plans. However, if the employer is using an information coordinator, data aggregator or other similar organization to coordinate information from multiple product providers, then that party can act as the central source for the product providers.
- Once the necessary confirmation is obtained, the provider should process the distribution request without requiring further proof or signature from the employer or TPA.
- If the employer (or TPA) cannot or will not provide confirmation of "no employee" status, recommended best practices are:
  - ❖The provider should accept other reasonable proof, such as a letter from the retirement board to the participant, an income tax return showing no W-2 income from the employer, a COBRA notice or other documentation that demonstrates a lack of employment relationship between the parties.
  - ❖The provider should maintain a written or electronic record of its best efforts to obtain confirmation from the employer or TPA or written proof of severance from the participant.
  - ❖After reasonable efforts to obtain confirmation have failed, the provider may then process the distribution, though at that point the provider may make it clear to the participant that any tax consequences of an improper distribution will fall on the participant. Failure to timely process the distribution request unless there are extenuating circumstances is discouraged and in some cases may be a violation of state contract and/or federal securities laws.

Even in a safe harbor plan, employer should provide factual information about employment status of plan participant.

Death and Disability

- Most providers have standard procedures for acceptance of proof of death or disability.[7] However, if the employer has delegated this responsibility to a TPA and the TPA notifies the provider(s) in writing that the TPA has provided the necessary confirmation, the provider should process the death or disability distribution request without additional review (assuming it is reasonable on its face).
  - ❖If the TPA has made the determination that the distribution satisfies the requirements for a disability distribution, the participant remains responsible for supporting the claim to the satisfaction of the IRS to avoid the IRC Section 72(t) penalty. The provider need not impose an additional level of review if the TPA's determination is reasonable on its face.

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[7] *It is important to note that disability may have a different definition under an annuity contract than under a 403(b)(7) custodial account. Under a custodial account, an individual will be treated as disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. This is the standard required by the IRS to permit a hardship distribution under a 403(b) plan (though many disabled participants have also severed employment) and to avoid the 10% penalty under IRC Sec. 72(m)(7). Many 403(b) annuity contracts use a different definition for disability that conforms to their other annuity products. Providers must exercise caution when determining if a participant qualifies for disability. They should take care to ensure that their determinations are based on the requirements for "disability" from their contract/account as well as for tax purposes. Individual taxpayers are required by the IRS to document and support their "disability" claims for purposes of IRC Sec. 72(m)(7).*

❖In a safe harbor plan, providers must use standard procedures to process death claims without employer signatures or confirmations. Necessary paperwork and signatures can be obtained from beneficiaries or estates of decedent participant. Employers may only provide factual information and perform ministerial tasks.

Hardship Withdrawals

- If the plan permits hardship withdrawals, in non-safe harbor plans, the employer should communicate the following information to all vendors:
  - ❖which entity is responsible for determining eligibility for the hardship and processing the withdrawal (and, if the plan is intended to be exempt from ERISA under the "safe harbor" if limited employer involvement, how it is intended to comply with that exemption);
  - ❖whether the plan is using the "safe harbor" hardship provisions or the facts and circumstances criteria for determining hardships; and
  - ❖any other restrictions or conditions applicable to hardship withdrawals. (For example, some plans may limit the number of annual hardship withdrawals permitted from the plan.)

These best practices recommendations can be followed by completing and using the Plan Features Grid (see "Best Practices Support Materials" section).

- If the employer is planning to use an IRS approved 403(b) prototype plan document sometime in the future, those documents will often only permit the "safe harbor" hardship definition. This fact should be a current consideration for employers. The six qualifying events under the "safe harbor definition" are. generally:
  a. Medical expenses for the participant, dependents, and primary beneficiary not reimbursed by insurance.
  b. The purchase of the participant's principal residence.
  c. Tuition and related fees for the next 12 months for post-secondary education for the participant, spouse, children, dependents or primary beneficiary.
  d. Payment to prevent eviction or foreclosure on the participant's primary residence.
  e. Funeral expenses of parents, spouse, children or primary beneficiary.
  f. To repair damage to the participant's primary residence caused by any of the events that would qualify for the casualty deduction, such as hurricane, flood, fire etc.
- In a safe harbor plan (a plan seeking to retain ERISA exemption), providers must process the hardship withdrawal without involvement by the employer. However, once the hardship withdrawal has been distributed, the employer must be notified in the same manner as other 403(b) plan sponsors, to suspend employee deferrals for at least six (6) months following the date of the distribution.
- Providers should retain information in the Plan Features Grid, notify the employer following a hardship withdrawal and advise the employer of the requirement that elective deferrals be suspended for six (6) months following the hardship withdrawal.
- Employers, upon receiving notice from providers that an employee has received a hardship withdrawal, must modify the payroll withholding system to stop all elective deferral contributions for that employee for six (6) months. Employees should also be advised that their deferrals will stop.
- Employers should determine if they will automatically "restart" employee deferrals after the six (6) month suspension or if they will require employees to complete new enrollment forms. Employees should then be advised of the procedures to follow. Safe harbor plan sponsors (those seeking to maintain the ERISA exemption) should not automatically restart employee deferrals in the absence of instructions from employees to do so.
- Providers should alert employers when the six (6) month suspension period is about to expire to advise employers when they may again permit salary deferrals.
- Providers (or TPAs if they are responsible for recordkeeping account information) should track sources of participant account contributions and balances to properly identify which portion of a participant's account is available for hardship withdrawals. Under the regulations, only salary reduction contributions, not earnings, or employer contributions were available for hardship withdrawals from 403(b) plans. If sources are not properly segregated or tracked, hard-

ship withdrawals may not be available.
- If the "safe harbor" hardship provision is used, providers (or TPAs if they are responsible for recordkeeping account information) should require evidence that all available loans under plans sponsored by the employer (including the 403(b) plan) have been taken prior to authorizing a hardship. This requirement includes a review of the provider's internal records to determine if the participant has loan availability from the provider prior to authorizing the hardship. Note that the taking of loans prior to granting the hardship withdrawal may not be required if the loan, in and of itself, would create additional hardship because of the requirement that the loan be re-paid.

Qualified Domestic Relations Orders (QDROs)

- Since providers have historically processed QDROs for 403(b) accounts based on standardized procedures and made distributions based on those terms, it is recommended that providers continue this practice. A QDRO checklist has been developed that providers can use for this purpose (see "Best Practices Support Materials" section).
- If the employer has engaged a TPA and wants the TPA to evaluate the status of a QDRO, the TPA can determine the status and then direct the provider to make distributions in accordance with the QDRO. For consistency within the marketplace, a QDRO checklist has been developed that TPAs can use for this purpose (see "Best Practices Support Materials" section). (Note that, if the plan is intended to be exempt from ERISA under the "safe harbor" for plans with limited employer involvement, QDROs are considered a discretionary decision for that purpose and such plans are advised to require providers to determine QDRO status.)

Required Minimum Distributions (RMDs)

- Product providers should give written notice to every participant who has an account with that provider that the participant may be subject to RMDs at age 70½ unless he or she is still working. This notice may be provided by the TPA if the employer has delegated the notice requirements to the TPA. In a safe harbor plan, the provider must give the notice.
  - ❖ Option 1: Provide regular notices to all plan participants and beneficiaries
  - ❖ Option 2: Provide annual notice to all account/contract holders that are aged 70 or older
- Providers should verify with the employer or its TPA the employment status of participants who defer RMDs beyond age 70 ½.
- Employers should require from providers (in Service Provider Agreements) that participants will be informed, in writing, of the participants' required beginning dates and the impact related to not taking RMDs when required.
- Custodians and/or insurers should be responsible for making the RMD payments to participants and beneficiaries in accordance with current regulations and IRS audit guidelines. The payer of the RMD is also responsible for the tax withholding and reporting.

Distributions of Employer Contributions (if included in Plan)

- As permitted by law, the employer's plan may specify different restrictions on distributions of employer contributions from annuity contracts:
  - ❖ Severance of employment or other specified events
    - ♦ Attainment of a specified age and/or number of years of service (no less than 2).
    - ♦ Differentiate, if applicable, between pre-09 contracts and contracts issued after 12/31/08. (***permissible but not recommended due to complexity***)
- Or the employer's plan can apply the same restrictions on distributions that apply to elective deferral withdrawal restrictions. This would make administration easier because the rules would be consistent for both types of contributions. (***recommended***)
- If employer contributions cannot be differentiated from the pre-tax elective deferrals in a participant's account, then the participant's entire account should be treated as if it is subject to the restrictions on elective pre-tax deferrals.
- Employer contributions should be separately tracked from pre-tax elective deferrals as of 1/1/09, even if the restrictions on distributions under the plan are no different.
- As long as the features on the employer's plan (see Plan Features Grid located in "Best Practices Support Materials" section) have been shared with the provid-

ers, then:

- ❖Proof of an eligible event will follow the same guidelines that apply to elective deferrals.
- ❖If applicable, the employer or TPA must confirm facts of eligible event based on unique features of plan (such as service requirements or "formula" based criteria) to the provider.
- ❖If the TPA informs the provider, in writing, that the eligible distribution event has been confirmed, the provider should process the distribution request without requiring further proof or employer authorization if it is reasonable on its face.

- To accommodate plan requirements, providers should separately account for employer contributions. If any provider cannot separately account for employer contributions, the provider should notify the employer (or, if applicable, its TPA) and accept the written instructions from the employer or its TPA with respect to the distribution of employer contributions.
- Excess employer contributions should not be corrected by returning the excess to employees. Excess contributions must be returned to the employer.
- Safe harbor ERISA Exempt plans should NOT have ANY employer contributions for any employees or participants. If there are any employer contributions in the plan, the plan most likely is no longer a "safe harbor" plan that qualifies for the exemption from ERISA.

Distributions of Roth 403(b) Contributions

- If the plan permits Roth 403(b) contributions, then the employer or its TPA should confirm that each provider accepting such contributions can separately track and report Roth contributions.
- If any of the plan providers cannot track Roth 403(b) contributions, the employer's plan should restrict providers for Roth 403(b) contribution purposes to only those approved providers with the ability to track Roth 403(b) contributions. *Providers that cannot separately track Roth 403(b) contributions should be permitted to accept only pre-tax deferrals and/or employer contributions.*
- The earnings on Roth 403(b) contributions are distributed tax-free only if the distributions from such contributions are made after both the 5-year holding period and a qualifying event occur.
  - ❖The 5-year holding period is measured from the first year a contribution is made to any Roth 403(b) account. The provider must obtain information from the employer or its TPA to determine the date the first Roth contribution was made to any account for a participant. This information may be obtained at the time of the distribution or at any time prior to the distribution.
  - ❖A qualifying event for Roth 403(b) distribution purposes is:
    - ♦ Attainment of age 59½ (the provider should have this information from the account establishment process)
    - ♦ Death (see "death distributions above") or
    - ♦ Disability (see "disability distributions" above).

Approvals and Authorizations (for ERISA Exempt Plans)

- If not otherwise addressed in these best practices guidelines and a product provider needs approval for a distribution, whose approval is appropriate?
- For Governmental Plans and Non-electing Church Plans
  - ❖If the employer has hired a TPA, the TPA's written approval is sufficient as the TPA represents the plan.
  - ❖If there is no TPA, the employer can approve on the provider's forms. However, for marketplace consistency, if requested by the employer, the providers should accept the use of standard certification forms or letters of direction prepared for this purpose by the NTSAA.
- For plans sponsored by 501(c)(3) organizations that are exempt from ERISA under the "limited involvement" safe harbor under DOL Reg. 2510.3-2
  - ❖The employer should represent to the data aggregator or information coordinator or provider that the "safe harbor" has been met; generally those parties will not have the information to make that determination.
  - ❖For transactions involving factual information, the employer or a representative of the employer (such as a hired information aggregator or coordinator) may provide or confirm the information
  - ❖For transactions involving discretion, neither the employer nor a representative of the employer

may sign. The product provider must execute the request under the terms of the contract with the participant or refuse to execute the request based on the information provided.

Reporting and Withholding

- The payer of any distribution must provide reporting and proper withholding on distributions. Product providers that make distributions from participant accounts are required to issue a Form 1099R to the participant or account owner with a copy to the IRS when a distribution is made.
- If income tax is withheld under §1441 (the nonresident alien section), report the distribution and withholding on Forms 1042S and 1042, not on Form 1099R. The Form 1042S is used to report distributions from 403(b) plans for expatriates and certain citizens that renounced their citizenship after June 16, 2008. See the instructions to the Forms 1042 and 1042S for more information.
- Employers must provide the proper reporting and withholding of state and federal income taxes and payroll taxes for contributions made to the plan.

Rollovers

Marketplace Issues

The regulations effectively repealed Rev. Rul. 90-24 and significantly changed how and when 403(b) plan participants could change the investment of their 403(b) contracts/accounts. There has been much confusion as the marketplace has had to distinguish between "in service" exchange requirements and rollover requirements. There remains confusion about when a rollover out of the plan may take place and whether rollovers are mandatory plan features.

Accounting of rollovers has become a significant issue for 403(b) plans. Grandfathered ("unrestricted") amounts may be lost if rollovers from one 403(b) plan to another are not separately tracked; that is, the rollover amounts will be subject to the withdrawal restrictions of the receiving plan unless there is separate accounting of the rollover amount in the receiving plan. Similarly, rollovers from another plan may become subject to the age distribution restrictions of the 403(b) plan, unless there is separate accounting of the rollover amount in the 403(b) plan and the plan document permits the segregated rollover amount to retain its unrestricted status and be eligible for unrestricted withdrawals at any time. While the ability to segregate and separately track rollovers is a good feature, not all product providers are capable of providing this service in all instances. Thus employers may have plans under which some providers may be able to segregate rollovers and others may not.

Best Practices Recommendations

403(b) plan documents must permit eligible distributions from 403(b) plans to be directly rolled over into other eligible retirement plans.[8] The Internal Revenue Code defines the types of plans that are eligible to accept direct rollovers from 403(b) plans. Participants may also choose to make indirect rollovers.[9] Product providers, as payers of assets from 403(b) plans, should accommodate these requirements. It was recommended that plan documents also provide for rollovers into the 403(b) plan so long as the provider accepting the rollover could track the rollover contributions separately from other types of contributions, but this is a design decision of the plan sponsor.

Rollovers into the Plan

- Accepting rollovers into the plan is an optional feature which the employer may or may not include in its plan document. Employers are encouraged to include this feature in their plans, as it is a "low risk" feature and it gives participants a means to consolidate amounts from other plans, such as other 403(b) plans, governmental 457(b) plans and IRAs into their 403(b) plan account.
- If the plan permits rollovers into the plan, the document should specify that only providers that can accommodate separate accounting of amounts rolled into the plan should be permitted to accept rollover contributions under the plan.

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[8] *A direct rollover is the direct movement of all or some portion of a participant's interest in a plan from the custodian, insurer or trustee holding the participant's account to the custodian, insurer or trustee of another eligible retirement plan into which the participant wishes to have his account deposited. In this case, the participant does not receive the distribution and the amount is directly deposited into his or her new account under the new plan as a "direct rollover" contribution.*

[9] *An indirect rollover occurs when a participant receives the distribution of his or her interest under the plan. The participant then has 60 days to redeposit all or any portion of the amount of the distribution into an eligible retirement plan. However, the participant will only receive 80% of the amount of the distribution because the law requires that 20% of any amount of an eligible rollover distribution that is not directly rolled into another plan must be withheld for federal income tax purposes. However, the participant may rollover up to 100% of the amount of the distribution (the 80% received plus the 20% withheld) into an eligible retirement plan within 60 days of receiving the distribution and qualify for Indirect Rollover status. Any amount treated as a direct rollover or as an indirect rollover defers federal income taxation until withdrawn.*

- The employer or its TPA must identify which product providers are permitted to accept rollovers under the plan and which are not. If the plan has any limits on rollovers (for example, if it restricts the source of rollovers to certain types of plans, or to a certain number of rollovers per year), the employer or TPA must inform the product providers of such restrictions.
- Participants should also be advised of any restrictions on rollovers into the plan. Providers or the financial representatives should advise participants unless the TPA has been engaged to provide the communication and education services.

Rollovers Out of the Plan

- The plan *must* permit participants to make a direct rollover of an eligible distribution. It is NOT an optional feature. Once eligibility for a distribution is confirmed, the employer has no further involvement in the transaction. However, a rollover may not be made until an eligible event authorizing a distribution has occurred. Participants may also make indirect rollovers. (See "Distributions" above.)
- The direct rollover avoids the 20% federal income tax withholding which must otherwise be taken from the distribution and which then must be made up by the participant if s/he rolls the distribution within 60 days – an "indirect rollover."

❖The payer of a distribution must provide written notice to the participant prior to a distribution that is eligible to be rolled over that the rollover may be made directly to another provider, another type of plan or to an IRA. For 403(b) purposes, this means that the product provider must provide this notice. The IRS has provided a sample notice for this purpose.

❖The IRS has issued sample rollover notices which may be used as a "safe harbor" notice to comply with the notice rules. (IRS Notice 2009-68 contains two notices, one which applies to distributions from designated Roth accounts and one which applies to distributions from non-Roth accounts.) Current copies of these notices may be downloaded from the IRS website at www.irs.gov.

❖The employer should confirm that its providers have procedures in place to issue these required written notices to the participants.

❖501(c)(3) Employers seeking to preserve the ERISA Exemption should ensure that their authorized product providers will review and approve all rollovers and will provide the required rollover notices and tax reporting.

Loans in 403(b) Plans

Marketplace Issues

Loans are a particularly difficult issue in 403(b) plans. Under the final 403(b) regulations, the IRS imposed plan level requirements on loans. However, 403(b) plans funded with individual annuity contracts and custodial accounts also have contract level requirements applicable to loans that must be addressed. While many of the requirements are identical, the contract rights attached to the individual annuities and custodial accounts inhibit certain plan level compliance initiatives. Additionally, the rules for loans under Code Section 72(p) apply a single loan limit to all plans of the employer. Thus, the monitoring of loan limits must be applied to all plans sponsored by the employer in which loans are permitted.

In addition, organizations in the marketplace have interpreted applicable laws and regulations and applied risk management strategies to their standard business practices as they operate in the 403(b) marketplace. Traditional practices in the financial services industry have carried over into the 403(b) marketplace as 403(b) products are often securities and companies treat 403(b) transactions as securities transactions. This proprietorial approach to interpreting a complex set of applicable laws and regulations has led to some reluctance to modify internal customs and procedures to more standardized marketplace criteria. One of the areas most suffering from the lack of standardization is the general administration of 403(b) plan loans. For example, some product providers are still requiring "wet signatures" and "signature guarantees" for loan distribution authorizations. These practices result in a lack of standardization and inefficiencies in operations by product providers, TPAs and plan sponsors slowing down the proper and timely access of participants to their funds.

At the first Summit in 2009, it was also discovered there was a lack of consistency in basic methodology for calculating loan limits. Because of differences in results from provider to provider and TPA to TPA, there was a request from the attendees at that Summit to develop a loan calculation worksheet that could be used in the marketplace as a standard for 403(b) loan calculation purposes. Accordingly, two worksheets were developed: a 403(b) Plan Loan Limit Worksheet for Non-ERISA Plans and a 403(b) Plan Loan Limit Worksheet for ERISA Plans (see "Best Practices Support Materials" section). Also, an educational piece is included that addresses the differences in ERISA and non-ERISA loan requirements, the requirements for refinancing loans and the rules for the granting of new loans when there is an outstanding defaulted loan. (See Additional Educational Information on Loans located in "Best Practices Support Materials" section.)

Best Practices Recommendations

Because of the proprietorial issues unique to loan processing, it may be difficult to establish uniform acceptable "best practices" for loans in the marketplace. However, there was strong consensus that we should establish goals to which the marketplace should strive.

That said, plans should allow loans only if there is sufficient administrative support for a loan feature under the plan. Except for the statutory requirements and specific plan conditions, loan provisions in the plan document should defer to the contractual language of the loan provisions in each participant's underlying annuity contract or custodial account to avoid conflict. Those provider differences in requirements for loans from custodial accounts and annuity contracts can be managed at the plan level where any other outstanding loans held by the participant are factored into the single loan limit. Providers and TPAs should also agree to conform to the standardized calculation methodology provided in the 403(b) Plan Loan Limit Worksheet (see "Best Practices Support Materials" section). While this manual is focused primarily on the K-14 non-ERISA 403(b) marketplace, we have included an analysis and worksheets on ERISA loans because so many TPAs and

product providers have loan systems and operations that must serve both constituencies (See "Best Practices Support Materials" section).

- The employer's plan documents should permit loans if the employer has engaged a TPA to administer the loans under the plan and should defer to the loan provisions in the underlying annuity contracts and custodial accounts. For example, one provider's loan provision might permit borrowing at 50% of the account value, while loan language in another provider's contract may base available loan amounts on the greater of $10,000 or 50% of the account value, both of which are permitted under Code Section 72(p).
- If the employer's plan permits loans, then the employer should consider product provider's policies and procedures when selecting plan providers under their plan document and not permit providers that cannot or are unwilling to conform to standardized procedures and calculations.
- When in doubt as to which party must initiate or sign a form, refer to the Plan Features Grid (see "Best Practices Support Materials" section). For 501(c)(3) employers seeking to qualify for the ERISA Exemption, the employer cannot authorize loans. The employer or a representative can provide factual information about the participant, an account balance, previous loan history and similar factual information, but may not approve or authorize the loan or exercise discretion over plan assets. A Data Aggregator or Information Coordinator may be used or the product providers may hire a TPA to provide plan based loan services for ERISA Exempt plans.

The Employer Should

- Notify providers whether loans are permitted in the plan (using the Plan Features Grid) and whether there are any specific requirements or whether the loan language defers to the contractual language of the annuity and custodial accounts. If certain providers are prohibited from making loans, that should also be noted on the Grid.
- Require providers to notify their financial representatives about the inclusion or exclusion of loans.
- Allow loans under their plan only from providers that agree to follow the administrative policies and procedures of the TPA authorized by the employer or by the product providers. Providers refusing to comply should NOT be permitted to grant loans under the plan. Additional signatures or authorizations beyond those required by the TPA should not be necessary.
- Review the information on refinancing loans (See Additional Educational Information on Loans located in "Best Practices Support Materials" section.) to determine how the plan will address refinancing and defaulted loans. If the employer wishes to prohibit refinancing and subsequent loans after a default, then the plan should reflect these restrictions and providers should be notified. Otherwise, employers must establish rules for the refinancing of loans, the granting of new loans when there is an outstanding defaulted loan and include those requirements in the agreements with the providers.
- Notify the administrator of any other plan (of the employer) that permits loans that information on outstanding loans must be shared with the party responsible for managing loan limits (either the employer or the employer's TPA).

The Provider Should

- Examine the employer's loan requirements and either agree to conform or agree not to permit loans from the provider's accounts.
- Communicate those loan requirements to financial representatives that are contracted to work with the specific employer.
- Utilize the standardized calculation worksheets (see "Best Practices Support Materials" section) or agree to adhere to the result of those calculations if done by a TPA.
- Agree not to require employer signature on loan forms if properly notified that a TPA or the product providers have been assigned this transactional responsibility.
- Re-evaluate historical practices (suggested securities practices for custodial accounts and internal contract support practices for insurers) for appropriateness in the 403(b) plan environment.
- Providers should also agree to continue to provide loan information on participants to the employer or TPA even if subsequently deselected as a provider.
- Determine if the provider will be making loans from ERISA Exempt 403(b) plans and how routine loan procedures will be modified to accommodate restrictions on employer involvement for loans from such plans. Communicate the changes in procedures to the participants, customer service representatives, servicing representatives and the employers.

In all instances, the adoption of best practices should help meet the goal which is to complete the loan request in a timely manner for the participant who will often have a need that can be met only with the receipt of the loan proceeds. Thus, it is recommended that all parties work in a timely manner to follow directions, obtain missing information, get necessary authorizations and cooperate with one another (TPA, product provider, employer, participant or financial representative) to communicate the problem and resolve any issues.

Other 403(b) Safe-Harbor Plan Issues

Marketplace Issues

In addition to the distribution issues described above, employers attempting to support safe harbor plans face many challenges. As the marketplace responded to the demands of the final IRS regulations, the general response was to shift more responsibility to the employer sponsoring the plan. While this effort conformed to the spirit of the IRS regulations, it became treacherous to sponsors of safe harbor plans as most of the marketplace had redirected its resources primarily toward IRS compliance initiatives which often contrasted with support previously provided to safe-harbor plans and their sponsors.

Providers spent millions changing their internal systems to include employers and employer representatives in decision making transactions, subverting their internal recordkeeping to directions from TPAs or outside administrators and opening up account values to competitors and TPAs for compliance purposes. Now a very small segment of the marketplace was requesting that the providers "go back" to pre-regulation support for their segment of the marketplace. Not surprisingly, providers were slow to listen and even slower to respond. Some simply could not "undo" the changes made and others could not bifurcate their systems to accommodate different service models.

Also, many employers had engaged TPAs between the issuance of FAB 2007-02 and FAB 2010-01, not knowing that the DOL would later determine that engaging a TPA would cause the loss of safe harbor status for the plan.[10] Employers need to understand clearly what they can and cannot do to support their safe harbor plans, what support options are acceptable and which support models are NOT acceptable and they need voluntary correction mechanisms or transition relief to rely upon to "fix" inadvertent errors, so that such plans can be sustained. For many 501(c)(3) nonprofit organizations, a safe-harbor 403(b) plan is often the only form of retirement plan that can be offered to employees and the loss of safe harbor status would result in significant hardship for these employers and the potential inability to support any form of retirement arrangement for their employees. While offering a safe harbor 403(b) retirement program remains a strong objective, several seemingly insurmountable obstacles must be addressed.

Best Practices Recommendations

- Determine ERISA vs. Non-ERISA Status
  There is great value in maintaining a plan for employees, but employers must determine whether the 403(b) plan they are sponsoring qualifies for the safe harbor exemption or is subject to ERISA. (See DOL Safe Harbor Exemption in Best Practices Support Materials) Once that determination is made, then steps must be taken to maintain and administer the plan appropriately.
  - ❖Competent counsel should be retained to examine the facts and circumstances and provide qualified opinion on ERISA status.
  - ❖Counsel's recommendations should include advice to design or re-design plan provisions to minimize risk and stay within the framework of DOL FABs, if that is the goal, or to recognize the ERISA status and change requirements. (Based on current interpretations, it should be noted that once the ERISA exemption is lost, it cannot later be recaptured.)
  - ❖If the evaluation leads to a determination of ERISA status, legal counsel should be consulted on the consequences of ERISA status. What that means to a plan sponsor exceeds the purpose of this Manual, but see the "ERISA Compliance Quick Checklist" which is part of the General Instructions to Form 5500-SF. While this form would almost never apply in a 403(b) situation, the related checklist provides valuable information on general ERISA compliance. A copy is available in the Best Practices Support Materials. See also the

[10] *The NTSAA/ASPPA is trying to work with the DOL to suggest some forms of optional relief for plans that may have inadvertently "drifted" into ERISA status because of the gap in DOL guidance.*

excellent brochures, guides, and checklists that are continuously published and updated on the Employee Benefits Security Administration website at www.dol.gov/ebsa to promote retirement plan compliance and the voluntary correction of plan mistakes.

- Maintaining a Safe Harbor ERISA Exempt Plan
  - ❖Employers should investigate potential ways to comply with the available safe harbor guidance and then, develop a written policy, including procedures, for complying with FABs 2007-01 and 2010-01 ensuring that they do NOT make discretionary administrative determinations such as:
    - ♦ *directly* authorizing plan to plan transfers, or internal exchanges
    - ♦ authorizing or determining eligibility for transactions such as loans, hardship withdrawals or qualified domestic relations orders
  - ❖In developing the policy, possible workarounds should be considered that may avoid violating the intention of these regulations:
    - ♦ Consider a "less is more" theory. The DOL guidance permits employers to ban problematic transactions such as loans and hardship distributions from vendor contracts without subjecting the plan to ERISA. In addition, an employer is permitted to remove vendors who do not comply with any aspect of the final 403(b) regulations without losing the safe harbor exemption. This includes uncooperative vendors or those who cannot share the required information with the employer or its designee.
  - ❖Employers should allocate responsibility for discretionary plan activities to the vendor or to a third party. Since directly hiring a third party administrator (TPA) to make discretionary decisions regarding plan transactions would cause the plan to lose the safe harbor, the employer should consider hiring an "Information Coordinator" or "Data Aggregator" to organize date and plan information for use by the plan's product providers Instead of, or in addition to, hiring a third party, the employer may choose to limit product provider selection to those who are bound by contract to make discretionary determinations with respect to transactions requiring discretion, such as loans and hardships. See the worksheet that outlines the responsibilities and obligations of Third Party Information Coordinators in the Best Practices Support Materials.
  - ❖Employers should learn what they can and cannot do to remain within the safe harbor exemption from ERISA. See "What is a Non-ERISA 403(b) Plan for 501(c)(3) Organizations?" in the Best Practices Support Materials.
- Providing Administrative, Operational and Investment Services for a Safe Harbor ERISA Exempt Plan
  - ❖Employers seeking to sponsor Safe Harbor ERISA Exempt Plans may NOT hire or retain a third party administrator to provide administrative services, including discretionary tasks such as authorizing distributions and exchanges, calculating loans, determining QDROs, etc. for the plan under current DOL guidance.
  - ❖Employers may hire third parties to provide nondiscretionary services. For plans with multiple product providers, an Information Coordinator or Data Aggregator would serve the function of gathering all data from the providers, and organizing the supporting documentation for them so that decisions could be promptly made by the affected provider. See sample Information Coordinator Agreement in the Best Practices Support Materials.
  - ❖Where employers expect each product provider to perform the discretionary tasks related to their products, the employer should evaluate the providers in their 403(b) plans to determine whether each of them can, and will, perform all of the discretionary tasks required to support the features included under that providers contract/account included under the employer's plan. This process can be accomplished by using the Plan Features Grid provided in the Best Practices Support Materials.
  - ❖If the provider offers a feature, such as loans, but will not be responsible for the proper administration of that feature, then the employer should:
    - ♦ Remove that feature from that provider's contract under the plan
    - ♦ Remove that provider from the plan, or
    - ♦ Require the provides under the plan to use a third party (not engaged or paid for by the employer) that will perform the re-

quired services for all of the product providers

- ❖Employers sponsoring Safe Harbor ERISA Exempt Plans, may also eliminate optional features from their plans (even if underlying contracts include such features) that require discretion, such as loans, exchanges, hardships withdrawals if the providers are unable or unwilling to be responsible for discretionary determinations.
- ❖The product providers that want to participate in the ERISA Exempt marketplace should modify their internal procedures to accommodate such employer limitations. Different paperwork and procedural strategies should be developed to remove requirements for employer signatures on requests for discretionary transactions.
- ❖These restrictions may limit the number or variety of investment products that are available to participants. Employers should document the steps taken, the reasons, the procedures followed, and the results.

- Safe Harbor Arrangements Must Offer Participants Reasonable Choice of Investment Products
  - ❖Employers must offer more than one contractor and more than one investment product to meet the terms of the safe harbor according to FAB 2010-01. However, there are exceptions for employers that offer only one provider or use only one contractor.
  - ❖Where reasonable facts and circumstances justify use of a single investment provider or contractor, a plan may use a single provider or contractor. However, be forewarned! The DOL has stated that it would take very unusual circumstances to justify utilization of a single provider or contractor in the current marketplace where product providers can access employees and employers electronically and have multiple methods to communicate with participants. However, the DOL is aware that there may be situations where such circumstances may arise.
  - ❖There is also a significant exception for small plan sponsors that use multi-fund platform product (instead of multiple products using multiple payroll slots with multiple contractors). Under FAB 2010-01, it appears that the DOL may permit the "open architecture" platform arrangement only if the normal multiple investment option is cost-prohibitive and would result in the employer's termination of the plan to avoid those costs, and only if the employer offers employees the freedom to exchange their account to a different "exchange only" provider.
  - ❖Where the employer offers multiple investment products and contractors, a variety of investment choices designed to meet the different investment objectives of participants should be accommodated. If is advised to limit the product providers to those that can agree to comply with the compliance responsibilities, including the making of the discretionary decisions process.
- What initiatives can be undertaken to verify that this form of retirement program will continue to be viable for a large segment of the non-profit corporation community?
  - ❖NTSAA/ASPPA should develop grass roots initiatives in conjunction with other like minded organizations and their membership to campaign for further guidance and relief from possible sanctions either in the form of legislative relief or the prompt issuance of additional regulatory guidance.
  - ❖NTSAA/ASPPA should work with the Department of Labor to apprise them of unique issues facing the smaller 501(c)(3) organizations resulting directly from the Departments interpretations of applicable guidance as applied to 403(b) plans. The goal should be to save this form of retirement plan and the ERISA exemption for this marketplace.
  - ❖NTSAA/ASPPA should work with the AICPA and similar professional associations to develop acceptable standards for accommodating the ERISA exception for employers seeking to maintain the exception.
  - ❖The Tax Exempt and Governmental Plan Sub-Committee of the ASPPA/NTSAA should evaluate potential legislative relief if ongoing meetings with the DOL do not result in certainty and satisfactory relief for small 501(c)(3) organizations seeking to preserve this exemption.

Deselected Product Providers, Orphan Accounts and Pre-Reg. Accounts

Marketplace Issues

There is much confusion over the correct handling of transactions that occur under contracts of product providers that are no longer included under an employer's 403(b) plan. As a result of the final 403(b) regulations and subsequent guidance issued by the IRS,[13] employers, participants and product providers have different responsibilities based on when 403(b) contracts were issued and when contributions were made under those contracts. Plan sponsors and provider organizations are struggling to identify which contracts are connected to which plan and when contributions began or ended. However, participants are still requesting distributions and loans while the marketplace is seeking to determine who has responsibility for the requested transactions. These transaction requests are often delayed due to confusion over whether the product provider may act on the request of the participant or whether the employer must authorize the transaction. Providers are torn between the need to act promptly on transaction requests and the fear of jeopardizing their client's accounts/contracts. In turn, employers are frustrated by complaints from participants whose distribution and loan requests are lingering while product providers and employers continue to work out these issues.

This problem cannot be resolved by product providers. Only employers know to which providers 403(b) contributions were sent during the periods specified by the IRS. To complete this task, employers will need help understanding which 403(b) contracts (and providers) are deemed to be "included" in their plan under IRS guidance and what kind of relationship exists between the employer and each provider. The relationship will determine what responsibilities the employer still has with respect to any contracts held by that provider and what level of administrative involvement the employer may be required of the employer or its TPA. To identify the different relationships and resulting responsibilities, this manual includes a glossary of terms that will be used consistently throughout this section for each type of relationship (as specified in IRS guidance). The Glossary is located in the back of this manual.

Best Practices Recommendations for Employers

Employers must understand their responsibility to identify which providers are "included" in their 403(b) plan. Employers must understand that current providers and some "legacy" providers may be considered to be included under their 403(b) plan under applicable IRS guidance. If an employer engages a TPA, the TPA should be responsible for monitoring the legacy providers or should clearly state in its agreement with the employer that it will not provide any services relative to providers prior to 1/1/09 so that employers understand the gap in administrative service.

Product providers must have clear communications from employers or TPAs, advising them when they can execute transactions with or without employer authorizations.

- Employers should notify all deselected providers that they are no longer treated as part of the employer's plan. The notice should include the date the provider has been deselected.
- Employers should include information on providers that have been deselected from their plan on the Plan Features Grid, so the remaining product providers are aware of the change. Be sure to redistribute the revised Grid to all current product providers and participants. (See "Best Practices Support Materials" section for the Plan Features Grid.)
- Employers should clearly understand when they need to authorize transactions and when they do not. The 403(b) Contract Categories Grid (found in "Best

[13] *See Rev. Proc. 2007-71*

Practices Support Materials" section) describes the various categories of contracts under the final 403(b) regulations.

- Employers or their TPA should conduct a provider inventory exercise to identify any providers to whom they have sent 403(b) contributions and categorize them based on the 403(b) Contract Categories Grid. The employer's past payroll records should enable them to identify providers where 403(b) contributions were sent. If a common remitter was used, the common remitter should be able to provide a listing of the recipients of the employer's 403(b) remittances. An effort should be made to identify the dates on which contributions stopped for providers that are no longer named as providers under the employer's current 403(b) plan document.
- Employers or their TPA should document the list of providers and note the date deselected, identify whether they have an information sharing agreement (ISA) with the deselected provider and what transactions, if any, the provider is permitted to process. Employers or their TPA should capture this information by using the Provider Status Worksheet (see "Best Practices Support Materials" section).
- To reduce future communications from Pre-Reg. providers or their local servicing representatives, employers should send a letter to those providers whose contracts do not require employer authorization certifying that they do not have to seek employer authorization prior to issuing a distribution or loan. A sample Pre Reg. Notice is located in the "Best Practices Support Materials" section.
- For providers that fall into the Orphan category on the 403(b) Contract Categories Grid (see "Best Practices Support Materials" section), the employer should send a letter directing each such provider to follow the alternative transition relief in Rev. Proc. 2007-71 and notify the employer or its TPA prior to authorizing a distribution or loan to a participant. A sample Transition Relief Letter is located in the "Best Practices Support Materials" section.
- Employers should try to enter into an information sharing agreement with any deselected providers that were included in the plan on 1/1/09 or later since those *accounts are included in the plan* under IRS guidance. (See the sample 403(b) Information Sharing Agreement for Deselected Providers in the "Best Practices Support Materials" section.)

Best Practices Recommendations for Providers

While providers may not be able to identify which contracts under an employer's plan are "included" in that employer's 403(b) plan, once they are advised of the status of a contract, they can adjust their internal systems and modify their practices to simplify transactions for deselected contracts. Providers should also have reasonable administrative solutions for processing transaction requests under plans of non-responsive employers.

- Providers should establish internal systems to identify contracts that are not "included" under an employer's plan so employer involvement is not sought as part of regular processing.
- Deselected providers that receive written notification from an employer certifying that no authorization is required should accept it and proceed with the transaction without further employer involvement.
- Providers should accept representations of the employer or the TPA and process participant transaction requests accordingly. Additional verification or authorization is not necessary.
- If provider policy requires employer authorization, product providers should be responsive to the information sharing requirements of employers. Providers working with 403(b) plan sponsors should be willing to engage in information sharing with all employers with whom they have participant accounts.
- Deselected providers should engage in information sharing with the employer to help facilitate compliance.
- If an employer does not respond to a provider's request for authorization or its attempts to engage in information sharing, the provider may notify the non-responsive employer that a specific amount of time will be permitted prior to assuming that the employer has given consent to the transaction requested ("negative consent"). Providers should disclose to the participant on the transaction form that the transaction will be processed in the absence of authorization from the employer or TPA. The disclosure should explain the tax risk to the participant, who can then make an informed decision whether to proceed with the transaction.

Tax Free Transfer and Exchanges

Marketplace Issues

The biggest problem in the marketplace is the confusion in understanding the differences between exchanges, rollovers and transfers. All three terms describe the movement of 403(b) contract/account balances, but each has different requirements and different tax consequences for the employee. Because of this confusion, improper paperwork gets completed and processed. To try to reduce the confusion, this manual includes standardized descriptions of each term, whether the transaction is mandatory or optional and the tax reporting obligation that follows the transaction. You should refer to the "Glossary" in the back of this manual for clear definitions of the terms as used in this manual. The recommendations and discussions that follow use the terms as defined.

In addition, there are processing problems that are unrelated to the confusion in terminology and participant intention. Under prior rules, the movement of a participant's 403(b) contract/account was a transaction between the employee/participant and the provider. The final 403(b) regulations have now inserted the employer (and its TPA) into the transaction without guidance on how to handle the logistics of problems, errors, data failures, processing inconsistencies, etc. For example, a participant may request an exchange, but the paperwork to establish a new contract with the new provider may have an error or may not be properly completed. The sending vendor issues an "exchange" check, but the receiving vendor does not have an account into which it can deposit the proceeds. In the absence of direction, providers have developed their own strategies for addressing these issues which result in inconsistent marketplace transactions.

Best Practices Recommendations

It is essential that providers, their financial representatives, employers, TPAs, consultants and any other professional working in the 403(b) marketplace understand the difference between rollovers, plan to plan transfers and exchanges. They should also understand the differences between these terms and 90-24 transfers, which are no longer available (but are still referenced on forms, marketing materials, and in some plan documents). Providers should strive to minimize unnecessary requirements so that processing exchanges, rollovers and transfers can become standardized throughout the industry and participants can expect consistent results from provider to provider.

Providers also requested the development of checklists that include required elements for exchange, transfer and rollover forms so that TPAs could process such transactions properly using provider forms and paperwork. Providers could then compare their internal forms against the checklists, correct for deficiencies and enable TPAs to complete exchange, transfer and rollover transactions without duplicative paperwork. The following are recommendations intended to coordinate practices of TPAs, employers and product providers for consistent processing of exchange and transfer transactions.

- Providers and employers should be able to distinguish between a transfer, exchange and rollover and know whether the employer's plan includes these features. See the "Glossary" for an explanation of these terms and the differences between them.
- Employers should use the Plan Features Grid to advise all approved providers and employees whether their plan permits transfers and/or exchanges. All deselected providers holding non-grandfathered orphan accounts should also be provided with a copy of the Plan Features Grid.
- Employers that want to enhance portability and preserve participant contract benefits under their plans should permit plan to plan transfers and so indicate on the Plan Features Grid. A transfer must include proper disclosures about the assets being transferred (e.g., confirmation of no outstanding loans on the

amount being transferred and confirmation that the transfers to a non-ERISA plan are not coming from an ERISA plan). The Exchange, Rollover or Plan to Plan Transfer Form for use by receiving providers appears in the "Best Practices Support Materials" section.

- Providers should educate their financial representatives on the differences between exchanges, transfers and rollovers and prepare educational materials for participants to help explain the differences so participants understand which transaction is appropriate for their needs.
- Providers should maintain a database of each employer's plan features, including exchanges and transfers and providers authorized to receive these transactions. The Plan Features Grid should be used for maintaining this information and other information pertaining to each employer's plan. (See "Best Practices Support Materials" section.)
- Providers should not impose additional conditions on transactions (such as requiring original signatures, original paperwork or original forms) that slow down processing in the absence of legal necessity or requirement. Copies, including facsimiles, electronic or scanned documents or e-mail signatures should all be acceptable.
- Unless otherwise indicated on the Plan Features Grid, providers should act on transfer and exchange requests without employer or TPA authorization so long as the recipient provider is identified as an authorized provider to accept the transfer or exchange.
- Providers and TPAs should not return checks received in a transfer or exchange without exhausting every effort to confirm the validity of the transaction. If checks must be returned, the procedures established by the employer/TPA should specify to whom those checks are to be returned.
- If an employer receives a returned check from a failed transfer or exchange, the employer should establish records to provide evidence that the transfer or exchange did not occur and why.
- Upon returning a check for a failed transfer or exchange, the provider returning the check must notify the employee that the transaction failed and no transfer or exchange occurred.
- To ensure that the contractual qualifications for transfers and exchanges are satisfied by the recipient provider, the recipient provider should give employer assurances that the provider's contract/custodial account satisfies the requirements. This can be done by including the assurances in the service provider agreement. See Hold Harmless/Vendor Agreements for 403(b) Plan in "Best Practices Support Materials" section.

Information Technology

Marketplace Issues

Under the final 403(b) regulations, information under a 403(b) plan must be shared between employers, product providers and, if so appointed, by third party administrators. However, there have been few systems in place that can support this requirement. Historically, employers kept employment records on each employee that may or may not have included information about their participation in the 403(b) plan. Each product provider kept its own account records and processed the transactions under its contracts or custodial accounts (With the exception of certain unallocated group annuity contracts,) there was generally no need to transmit large amounts of plan related data to another product provider, to the employer or to a third party administrator. However, to support the new compliance and information sharing requirements included under the final IRS regulations, it is imperative that the 403(b) industry develop and support a standardized data format and electronic information sharing platform. One platform has been under construction and has been offered to the 403(b) marketplace since the issuance of the regulations and is referred to as the SPARK data format Although the SPARK data format was originally designed to permit the sharing of information by 403(b) product providers without regard to any administrative requirements, it has evolved over several stages and with the input from NTSAA/ASPPA and other professional organizations, it is hoped that SPARK data format can be used industry wide to share account data and administrative data. This taskforce reviewed the current SPARK platform and evaluated methods for improving the flow of information between employers, third party administrators and product providers.

Best Practices Recommendations

The current SPARK format (version 1.04 at the time this was written) provides a sound platform for basic data transmission but cannot be used exclusively for plan administration and compliance data purposes. Providers and TPAs have different data requirements than that provided by SPARK. There also appear to be notable differences between data needed for processing under custodial accounts and processing under insurance products. Finally, SPARK does not provide enough data transaction detail for TPA processing purposes, requiring TPAs to condition transaction approval with caveats or make supplemental data requests to gather necessary information to make compliance determinations.

It was recognized that organizations have invested significant resources conforming to SPARK protocols in an effort to support a standardized electronic 403(b) data format. Thus it may make sense from a financial perspective to attempt to make modest recommendations to improve the SPARK data requirements. However, there was some concern that the SPARK data format was not structured to reflect all relevant 403(b) transactions and therefore may not be appropriate for plan administration. Thus, it appears, more study on this issue is needed. In the interim, it is suggested that the following steps be taken to supplement SPARK data:

- Providers should give TPAs a onetime "position" file that includes key fund source and balance information (as of a specified date (12/31/08)) to establish baseline data points for each custodial account/annuity contract. Current SPARK data requirements could be used as a starting point for this position file.
- On-going data exchange between TPAs and providers would be transaction details only—contributions, loans, distributions, etc. The transaction detail necessary would be similar to the transactional information provided to participants in their account statements.
- The SPARK Institute maintains an excellent website with information on their SPARK data format protocols and Best Practices in Data Sharing. See www.sparkinstitute.org/403b-q-a-php, which includes information on Best Practices in Data Sharing for Information Sharing, Multiple Vendor Remittances and Census Remitting and Aggregated 5500 Information. As we go the print, the website was last updated on November 18, 2010.

Conclusion

It is hoped that the suggestions and materials presented in this manual will encourage employers, product providers and TPAs to adopt as many of the best practices outlined in this publication as possible and that as a consequence, the entire 403(b) marketplace will benefit. Employers should find that their administrative burdens are understood and simplified; participants should find that the turnaround time for processing and transaction requests is reduced and product providers and TPAs should find that the procedural and systemic burdens delegated to them have been eased. While some providers and TPAs will inevitably continue "on their own paths," the cost of so doing will be its own burden. The need for marketplace consistency and standardization was made clear at the Summit meeting and in the subsequent task force meetings. We hope this manual can serve as a helpful tool toward the goal of standardization and consistency.

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Sample Universal Availability Notice

(Not required for Section 3121(w)(3)(A)(B) Churches or QCCOs)
Note: This serves as a sample of the notice to employees of the right to make elective deferrals to the 403(b) plan, which is a requirement under the Universal Availability rules (see Universal Availability Information) in the final 403(b) Regulations. This notice should be sent to all employees no less than once each year.

To: All Employees of [Insert name of employer]
From: [Human Resources Director or Other Business Official]
Re: Notice of Your Right to Participate in the [Employer name] 403(b) Plan
Date:

In compliance with the requirements of final 403(b) regulations and the universal availability requirements of Section 403(b)(12)(A)(ii), we are pleased to notify our common law employees that a 403(b) plan is available under which they may make voluntary salary reduction contributions.

Following are the details of our 403(b) plan, and the eligibility of our employees who wish to participate:

1. All part-time and full-time common law employees (no leased employees and no independent contractors can be permitted to participate) who are willing to contribute at least $200 per year into the 403(b) plan are eligible to participate, except as otherwise provided below:

   [Use as appropriate]

   - Non- resident aliens may not participate in the 403(b) plan
   - Employees that are participating in another voluntary salary reduction plan sponsored by this employer (any other 403(b) plan, 401(k) plan, or 457(b) plan) may not participate in the 403(b) plan and
   - Students working for this community college or university as described in Code Section 3121(b))(10) may not participate in the 403(b) plan
   - Employees that normally work less than 20 hours per week may not participate in the 403(b) plan, or new employees that work 1,000 or less hours in the year hired or in subsequent years worked 1,000 or less hours in the prior year may not participate in the 403(b) plan [NOT RECOMMENDED- SEE CAUTION BELOW]

   Caution: If employees normally working less than 20 hours per week are excluded, employers must ensure that NO employee working less than 20 hours per week (or 1000 hours per year after January 1, 2009) is inadvertently permitted to participate. If that happens, every employee working less than the standard must be permitted to participate. Many employers will choose not to exclude this category of employees to avoid potential violation.

2. Employees are permitted to submit salary reduction agreements to the [payroll/human resources/benefits department] at any time. The requested salary reduction contributions will begin at the first payroll period following receipt of the properly executed salary reduction agreement and catch-up contribution calculations (for employees who are utilizing catch-up provisions).

   Employees are also reminded that the proper annuity account or custodial account application will need to be established/opened to receive the requested contributions.

3. The following information is available to aid employees participating in the plan:

   a. A list of the authorized vendors can be obtained from the [payroll/human resources/benefits] department located at [location, phone], or on our web site at [insert www.url address].

   b. Salary reduction agreements can also be obtained from the [payroll/human resources/benefits] department or through your 403(b) financial advisor.

   c. The proper application and other contract paperwork can be obtained through the [benefits office, the provider or a representative of that provider, or through electronic means at _____ (Web site)].

4. Salary reduction contributions can be made in an amount up to the lesser of 100% of your includible compensation or $16,500 (in 2010 and 2011) to *all elective deferral plans in which you participate.* Additionally, the plan permits the following additional catch-up contributions to be made by eligible employees:

   [Use as appropriate based on terms of plan document]

   • $5,500 for employees that are age 50 or older by the end of the current tax year
   • up to $3,000* for employees that have worked 15 or more years with this employer by the end of the current tax year (provided the affected employee has not contributed, on average, $5,000 or more for each prior year of service, and provided the additional amounts used under the increased limit have not reached $15,000 or more).

   However, the IRS has a complicated "ordering rule" that may impact your ability to fully utilize these limits if you are eligible for both catch-up contributions. You will be required to provide a maximum allowable calculation (MAC) to determine your personal limit for the year.

   **This catch-up contribution is permitted only if a calculation is submitted with the salary reduction agreement confirming eligibility.*

5. Salary reduction contributions are permitted to be made on a pre-tax basis, and, /on an after tax basis to the Roth 403(b) by so designating on the Salary Reduction Agreement.

Dated: _____

Guidelines for Implementing an Employee Education Program

Printed with Permission from
Association of School Business Officials International

Why has the Association of School Business Officials International (ASBO) prepared guidelines for implementing an Employee Educational Program (EEP)?

ASBO members have expressed an interest in helping their employees understand sources of retirement income and other retirement savings so they can retire at normal retirement age. In response, ASBO asked its Retirement Plan Council members (a list of those members can be viewed immediately following these guidelines on the 403(b) resources section at www.asbointl.org) to develop simple guidelines and a generic PowerPoint presentation members can use in an educational program. Why is that important to ASBO members?

- Our members are familiar with the results of recent surveys that describe participants in retirement plans as needing education about what they can expect from basic pension benefits and Social Security benefits, if any. After these benefits are calculated, there is strong interest in how to "fill the gap" with savings of their own retirement dollars in supplemental 403(b) and/or 457(b) plans. ASBO wants to provide this type of information to our members' employees.
- Our members understand that their budget outgo may be substantially reduced if employees can afford to retire at normal retirement age which, in turn, will permit them to be replaced with employees at reduced salaries.
- ASBO members want employees to understand the benefits being provided by 403(b) and 457(b) plans, including how they can save their own dollars for tax benefits of their retirement savings accounts.

The following guidelines are intended to help our members implement an EEP for their employees. Additionally, the generic PowerPoint Presentation immediately following these guidelines provides basic material that can be used to develop presentations for employee seminars.

NOTE: It is important to recognize that any EEP offered by the district is intended to supplement, and not replace, materials and education provided by the investment providers offered under the 403(b)/457(b) plans.

I. Plan the implementation of your EEP.

- Reach out to your TPA, consultant, legal counsel, and investment providers to help coordinate the implementation process.
- Appoint someone on your staff to manage and review the EEP.
- Consider presenting the EEP in seminar format, then providing online access to the materials presented. This meets the needs of those employees who are comfortable learning with online resources and those employees who are more comfortable learning in a classroom setting. Online access also will permit employees to share information with their spouses/partners and allows employees who are unable to attend the seminar to access the information.
- Offer your EEP presentations several times to permit as many of your employees to attend as possible. This might mean presentations at least three times a year, i.e., in the fall, late in the tax year, and again in the spring.

II. Select EEP presenters and request assistance from your partners in determining the materials used in the seminars and posted online.

- Require that whoever is presenting the seminar – a plan sponsor, one or more investment providers, your third-party administrator (TPA), your legal counsel, or a consultant – designate the appropriate qualified individuals to present the seminar materials. Consider requiring that each seminar feature a different set of presenters, thus ensuring that all investment providers have an opportunity to showcase their products. In your communication to the investment providers, specify that the presentation must be generic with no mention of the presenters' particular products. Require that the presentation be submitted to you in advance so you can ensure the company's logo and other company-specific information are not misused. If all investment providers are not presenters, require that all investment providers approved under your 403(b)/457(b) plan be mentioned during the seminar presentation and that the presenters indicate that some of the information provided may vary among the investment providers. Plan to attend the seminars and make opening remarks about the importance of the benefit you are providing for employees.
- Ask your investment providers/TPA/consultant/legal counsel for assistance in assembling the materials each attendee will receive in the seminars. Consider including:

    1. Copies of the ASBO generic PowerPoint presentation, including the link to online information for later review by your employees.
    2. A list of all investment providers approved under your 403(b)/457(b) plan, with contact information, to simplify enrollment and the annual review process.
    3. A fact sheet explaining the enrollment process and a salary reduction agreement (if you use a standard agreement) or information on the fact sheet stating that employees can obtain the salary reduction agreement from the investment providers (if you use the providers' agreements).
    4. A copy of the complete plan document and/or Adoption Agreement, if applicable, to familiarize employees with the features of your plan.

III. Issue the invitations to employees to establish the purpose of the seminars, time, date, and location.

- Communication about your EEP can also serve as the required annual meaningful notice of each employee's right to participate in the 403(b) plan, as long as the communication is designed to reach all eligible employees. Require that attendees RSVP so you are prepared with an adequate number of handouts.

Require that your investment provider/TPA/consultant, or legal counsel share a sample notice for review by your legal counsel so you can be sure the communication will satisfy the annual meaningful notice rules of the Internal Revenue Service.

- Carefully consider the method of delivery. For example, if paycheck "stuffers" are used, are you certain every eligible employee has received a paycheck at that point in time? If the notice is sent by email, do all eligible employees have access to email? What about substitute teachers, bus drivers, and cafeteria workers? Does the communication need to be directed to their home addresses? Consider using more than one delivery method.

IV. Garner staff support.

- Alert payroll personnel that they may encounter a higher than normal level of activity after each of your EEP presentations, in the form of new participants submitting salary reduction agreements, as well as current participants submitting agreements to increase contributions.
- Ask your payroll staff to periodically report to you the number of employees participating and increasing contributions so you can compare those numbers with the pre-seminar numbers. This helps you evaluate the success of your employee educational seminars.

Following are additional suggestions about materials you and your TPA/consultant/legal counsel/ investment providers might consider to meet the goals of your 403(b)/457(b) plan EEP.

In addition to those suggested in the above guidelines, materials provided for your EEP can include, but are not limited to, the following:

A. Plan highlights summary or plan summary description.

   A copy of the Adoption Agreement, if applicable, on which you selected the eligible employees and the plan features will generally suffice. If your plan document did not use an Adoption Agreement, your legal counsel can review the terms of your plan document and prepare a summary for your review. This might include an invitation for employees to view the actual plan document if they wish to do so.

B. Information regarding investment product options available under the 403(b)/457(b) plan and how to select investment product option(s).

   The investment providers offered under your 403(b)/457(b) plan can provide this information or you can provide contact information for the financial advisors who have this information.

C. Information available from 403(b)/457(b) TPA, if any, for plan participants and contact information for the TPA.

   The TPA can provide this information.

D. Information about how to request plan distributions, including plan loans, hardship withdrawals, and unforeseeable emergency withdrawals.

   - If plan distribution requests, such as plan loans, hardship withdrawals, and unforeseeable emergency withdrawals, are coordinated with the TPA or by one or more investment providers, the TPA or investment provider(s) can provide information about the coordination process and how to obtain forms to request a distribution.
   - If plan distribution requests, such as plan loans, hardship withdrawals, and unforeseeable emergency withdrawals are coordinated with the school administrators, the school administrators can provide information about the coordination process and how to obtain any forms the school administrators use.

E. Retirement savings information.

   This should include information about any potential employer contributions.

F. Financial investment information.

G. Retirement plan benefits available to employees.

   This should include information about how to calculate the expected benefit from the state retirement system and Social Security, if any.

H. Health and welfare benefits available to employees.

   Costs for health care after retirement will be an important element for your employees to assess to determine whether they have saved enough to supplement their other retirement benefits.

This document is provided by ASBO International solely for the use of its members and is not intended, nor should it be used, as a substitute for legal advice. You should consult with your counsel. Further, this document is not intended, nor should it be construed as tax advice. You should consult with your tax advisor. This information is general only and is not intended to provide a comprehensive description of all types of employee retirement savings education available. The School is cautioned to coordinate any employee education program with the investment providers offered under the School's 403(b)/457(b) Plan and its third party plan administrator, if any. Further, the School should consult with legal counsel for any questions related to the materials or information to be presented to employees during a 403(b)/457(b) Plan employee education program.

This document was created by members of the Association of School Business Officials (ASBO) International and reviewed by the NTSAA Summit Task Force Educational session team leaders. For additional retirement planning resources, visit **www.asbointl.org**.

Employee Education Slide Presentation

For Public Education Employees (available for download at **www.asbointl.org** and **www.ntsaa.org**) ***Reprinted courtesy of ASBO International***

Making the Most of Your Employer's 403(b) Plan

(For Public Education Employees)

General Information Only

Please be aware that this information is intended to be general in nature and is not intended to be legal or tax advice. Each of you should follow up with a legal, tax, or financial professional about your own personal situation.

Today's Objectives:

1. Retirement planning
2. Retirement costs
3. Sources of retirement income
4. Cost of procrastination
5. Action steps

Why does my employer want me to know about this employee benefit?

- An important tool to plan for retirement planning
- Benefits for you today and in the future
- Employer-provided retirement savings vehicle

Why start planning now for retirement?

Five reasons:

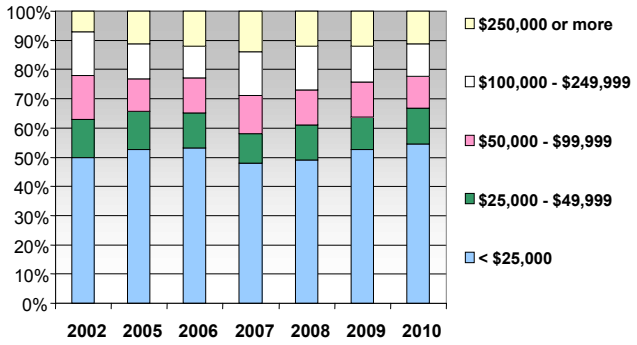
- Benefit from tax advantages
- Power of compound interest
- Pensions/Social Security often not enough; provide income only
- Rising cost of living
- Added flexibility and control available with your own retirement accounts; lump sum benefit is available.

Important Statistics

- 48% of workers surveyed were not too confident or not at all confident that they will have enough money to enable them to have a comfortable retirement.
- 51% were not confident about having enough to pay for medical expenses in retirement.
- 40% of workers and retirees admit worrying about being financially dependent on others during later years.

Source: EBRI Retirement Confidence Survey, 2010

Retirement Savings Preparation



2007 to 2010, employees with < $10,000 increased from 35% to 43%

2009 to 2010, employees with < $1,000 increased from 20% to 27%

EBRI 2010 Retirement Confidence Survey

Key considerations in thinking about retirement

- Lifestyle plans, financial plans
- Activities, necessities
- How much will retirement cost and where will it come from?

How much will retirement cost?

Income need today	Amount needed in 10 Years	Amount needed in 20 Years	Amount needed in 30 Years
$40,000	$53,757	$72,244	$97,090
$60,000	$80,635	$108,367	$145,636

- *Assumes 3% inflation*

Where will the money come from?

- 77.9% Earnings, pension plans, personal savings, and investments
- 19.1% Social Security (not applicable for some public school employees)
- 3% Other

Source: EBRI Databook on Employee Benefits, October 2009, Sources of Income for Persons Age 55 and Older; Households with income of $34,750 or more.

Pension Plan/Social Security: Important Factors

- Eligibility
- Full retirement age

Social Security in 2010

- $13,836 - Estimated average annual benefit paid to a retired worker
- $22,512 - Estimated average annual benefit paid to a retired couple
- $27,876 - Maximum annual benefit paid to a retired worker at full retirement

Source: Social Security Administration

Number of Workers to Retirees in Social Security

- 1945 – 41.5 workers for every retiree/beneficiary
- 1965 – 4.0 workers for every retiree/beneficiary
- 2008 – 3.2 workers for every retiree/beneficiary
- 2030* – 2.2 workers for every retiree/beneficiary
- 2060* – 2.1 workers for every retiree/beneficiary

Source: Social Security Administration, 2009 Old Age and Survivors and Disability Insurance (OASDI) Trustees Report.

*Estimated

Social Security Benefit Eligibility

Year of Birth	Full Retirement Age	% Received at Age 62
1937 or before	65	80.0
1938	65 + 2 months	79.1
1939	65 + 4 months	78.3
1940	65 + 6 months	77.5
1941	65 + 8 months	76.6
1942	65 + 10 months	75.8
1943-1954	66	75.0
1955	66 + 2 months	74.1
1956	66 + 4 months	73.3
1957	66 + 6 months	72.5
1958	66 + 8 months	71.6
1959	66 + 10 months	70.8
1960 and after	67	70.0

Historically, full retirement age has been the age of 65. However, it is now changing, and your full retirement age could be between ages 65 and 67 depending on the year you were born. Reduced benefits may be taken at age 62.

Pension Plan

- Benefit generally depends on compensation, years of service, and plan's annual accrual factor; some have changed recently
- Plan also establishes
  - Age for retirement with full benefit
  - Age for retirement with reduced benefit
- Hypothetical example: Jane Alvarez' benefit is $22,000 per year, starting at age 62 and continuing for the rest of her life, based on her average compensation of $40,000 and her 25 years of service with the district

Supplemental Plans

- 403(b) Plan
- 457(b) Plan
- 401(k) Plan (grandfathered pre-5/86 plans only)

Why contribute to your district's 403(b) plan?

- Opportunity for pre-tax contributions

  Note: After-tax Roth 403(b) contributions may also be permitted under 403(b) plan
- 100% vested in your contributions
- Tax-deferred growth
- Dollar-cost averaging
- *If applicable:* Employer matching contributions

Why pre-tax contributions?

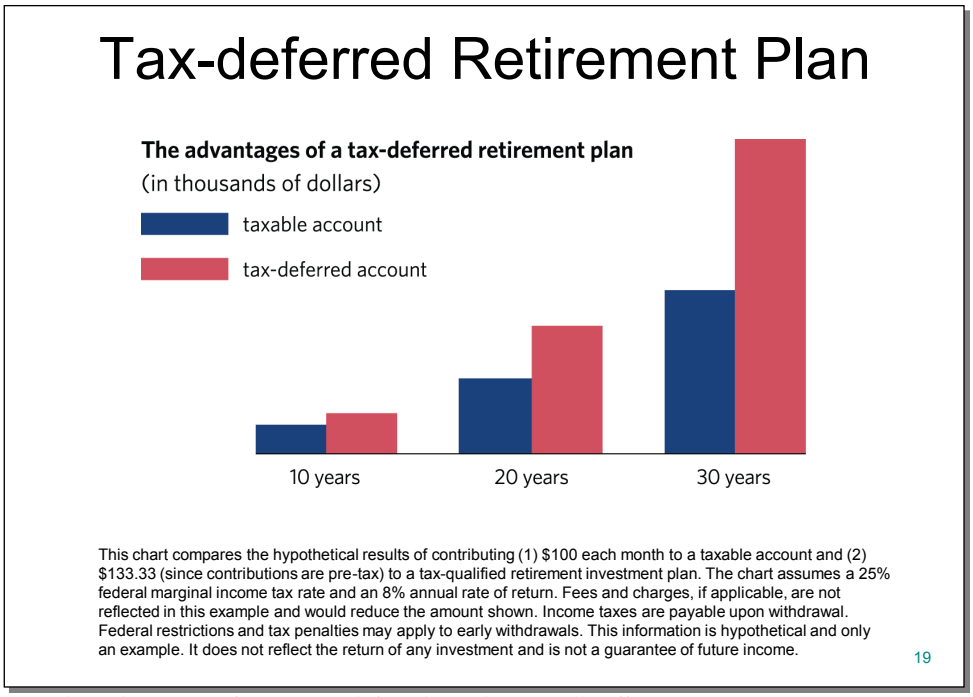
	Taxable Account	Tax-qualified Savings Plan
Salary	$3,000	$3,000
Pre-tax contribution	$0	$200
Taxable income	$3,000	$2,800
* Federal marginal income taxes	$750	$700
Total take-home pay	$2,250	$2,100
After-tax savings	$200	$0
Net take-home pay	$2,050	$2,100

This table is hypothetical and only an example. It does not reflect any specific investment and is not a guarantee of future income.

*25% marginal tax rate and single filer.

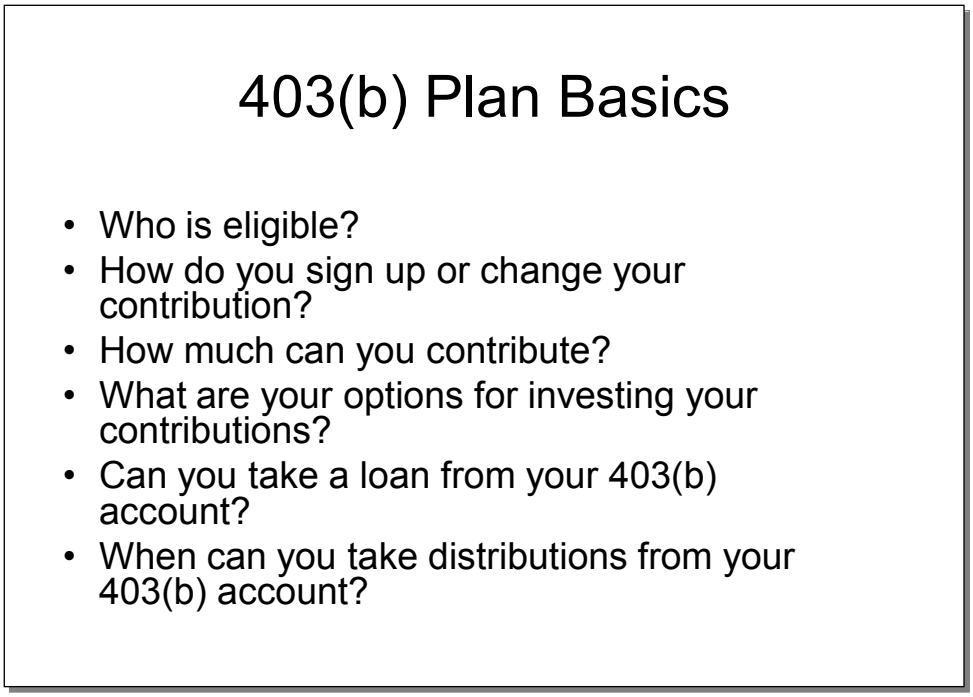
One of the benefits of participating in your employer's plan is that your contributions are made on a pre-tax basis, which means your contributions are made before your taxes are calculated. This reduces your taxes.

This chart compares the effect of saving on an after-tax basis vs. saving pretax in an employer-sponsored plan. If your monthly salary was $3,000 and you contributed $200 to your plan, your taxable income would be reduced to $2,800. If you were in a 25% federal marginal income tax bracket, you would have $700 deducted from your paycheck for federal income tax, as opposed to $750 if you did not contribute. If you put that same $200 in an after-tax savings account rather than your employer's plan, the amount of your take-home pay would be $2,050, which is actually $50 less than what you would have to spend if you participated in your employer's plan. So, the cost to save $200 before tax is actually $150.



The chart illustrates how the power of saving tax-deferred can dramatically affect your retirement savings outcome. It compares the hypothetical results of contributing $100 each month to a taxable account and $133.33 to a tax-qualified plan (since the contributions are pretax) for the same $100 out-of-pocket cost. This chart assumes an 8% annual rate of return. No fees or charges are reflected in the chart and would reduce the results shown.

Keep in mind that lower maximum capital gains rates may apply to certain investments in a taxable account, which would reduce the differences between performance in the accounts shown in this chart. You should consider your personal investment horizon and current and anticipated income tax brackets when making investment decisions as they may further impact the results of the comparison. This chart is hypothetical and only an example. It does not reflect any specific investment and is not a guarantee of future returns.



Who is eligible?

Your employer's 403(b) plan may permit:

– All employees who normally work more than 20 hours per week (or 1,000 hours per year)

OR

– All employees

to participate.

Other exclusions may apply.

Contact your employer for its specific 403(b) plan eligibility rules.

How do you sign up or change your contributions?

- To begin contributions and enroll in the 403(b) plan or to change your contributions, you must complete a salary reduction agreement.
- If you are a new participant, you will also be required to select an investment provider available under the 403(b) plan and establish an account with that provider.
- Contact your employer for its specific procedures as to how to enroll in the 403(b) plan or change contributions.

How much can a participant contribute?

- Basic limit: $16,500 (2011 adjusted limit)
- If 403(b) plan permits:
  - Employees with 15 or more years of service with the district may contribute an additional amount:
    - Up to $3,000 per year, depending on deferrals in past years
    - Lifetime per-employer maximum of $15,000
  - Employees age 50 or older may contribute an additional $5,500 (2011 limit, indexed)

What are my options for where to invest my contributions?

- You may select an approved investment provider under the plan from a list provided by your employer.
- Contact your employer for the list of available investment providers for your 403(b) plan or see the list in your handouts.

What are my options for investing my contributions?

The investment providers offered under your 403(b) plan offer one or both of the following types of investment products:

- Annuity contracts
- Mutual fund products

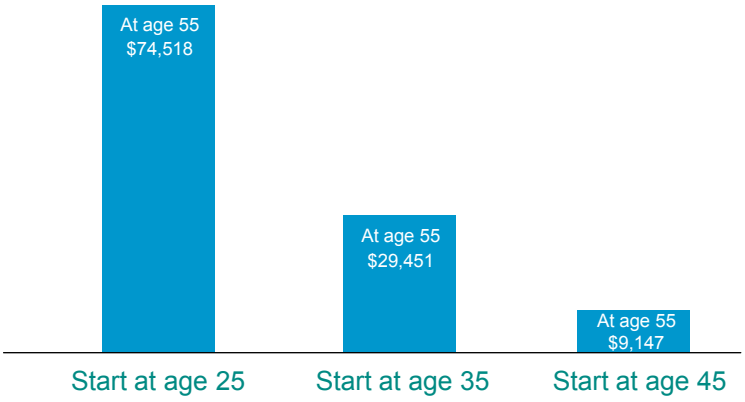
May I take a loan from my 403(b) account?

- If the 403(b) plan permits loans, you may be able to take a loan subject to the terms of the investment arrangement that you select.
- Remember: The primary objective of the plan is to save for retirement.
- Contact your employer to determine if loans are permitted under your 403(b) plan or see a list of the features in your 403(b) plan in your handouts.

When can I take distributions from the plan?

- At four basic events:
  - Age 59 ½
  - Severance from employment
  - Financial hardship (if permitted under your 403(b) plan)
  - Disability
- Additional plan limitations may apply (contact your employer for specific terms of your 403(b) plan).
- In addition, distributions will be made to your beneficiaries upon your death.

What is the urgency?
The cost of procrastinating
Investing $50 a month earning 8% annually



Starting to save is something a lot of us put off -- usually because we think we can't afford to start now. But take a look at this chart. If you had started investing $50 per month at age 25 into a diversified portfolio that averaged 8% a year, you would have accumulated $74,518 by the time you reached age 55. But, if you waited and didn't start saving and investing until age 35, your $50 per month would only have grown to $29,451. What a difference!

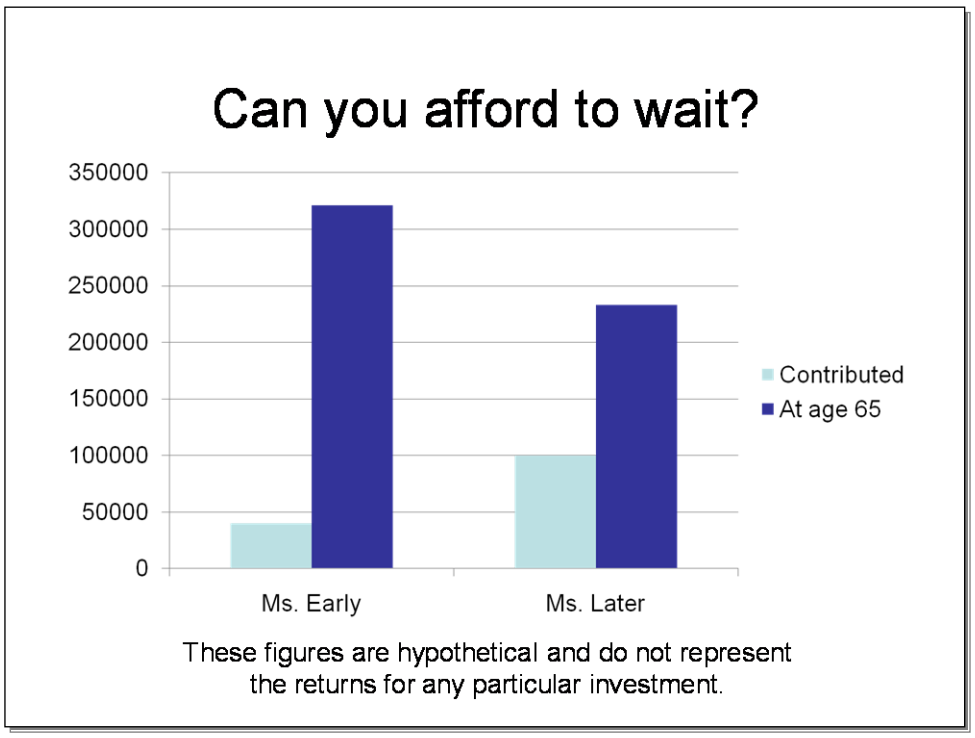
Some of you might be saying to yourself, "I'm too young to start saving long term now. I'll just make up the difference later." How much more per month do you think you would need to contribute starting at age 35 to still reach that $74,518 goal by age 55? Twice as much? No, much more. If you had started at age 35, you would need to contribute $127 per month in order to reach the same goal. The earlier you start investing, building your financial house, doing your financial planning, the easier it will be.

The Power of Starting Today

	Ms. Early	Ms. Later
Age today	25	25
Age start/stop	25/35	40/65
Annual contribution	$4,000	$4,000
TOTAL contribution	$40,000	$100,000

Both earn a 6% annual rate of return.
Who ends up with more at age 65?

Ms. Later started a retirement fund at 40 and contributed until age 65. She paid $4,000 annually, for a total of $100,000. She earned 6% annually. Ms. Early started her own retirement fund at age 25 and contributed $4,000 annually for just 10 years, for a total of $40,000. She also earned 6% annually. Ms. Later contributed more than twice the amount that Ms. Early did –$100,000 versus $40,000. But who ends up with more? From IM-007143



By age 65, Ms. Later has an ending balance of almost $233,000. Ms. Early has an ending balance of $321,000! The secret is time and the compounding returns that accompany it. The longer you delay, the less time your money can accumulate. These figures are hypothetical and do not represent the returns for any particular investment. The figures do not take taxes, account fees, or inflation into account. From IM-007143

The Power of Starting Today

	Ms. Early	Ms. Later
Age today	25	25
Age start/stop	25/65	40/65
Annual contribution	$4,000	$4,000
TOTAL contribution	$160,000	$100,000
Account Value @ 65	**$656,000**	**$233,000**

This time, consider if Ms. Early kept her contributions going until age 65 (all else remains the same). While she contributes $60,000 more than Ms. Later, Ms. Early's account value is $423,000 higher!!

These figures are hypothetical and do not represent the returns for any particular investment. The figures do not take taxes, account fees, withdrawals, or inflation into account.

Action Steps

1 Calculate the cost of retirement.
2 Create a plan to achieve your goals.
3 Take advantage of tax-qualified savings.
4 Increase savings with increases in pay.

Plan Features Grid

Employer Name _____

Plan Name _____

Address _____

Plan Administrator/Designee _____

Plan Design Features

	Types *(check if available under plan)*	**Party Responsible for Evaluating**			**Transmittal Method**	
New Contributions		**ER**	**TPA**	**Provider**	**Electronic**	**Hardcopy**
	❑ EE ❑ ER ❑ Roth ❑ Other contributions: ❑ Post Employment ❑ Other _____ ❑ Other _____					
Catch Up Limits	❑ Age 50 ❑ 15 years of service					
Additional Account Services	❑ Rollovers In ❑ Plan-to-Plan Transfers In ❑ Exchanges In					
Movement of Accounts In-Service	❑ Exchanges Between Authorized Vendors ❑ Exchanges to Non-Authorized Vendors ❑ Exchanges from Non-Authorized Vendors					
Movement of Accounts (Post Employment)	❑ Exchanges ❑ Rollovers Out ❑ Plan-to-Plan Transfers					

	Types *(check if available under plan)*	Party Responsible for Evaluating			Transmittal Method	
New Contributions		**ER**	**TPA**	**Provider**	**Electronic**	**Hardcopy**
In-Service Access Provisions	❑ Loans ❑ Payroll Deduction ❑ Restricted to: ❑ Hardships ❑ Safe Harbor ❑ Facts and Circumstance ❑ Withdrawals from Rollover Accounts					
Distributions	❑ Employer Contributions ❑ Same requirements as EE contributions ❑ Different requirements from EE contributions (Describe)					

Dated _____

Current Authorized Vendors

Vendor Name	Contact Person	Telephone	Email	As of Date
1.				
2.				
3.				
4.				

Previous Vendors Deselected

Vendor Name	Contact Person	Telephone	Email	As of Date
1.				
2.				
3.				
4.				

Dated _____

Quick Reference Chart for 403(b) Plan Excesses

Types of 403(b) Excess	Definition	403(b) Correction Method
Excess Deferral • 401(k) • 403(b) • SARSEP • SIMPLE-IRA	Employee contributed more than the dollar limit for the calendar year. Dollar limit was $15,500 for 2008 and $16,500 for 2009 through 2011. Beginning in 2002, individuals who attain age 50 or older in any year may make an additional elective deferral of the catch-up amount for the year. This amount was $5,000 for 2008, and is $5,500 for 2009 through 2011. This is a "taxpayer limit" and includes all deferrals to all plans listed in the first column of this chart, in which an employee participates, whether related or unrelated employers.	Steps in Correcting on a Timely Basis • Employee must notify the plan that an excess deferral was made by the date indicated in Plan, usually March 15th. (May be a date from March 1-April 15) • Employee must receive excess amount plus earning by April 15th following the year the excess was made. EXCESS DEFERRALS MAY NOT BE RETURNED TO EMPLOYER IN ORDER TO CORRECT FORM W-2. The W-2 is not altered. Reporting • If Corrected in Year of Deferral - Form 1099R completed for Excess Deferral and earnings. Excess amount and earnings go in Boxes 1 and 2a, and Code 8 in Box 7. • If Corrected by April 15th of Year following Year of Deferral, 2 Form 1099Rs completed for the year of distribution: ❖1st with excess deferral amount in Boxes 1 and 2a, and Code P in box 7; and ❖2nd with earnings attributable to excess in Boxes 1 and 2a and Code 8 in box 7. • If Corrected After April 15th following Year of Deferral. ❖Excess deferral is included in participant's income in the year of the deferral AND again in the year distributed (DOUBLE TAXATION). Form 1099R issued for the year distributed. Employee also claims excess as income in the year deferred (amend tax return on 1040X). ❖Distribution of such excess can only be made if a distributable event occurs (i.e., 59 1/2, separation, death, etc...), unless the Employer is correcting under EPCRS. ❖Excess deferrals corrected under this method are counted as a 415 addition to the plan when originally contributed. • Form 1040: The participant must show the distributed excess amount (unadjusted for any losses) as gross income on line 7, Form 1040 for the year of deferral. ❖The earnings are reported on line 7, Form 1040 for the year of the distribution. ❖The participant reports a loss on excess deferrals as a negative amount on line 21, Form 1040, for the year of distribution, and labels it "Loss on Excess Deferral Distribution".

Quick Reference Chart for 403(b) Plan Excesses

Types of 403(b) Excess	Definition	403(b) Correction Method
Excess Contribution to a 403(b)(7) Custodial Account	Employee Contributed more than their Maximum Amount Contributable (MAC)	Steps in Correcting • Employee must complete a Form 5330 and pay the 6% excise tax penalty for each year that the excess contribution remains in the account. The Form 5330 is due by the end of the 7th month following the end of the participant's tax year (usually July 31). • Employee may remove this excess contribution, along with the earnings attributable, for years after 1998. Such employee may instead under-contribute in future years until excess is eliminated. ("retention method") • Excess contributions which are left in the account DO NOT create basis in the plan. Reporting Regardless of the timing of the removal of the excess, a 1099R is issued for the year of the distribution, with the total amount of excess and the earnings attributable in Boxes 1 and 2a and Code E in Box 7. The excess plus earnings attributable are taxable in the year of distribution regardless of the year to which the excess relates. • The participant must report the excess amount as gross income on line 7 of the Form 1040 for the year the excess is distributed.
Excess Contribution to a 403(b)(1) Annuity	Employee Contributed more than their Maximum Amount Contributable (MAC)	Steps in Correcting • Employee may remove this excess contribution as indicated above. Such employee may instead under-contribute in future years until excess is eliminated. • Excess contributions which are left in the account DO NOT create basis in the plan. Reporting • Regardless of the timing of the removal of the excess, a 1099R is issued for the year of the distribution, with the total amount of excess and the earnings attributable in Boxes 1 and 2a and Code E in Box 7. • The participant must report the excess amount as gross income on line 7 of the Form 1040 for the year the excess is distributed.

Quick Reference Chart for 403(b) Plan Excesses

Types of 401(k) Excess	Definition	401(k) Correction Method
Excess Aggregate Contribution	Plan fails the ACP (Actual Contribution Percentage) test. This test includes matching employer contributions and after-**tax employee contributio**ns.	Steps in Correcting on a Timely Basis • Distribute excess plus earnings to affected HC. If distribution is made within 2 1/2 months after the end of the plan year, the employer is not liable for §4979 10% penalty on the excess aggregate amount. ** • Employer can make additional matching contributions to NHCs to meet the ACP test. • Employer may use certain QNE and elective deferrals to satisfy ACP test. • Excess may be forfeited if subject to vesting schedule. • Beginning with Plan Years after 12/31/07, ACAs (Automatic Contribution Arrangements) have 6 months after the Plan Year end to correct excess contributions with no 10% penalty. Reporting • If corrected prior to plan year end - Form 1099R completed for Excess Aggregate amount and earnings. Excess amount and earnings go in Boxes 1 and 2a, and Code 8 in Box 7. • Beginning with the 2008 Plan Year, corrective distributions for a Plan Year, if corrected within 2 1/2 months (or 6 months) following year of excess, are taxed in the year of distribution. Complete a Form 1099R with excess aggregate amount plus earnings attributable in Boxes 1 and 2a, and Code 8 in box 7 for the year distributed. • If Corrected After 2 1/2 Month (or 6 Month) Period Excess Aggregate amount and earnings attributable are taxed in the year distributed. Form 1099R issued for the year distributed. Form 1040: The participant must show the distributed excess amount plus earnings as gross income on line 7, Form 1040. Employer is liable for the §4979 10% excise tax. Form 5330 must be filed. Payor is responsible for Income Tax Withholding on distributions made after the 2 1/2 month (or 6 month) period.

**The law actually permits the 6 month correction period to apply to all plans even those that do not contain an ACA provision. However for those plans that do not contain an ACA provision, the 10% excise tax still applies after 2 ½ months, therefore there is no tax difference to the taxpayer if the excess is corrected after 2 ½ months unless the plan *does* contain an ACA provision.

Quick Reference Chart for 403(b) Plan Excesses

Types of 403(b) Excess	Definition	Stated 401(k) Correction Method
Excess Annual Addition Under Section 415	Contributions made on behalf of participant (employer, employee and/or forfeitures) more than the 415 limitation. This is generally an annual addition which exceeds the lesser of 100% of the employee's compensation or $49,000 for 2009 through 2011. Age 50 Catch-up contributions are not part of this limit. Beginning after 12/31/97, compensation for purposes of this limitation includes elective deferrals under 403(b), 401(k), SARSEP, SIMPLE or 125 plans. If multiple plans, 415 Excesses must be first corrected from a 403(b) Plan.	Steps in Correcting on a Timely Basis • Plan distributes excess amount plus earnings. • Employee is taxed on excess amount plus earnings in the year the excess is distributed. • 415 Excess may be corrected by distribution of elective deferrals plus earnings or return of after-tax employee contributions plus earnings. • Excess 415 amounts may cause the plan to lose its qualified status unless plan provisions are followed. • Amount not eligible for rollover, but is subject to federal withholding. Reporting • Form 1099R completed for the year that the excess 415 amount is distributed. The total distribution goes in Boxes 1 and 2a, and Code E in Box 7. • If only after-tax employee contributions are being returned, enter total distribution in Box 1, the earnings in Box 2a and the after-tax contribution amount in Box 5. • Form 1040: The participant must show the distributed excess amount on line 16a of Form 1040, and the taxable amount on line 16b of Form 1040 for the year that the excess 415 contribution was distributed.

Important Note: At this time there are no written procedures for correcting 415 as there have been in the past under EPCRS. The next updated Revenue Procedure will once again include these corrections. Until such time IRS has instructed employers to use the previous IRS approved methods for correction.

Quick Reference Chart for 403(b) Plan Excesses

Special Rules that Apply to All 403(b) Excesses (including "unwanted" Deferrals)

1. The 10% additional tax on premature distributions does not apply when returning excess amounts plus earnings.
2. None of the corrective distribution can be used in satisfying the minimum required distribution at 70 1/2 or death.
3. Excesses which are claimed as income in a year cannot be considered as an eligible rollover distribution. Therefore excesses not timely corrected must be accounted for so that such amount is not included in an eligible rollover distribution in the future.
4.
   a. When calculating the earnings attributable to an excess, there are reasonable interpretations used for 401(k) plans. See IRS Notice 88-33 and 1.401(k)-1(f) for these methods. Also check plan document to see if a method is indicated, if so, use the method outlined in the plan.
   b. There are 3 periods that can be used for calculating earnings:
      - Plan Year only
      - Plan Year + GAP period
      - Plan Year + "Adjusted" GAP

      Plan documents will either select one or permit the choice (if permitted by law) as long as the method is used consistently for a Plan Year.
   c. Earnings on Excess Deferrals must include the GAP period for Plan Years beginning on or after 1/1/07.
   d. For Plan Years beginning after 12/31/07, GAP period earnings are not required to be included in the earnings calculation for correction of ACP (excess aggregate contributions).
   e. Depending on the type of excess, the Plan may need to be amended (not until 2009) to reflect the period used in determining earnings on the excess.
5. A 10% excise tax penalty, under §4979 is imposed on the employer on excess contributions and excess aggregate contributions (matching and employee after-tax contributions) if not corrected on a timely basis.
   This 10% excise tax is due by the employer's income tax filing deadline for the taxable year with or within which the taxable year ends and is reported on Form 5330.
6. Participant must be advised at the time of distribution of the year or years in which the distribution is taxable and whether they must file an amended tax return and that such amounts are not eligible for rollover.
7. Failing the ACP after Total Distribution
   If an excess is discovered after the 1099R has been issued due to a total distribution, the amounts previously distributed must be recharacterized as corrective distributions of excess contributions or excess aggregate contributions.
   The payor first files a CORRECTED Form 1099R for the prior year for the correct amount of the total distribution (not including the amount recharacterized as an excess contribution or excess aggregate contribution), Second, file a NEW Form 1099R for the prior year excess amount plus allocable earnings.
   To avoid late filing penalties if the new 1099R is filed after the due date, enter in the bottom margin of Form 1096 the words "Filed to Correct Excess Contributions".
   Third, issue new copies of the Forms 1099R to the participant with an explanation of why these new forms are being issued.
8. Unwanted Deferrals under a plan with automatic enrollment (ACA) may be distributed within 90 days from the date of the first automatic contribution.

Checklist for Third Party Administrator (TPA) Selection

The first step in selecting an administrator to assist in compliance efforts with an employer's 403(b) plan is to determine what services the administrator will be providing for the plan. Not all administrators provide the same level of services to 403(b) plans. Unfortunately, employers may not be able to tell the differences in service levels when evaluating bids or proposals if employers do not understand the significance of the differences. The purpose of this checklist is to provide some basic information for employers to use to identify the different types of 403(b) plan administrators (TPAs) and determine what kind is best suited to provide the services needed for the employer's plan.

Once the employer has made the decision to use the services of a TPA, the decision should be made whether to interview and select one or to go through the Request for Proposal (RFP) process. In either case it is important to ask the right questions to assure that the selected designee for the employer is capable to complete the desired and required tasks needed for 403(b) compliance.

Step 1

Know the differences! Understand the differences among a common remitter, a recordkeeper, a quasi-TPA and a TPA.

Common Remitter is a type of TPA that:

- Captures data from the employer's payroll
- Compares the amounts remitted with expected contributions
- Compiles and reconciles exceptions with the payroll department
- Identifies employees eligible for "catch-up" contributions and applies contributions in the proper order
- Distributes contributions to investment providers

Recordkeeper or **Aggregator** is a type of TPA that:

- Keeps records of plan and participant account information
- Maintains accounting of values attributable to each 403(b) plan participant
- Some recordkeepers track the sources of money (i.e. Roth, employee deferrals and employer contributions)
- Typically do not handle compliance features

Quasi TPA is a type of TPA that:

- Provides some, but not all TPA services
- Usually offers one or more of the following services:
  - ❖Common remitter services
  - ❖Consulting
  - ❖Educational materials
  - ❖Documents (specimen documents)

Full Service TPA is a type of TPA that:

- Provides common remitter services
- Provides recordkeeping services
- Provides overall compliance at the Plan level with respect to loans, hardship withdrawals, tracking suspensions and reinstatement, exchanges and transfers, distributions and monitors required minimum distributions, but do not take on fiduciary responsibility
- Coordinates various vendor activities

- May maintain an employer plan website
- Acts as the central point of contact for plan level information
- Drafts and maintains plan document
- Maintains administrative forms
- Provides employer manual or instructions to employer
- Assists and advises employers regarding eligibility and participation requirements, such as the universal availability rule
- If the Plan is subject to ERISA, the TPA also:
  - ❖Assists in the calculation of contributions
  - ❖Monitors eligibility
  - ❖Assists in plan design to eliminate compliance problems
  - ❖Maintains Plan and Specimen Plan Document (SPD)
  - ❖Prepares Form 5500
  - ❖Performs compliance testing – matching, definition of compensation, etc.

Step 2

Rate TPAs. Complete the following checklist based on the RFP responses or interview of the TPA. Where applicable provide a rating of 1-5 (1 indicating the most positive response).

Comparison Checklist for TPAs

Name of TPA: _____

	Check one		Circle one
Assistance in event of IRS audit	❑ Yes	❑ No	1 2 3 4 5
Errors and omissions insurance and liability insurance	❑ Yes	❑ No	1 2 3 4 5
Privacy of plan participant information	❑ Yes	❑ No	1 2 3 4 5
Security:	❑ Yes	❑ No	1 2 3 4 5
• Secure electronic data transmission	❑ Yes	❑ No	1 2 3 4 5
• Secure website for data uploads	❑ Yes	❑ No	1 2 3 4 5
Common remitting processing/services	❑ Yes	❑ No	1 2 3 4 5
Plan documentation	❑ Yes	❑ No	1 2 3 4 5
• Employer's plan implementation guide	❑ Yes	❑ No	1 2 3 4 5
• Initial 403(b) plan documents	❑ Yes	❑ No	1 2 3 4 5
• Maintains and amends all legal documents as required	❑ Yes	❑ No	1 2 3 4 5
• Customized plan documents, if necessary	❑ Yes	❑ No	1 2 3 4 5
• Administrative forms	❑ Yes	❑ No	1 2 3 4 5
• Information sharing agreements	❑ Yes	❑ No	1 2 3 4 5
• Provides and updates Employer Guide/Manual	❑ Yes	❑ No	1 2 3 4 5
• Provides and updates required "enforceable" loan policy	❑ Yes	❑ No	1 2 3 4 5
• Provides and updates required hardship policy	❑ Yes	❑ No	1 2 3 4 5
• Assures that plan and underlying contracts are consistent	❑ Yes	❑ No	1 2 3 4 5

Compliance review for loans, hardships, transfers, QDROs, disability distributions, required minimum distributions and other plan distributions. • Compliance monitoring for "control" of other companies by employees	❑ Yes ❑ No ❑ Yes ❑ No	1 2 3 4 5 1 2 3 4 5
Monitors contribution limits including catch-up contributions and ordering rules, if applicable	❑ Yes ❑ No	1 2 3 4 5
Plan relationship manager assigned	❑ Yes ❑ No	1 2 3 4 5
Experience in the 403(b) market	❑ Yes ❑ No	1 2 3 4 5
Availability of website for Employees	❑ Yes ❑ No	1 2 3 4 5
Availability of website for Employer	❑ Yes ❑ No	1 2 3 4 5
Functionality of website	❑ Yes ❑ No	1 2 3 4 5
Enter the number of source accounts available (i.e., rollover, Roth deferrals, employer contributions, etc)_____	❑ Yes ❑ No	1 2 3 4 5
Does the website have all provider information	❑ Yes ❑ No	1 2 3 4 5

Comments

TPA Services Grid

This grid is designed to ascertain the types of services the TPA provides to their clients. Please complete each item as fully as possible. Ask each TPA under consideration to complete the grid in accordance with their responses or proposals as priced (not as available).

Company Name _____

Address _____

Contact Name _____

Phone _____ Email _____ Fax _____

Contributions	Common Remitter ❑ Yes ❑ No	Processing ❑ Electronic ❑ Manual	Monitor overall contribution limits ❑ Yes ❑ No	Age 50 catch-up monitor limits ❑ Yes ❑ No ❑ N/A	15 year catch-up monitor limits ❑ Yes ❑ No ❑ N/A
	Multiple contribution sources ❑ Yes ❑ No	By source types ❑ Rollover ❑ Employee ❑ Employer ❑ Roth ❑ Restricted ❑ Other _____	Source data is ❑ Separate accounting ❑ Vendor info only		
Transactions	Loans ❑ Yes ❑ No ❑ N/A	Determine loan amounts ❑ Yes ❑ No	Review multiple providers ❑ Yes ❑ No	Use ❑ Certificate ❑ Vendor form ❑ Both	Loan approval ❑ Full ❑ Plan eligibility only ❑ No approval
	Hardships ❑ Yes ❑ No ❑ N/A	Verify proof of hardship ❑ Yes ❑ No ❑ N/A	Review multiple providers ❑ Yes ❑ No	Use ❑ Certificate ❑ Vendor form ❑ Both	Hardship approval ❑ Full ❑ Plan eligibility only ❑ No approval ❑ N/A
	Transfers in/out ❑ Yes ❑ No ❑ N/A	Use ❑ Certificate ❑ Vendor Form ❑ Both	Request source data ❑ Yes ❑ No		

Transactions Continued	Exchanges	Use ❑ Certificate ❑ Vendor form ❑ Both	Monitor ❑ Validity ❑ Mini Common Remitter ❑ Exchanges	Request source data ❑ Yes ❑ No	
	Other in-service withdrawals	Use ❑ Certificate ❑ Vendor form ❑ Both			
	RMD	Calculation ❑ Yes ❑ No			
	QDRO	Determine if QDRO is qualified ❑ Yes ❑ No	Use ❑ Certificate ❑ Vendor form ❑ Both		
	Information Sharing	Accepts ❑ SPARK formats ❑ Other: _____ ❑ in addition to SPARK ❑ in lieu of SPARK	Build source data from 1/1/09 ❑ Yes ❑ No ❑ Only maintain sources from 1/1/09 rest is restricted ❑ Does not maintain any source data		
Distributions that require TPA approval (list all that apply other than the above)	1. 2. 3. 4. 5.				
Other Services	Website for employer	❑ Yes ❑ No			
	Enrollment services	❑ Yes ❑ No	Type ❑ Paper ❑ Electronic		

Other Services Continued	Consulting services	❑ Yes ❑ No	Types (list) 1. 2. 3.
	Educational services	❑ Yes ❑ No	Types (list) 1. 2. 3.
	Monitoring investments	❑ Yes ❑ No	Types and frequency (list) 1. 2. 3.
	Check vendor forms and contracts for tax and other compliance	❑ Yes ❑ No	Forms requested (list) 1. 2. 3.

Checklist for Financial Hardship Distribution from 403(b) Plan Form

(For Provider Use)

1. General Information for Plan Participant

❑ Participant name, SSN#, address, phone, e-mail
❑ Plan name
❑ Employer name, phone, fax and e-mail for contact person

2. Establish the Reason for the Hardship (Safe Harbor Standards)

❑ The payment of expenses for medical care previously incurred or necessary to obtain medical care for:
❑ myself ❑ my spouse ❑ my child(ren) or ❑ my other dependents
❑ The purchase of a principal residence (excluding mortgage payments)
❑ The payment of tuition and related education fees for the next 12 months of post secondary education for:
❑ myself ❑ my spouse ❑ my child(ren) or ❑ my other dependents
❑ The prevention of foreclosure on or eviction from my principal residence.
❑ The payment of funeral expenses of a family member.
❑ To repair my primary residence due to a disaster.

(Optional if permitted by the Plan document)

❑ This request is due to the hardship incurred by a Primary Designated Beneficiary (specify name)_____
_____under the plan.

3. Establish the Need for the Hardship (Safe Harbor Standards)

Participant must certify or must be independently verified. The following requirements must ALL be satisfied:

❑ (1) The distribution will not be in excess of the immediate financial need as indicated below, plus the amount necessary to pay any related federal, state, or local taxes or penalties as indicated below;
❑ (2) *I have previously obtained all distributions and nontaxable loans available under all retirement plans maintained by the employer of this Plan.*
❑ (3) I will not be able to make any salary reduction contributions to any other qualified or nonqualified plan maintained by the Employer of this Plan (other than a health or welfare benefit plan or defined benefit plan requiring mandatory employee contributions) for at least 6 months after I receive the hardship withdrawal.

4. Plan Loan Offset Requirement

❑ Have all available loans been taken from employer's plans?
❑ If participant has outstanding plan loans, disclose amount of the loan $ _____

5. Amount of the Request

❑ Indicate total amount of hardship requested: $_____ (incl. taxes and withholding)
❑ Include withholding language and notice on the form executed by the participant.

6. Need Participant Certification

❑ Include participant certification *(sample follows)*

I certify that the amount requested as a hardship distribution cannot reasonably be relieved:

(1) Through reimbursement or compensation by insurance or otherwise;
(2) By liquidation of any of my assets;
(3) By cessation of elective deferrals or after-tax employee contributions under the Plan;
(4) By other currently available distributions (including distribution of ESOP dividends) and nontaxable loans under any plans maintained by my Employer or by any other employer; and
(5) By borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

7. Need Signatures

❑ Signature of Participant
❑ Employer/TPA Authorization of Transaction
  ❑ Need place for signature certification to approve a distribution signed by the TPA or other employer representative
  ❑ Certificate authorization. In lieu of a signature, accept TPA certification as approval of the transaction for specified dates.

8. Follow-up Activities

❑ Notify Employer of suspended deferral
❑ Set the date that the suspension is lifted

Checklist for Qualified Domestic Relations Order (QDRO) Form

(For Provider Use)

1. General Information on Plan Participant

❑ Participant name, SSN, address, phone, e-mail
❑ Plan name
❑ Employer name, phone, fax and e-mail for contact person

2. Information on Alternate Payee

❑ Alternate Payee name, SSN, address, phone (other contact information helpful)
❑ Relationship to Participant
❑ Certified Court Order or other document under state domestic relations law that satisfies §414(p) of Code (see Checklist below for summary of requirements)

3. Information on Holder of Assets

❑ Identify holder of Assets (releasing Provider)
❑ Information on distributing account

4. Provider/Employer/TPA Authorization of Transaction

❑ Need place for signature by Provider, TPA or other employer representative (Depending on plan)
❑ Certificate authorization. In lieu of a signature, accept TPA certification as approval of the transaction for specified dates.

§414(p) of Code Checklist

Note, if there are multiple alternate payees attach list.

Yes	No	
❑	❑	1. Affected party is a plan participant.
❑	❑	2. The order is a judgment, decree or order which purports to relate to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a Participant.
❑	❑	3. Evidence has been presented which establishes a spousal or terminated spousal relationship, parent/child relationship or dependent relationship between the Participant and the Alternate Payee(s).
❑	❑	4. The order identifies the state domestic relations or community property laws under which it was issued.
❑	❑	5. The order clearly specifies the last known mailing address of the Participant and each alternate payee covered by the order.
❑	❑	6. The order clearly specifies the amount(s) or percentage of the participant's benefit to be paid to each alternate payee and the manner in which such amounts or percentage is to be determined.

❑ ❑ 7. The order clearly indicates the number of payments or period to which such order applies.

❑ ❑ 8. The order clearly identifies each plan to which it applies.

❑ ❑ 9. The order does not assign benefits to the alternate payee that exceed the amount to which the participant is otherwise entitled.

❑ ❑ 10. The order does not require the payment of benefits to an alternate payee which were required to be paid to another alternate payee under a previous QDRO.

❑ ❑ 11. (Only one of the following need apply)

Does the order require that the QDRO payment not be made until a time when the participant is entitled to a distribution?

OR

Does the order require that payment be made only after the participant attains or would have attained the earliest retirement age under the plan?

OR

Does the order require that payments be made before the earliest retirement age and require spousal consent if the benefit payable to the alternate payee exceeds $5,000.

Additional QDRO Actions

❑ 1. Receipt of DRO acknowledgement (sent to Participant and Alternate Payees) Date _____

❑ 2a. Initial Determination: ❑ This is a QDRO ❑ This is NOT a QDRO

❑ 2b. If not a QDRO initially, course of action taken.
❑ Identify deficiencies ❑ Other _____

❑ 3. Date on which separate account established for Amounts that may be payable to Alternate Payee. Date _____

❑ 4. Date on which 18 month determination period expires. Date _____

❑ 5. Name of Plans affected. Plan(s) _____

❑ 6. Date order requires payment to Alternate Payee. Date _____

❑ 7. Indicate amt. to be paid or manner in which determined. Amt. _____

Form _____

Period of # of payments

_____

Checklist for Universal Availability Notice

403(b) plans must satisfy "universal availability" requirements which define eligibility to participate in the plan. There are three components to universal availability that must be satisfied every 403(b) plan (except certain church plans) as follows:

❑ **Eligibility to make salary reduction contributions under the plan**
If any employees are permitted to make salary reduction contributions into a 403(b) plan, then all employees, except those described below, must be permitted to make salary reduction contributions into the plan. No employees may be excluded based on classifications such as "part-time employees," "substitute teachers," "benefit eligible employees," or seasonal, per diem or temporary employees. Only the following employees may be excluded from participation:

a. ❑ employees who contribute less than $200/year
b. ❑ employees who participate in another elective deferral plan, such as a 401(k) or 457(b) plan,
c. ❑ students performing services described in IRC 3121(b)(10), or
d. ❑ employees who work less than 20 hrs/week. Under the final regulations, this rule can be converted into an annual requirement based on a "look back" determination. Employees who are expected to work less than 1,000 hrs/year can be excluded from participating in the plan, but at the end of each 12 month period (measured from first date of hire), the employer (or TPA) must look back and count the hours actually worked by that employee in that 12 month period. If the employee was credited with at least 1,000 hours, he or she must be let into the plan. If the employee was not credited with at least 1,000 hours, then he or she may be kept out for the next 12 months. *This interpretation effectively requires an employer to keep track of actual hours worked for ALL employees if the plan excludes any employees under the 20 hr/week exclusion.*

❑ **Delivery of Meaningful Notice**
Every employee must receive **"meaningful"** notice of the plan and their rights to participate in the plan at least annually. The notice must be provided in a manner designed to ensure delivery to each employee individually. For example, posting a notice in the employee lounge by itself is not an acceptable delivery method. However, a summary provided at a benefits fair followed up by quarterly payroll stuffers would probably suffice. There is no requirement for a written receipt from each employee that they have received the annual notice.

❑ **Opportunity for Enrollment**
Every eligible employee must be given the right to enroll in the plan and change their elections at least once per year. It is strongly recommended that enrollments and election changes be available more frequently to accommodate unexpected situations; new hires, and changes in circumstances.

Note: If the plan offers Roth 403(b) contributions, the universal availability rules apply in the same manner to Roth contributions.

Loan Educational Information for Non-ERISA and ERISA 403(b) Plans

There are limits on the amount of nontaxable loans that may be made to a participant under a 403(b) Plan. In general, loans cannot exceed the lesser of (1) $50,000 or (2) the greater of (a) 50% of the present value of the participant's vested accrued benefit or (b) $10,000. (Code § 72(p)(2)). The $50,000 limit is further reduced by the excess of a participant's highest outstanding loan balance from all plans held by the employer during the past 12-months minus the current loan balance, if any. For these purposes, all plans of the employer are aggregated. The "employer" includes partnerships and proprietorships under common control, controlled groups and affiliated service groups (Code §72(p)(2)(D).

Non-ERISA versus ERISA 403(b) Plans

It is important to clarify that there are two sections of law dealing with participant loans:

- §72(p) which applies to Non-ERISA plans, and
- the DOL rules under ERISA §2550.408(b) which only apply to ERISA plans.

The DOL regulations are more restrictive than the Internal Revenue Code, but they **must** be used in the case of ERISA 403(b) plans. The differences between the two are outlined below:

Loan Provision	Non-ERISA	ERISA
Loan amount	Greater of 50% the account balance or $10,000 with a maximum of $50,000	Lesser of 50% of account balance or $50,000
Security Amount	Minimum = amount of loan Maximum = no maximum	No more than 50% (Minimum = amount of loan)
Interest Rate	Reasonable	Must be determined on date of loan Very specific guidelines
Written Procedures	Required (Electronic Permitted)	Required

The 403(b) Plan Loan Limit Worksheet provides calculations for both types of loans.

Non-ERISA vs ERISA 403(b) Participant Loans

Provision	Non-ERISA 403(b)	ERISA 403(b)
Responsible for making sure loan is technically correct	N/A. Participant self-certifies	Plan Administrator (Employer), but relies on Vendor for servicing and technical issues
Signatures	Participant	Employer and Participant
Responsible for loan procedures	Vendor	Employer, but Vendor usually provides
Services loan	Vendor	Employer, but Vendor usually provides

The final loan and 403(b) regulations require the employer take the responsibility for administering the plan. While employers may delegate this responsibility, they may not delegate to the participant since self-certification is no longer permitted under the final regulations. Additionally, the employer will be responsible to ensure all aggregation and limitations are in compliance.

Refinancing Loans

Refinancing is permitted as long as collectively the loan(s) satisfy the requirements under Code §72(p); however, as a practical matter, most providers do not permit the refinancing of a loan.

If a loan that satisfies the requirements under Code §72(p) is replaced by another loan (i.e.; a replacement loan) and the term of the replacement loan exceeds the maximum allowable term, both the replaced loan and the replacement loan are both treated as outstanding on the date of the transaction for the purpose of calculating the maximum amount of the new loan.

The maximum term permitted on the replacement loan may not exceed 5 years from the original date of the replaced loan. In other words the loan term may not be extended beyond 5 years by refinancing the loan. However, if the original loan term was for less than 5 years, the replacement loan is not required to end before the 5 year period ending after the original loan was taken. If an extension beyond the 5 years does occur, the refinanced loan is treated as a deemed distribution. If, in the alternative, the replacement loan is treated as two separate loans, meaning that the replaced loan continues to have a payment schedule within the new replacement loan that will assure that the replaced loan is paid off within the original term loan, then a deemed distribution does not occur.

Refinanced Loan Example

Janice is a participant in her employer's 403(b) plan and has $120,000 in vested monies under the plan. Janice borrows $40,000 from the plan on January 1, 2009 to be repaid in 20 quarterly installments of $2,491 each. The loan term therefore ends on December 31, 2013.

On January 1, 2010, when the outstanding balance on the loan is $33,322 (replaced loan), the loan is refinanced and is replaced by a new $40,000 (replacement loan) loan from the plan to be repaid in quarterly installments of $2,491 each over the next 20 quarters. Therefore the new loan term ends December 31, 2014.

The amount of the new loan ($40,000) when added to the outstanding balance of all loans from the plan must not exceed $50,000 reduced by the excess of the highest outstanding loan balance from the plan on the date of the refinancing (January 1, 2010), determined immediately prior to the new loan.

Since the new loan period ends later than the term of the loan it replaces, both the replaced loan amount ($33,322) and the replacement loan amount ($40,000) must be taken into consideration when calculating the amount available for a new loan.
$30,000 would be a deemed distribution on 1/1/06 calculated as follows:

1. New Loan Amount	$40,000
2. Outstanding Balance	$33,322
3. Highest balance in last year	$40,000
4. Subtract (line 3) – (line 2)	$ 6,678
5. Maximum Loan Amount	$50,000
6. Subtract (line 5) – (line 4)	$43,322
7. Add (line 1) + (line 2)	$73,322
8. Subtract (line 6) – (line 7)	$30,000

Therefore line 8 ($30,000) is the amount of the deemed distribution on 1/1/10 and should be reported by the provider on a Form 1099-R for tax year 2010 with a code L.

New Loans when there is an Outstanding Defaulted Loan

When payments are not timely made (no later than the end of the quarter following the quarter in which the payment was due), the regulations require that the providers default and report the remaining loan balance as a taxable deemed distribution with the issuance of IRS Form 1099-R. The defaulted loan must be held in the Provider's records since the amount in default (plus any loan interest accruing after the default) must be counted in determining eligibility for new loans.

If a plan permits a new loan with an outstanding defaulted loan in any plan of the employer, the regulations require that payments on the new loan be made through payroll deduction. Employers not wishing to offer payroll deduction for new loan payments should specify in their provider service agreements that no new loans are permitted in the plan if the participant has an outstanding defaulted loan.

Standardized Loan Limit Worksheet for Non-ERISA and ERISA 403(b) Plans

This 403(b) Plan Loan Limit Worksheet may be used to calculate the amount of non-taxable loans that may be made to a participant under an employer's 403(b) Retirement Plan (403(b) Plan).

Background

There are limits on the amount of nontaxable loans that may be made to a participant under the 403(b) Plan. In general, loans cannot exceed the lesser of (1) $50,000 or (2) the greater of (a) 50% of the present value of the participant's vested accrued benefit or (b) $10,000. Code §72(p)(2). The $50,000 limit is further reduced by the excess of a participant's highest outstanding loan balance from all plans held by the employer during the past 12-months minus the current loan balance, if any. For these purposes, all plans of the employer are aggregated. The "employer" includes organizations under common control. Code §72(p)(2)(D).

Verification Steps

Step	Description	Action
1.	Request employer to confirm whether the 403(b) plan provides any limits more restrictive than Internal Revenue Code requirements for a loan or a minimum loan amount.[14] *Note: one such limitation may be to restrict the number of loans permitted.*	No plan limit Plan limit is:_____ Minimum loan amount, if any, is: _____
2.	Determine the participant's vested account balance in the given 403(b) Plan (*inclusive of existing loans for Non-ERISA plans only*).	Value of 403(b) plan account: $_____
3.	Determine the highest outstanding loan balance in the given 403(b) Plan over the last 12-months.	Highest outstanding 403(b) loan balance: $_____
4.	Determine the outstanding loan balance in the given 403(b) Plan on the date of the loan.	403(b) plan loan balance on date of loan request: $_____
5.	Obtain from the employer a list of all other (1) 403(b) plans, (2) qualified plans (*i.e.,* pension plans (defined contribution and defined benefit plans), profit sharing plans, money purchase plans), (3) governmental plans (*i.e.,* state retirement systems and 457(b) plans), or church plans maintained by the employer. **Note:** For these purposes, all plans maintained by an employer and its related employers must be aggregated. Loan limitations are determined on an "Employer" basis not a "Plan" Basis. The "employer" includes controlled groups, partnerships and proprietorships under common control, and affiliated service groups.	List of other plans: _____ _____ _____

[14] *In addition, for a limited time, Plans were permitted to increase the loan limits for individuals affected by (i) Hurricane Katrina, Rita, or Wilma; (ii) May 4, 2007 Kansas storms and tornados; or (iii) 2008 Midwestern storms, tornados, and flooding. See Code section 1400Q.*

	Code § 72(p)(2). For purposes of school districts, this appears to include all plans of employers (county, state, other districts) using a common payroll with the district, but the IRS has not issued clear guidance.	
6.	Obtain the total vested account balance in all plans disclosed in Step 5 (*inclusive of existing loans for Non-ERISA plans only*).	Amount: $_____
7.	Obtain the total highest outstanding loan balances for all plans disclosed in Step 5 over the last 12 months.	Amount: $_____
8.	Obtain the outstanding loan balance for all plans disclosed in Step 5 on the date of the loan.	Amount: $_____
9.	A. Confirm with employer that it has attempted to obtain account and loan balance information from vendors who were discontinued after December 31, 2004 but prior to January 1, 2009 for whom the employer, as administrator, is obligated to request information pursuant to IRS Revenue Procedure 2007-71 OR, if the employer is using the alternative method, as to which the discontinued vendor has provided such information to the employer. **Note:** Prior provider contracts issued before 2005 which have received no contributions since 2004 are grandfathered. No action is necessary with respect to such contracts. B. Ask participant to confirm whether they have any other outstanding loans attributable to participation in a plan sponsored by the employer. If any additional loans are identified by the employer or participant, add them and account information to the information in Steps 6, 7 and 8.	❑ Confirmed
10.	Add the total vested account balances provided in Step 2 and Step 6 (other employer plans or contracts).	Total vested plan account balance: $_____
11.	Calculate the highest outstanding loan balance in the last 12 months by adding the balances provided in Step 3 and Step 7.	Highest outstanding loan balance: $_____
12.	Calculate the amount of loans outstanding on the date of the loan by adding the balances provided in Step 4 and Step 8.	Loan balance on date of request: $_____
13.	Take the highest outstanding loan balance in Step 11 and subtract the loan balance on the date of the loan request from Step 12. Enter this excess amount, if any, and go to Step 14.	Excess Amount (Highest outstanding loan balance minus loan balance on date of request): $_____
14.	Reduce $50,000 by the excess amount determined in Step 13. Enter this amount and go to Step 15.	Amount ($50,000 – Excess Amount): $_____

15.	Reduce the amount calculated in Step 14 by the loan balance on the date of request from Step 12, if any. Enter this amount and go to Step 16.	Amount: $_____
16.	Multiply the Total Vested Account Balance calculated in Step 10 by 50%. For Non-ERISA plans only - If this amount is less than $10,000, select the box marked "$10,000" and go to Step 17. If this amount is ≥ $10,000, select "50% of total account balance" and enter this amount, then go to Step 18.	❑ 50% of total vested account balance: $_____ ❑ $10,000
17.	If this is a Non-ERISA Plan and if the "$10,000" box in Step 16 was checked, determine the lesser of (1) the amount calculated in Step 15 or (2) $10,000. Enter this amount and go to Step 19. Note: Under an ERISA plan, a participant may borrow more than they have in assets however there must be additional collateral received and adequate security is required for all ERISA plans.	Amount: $_____
18.	If the $10,000 box in Step 16 was NOT checked Determine the lesser of (1) the amount in Step 15 or (2) 50% of the participant's total vested account balance from Step 16. Enter this amount and go to Step 19.	Amount: $_____
19.	**Total Loan Amount Available – All Employer Plans in the Aggregate – Go to Step 20 for determining amount of loan from the given 403 (b) accounts where there are multiple vendors.**	$_____
20.	Loan limit applicable to the given 403 (b) accounts: if lesser than the overall loan limit in Step 19, loans from the given 403 (b) accounts may not exceed [optional: "50% of" in a Non-ERISA Plan] the vested account balance in Step 2 less the outstanding loan balance on the date of the loan in Step 4.	Amount: $_____
21.	Determine if the participant has ever defaulted on a prior loan and not repaid the loan. If so, the loan must be by payroll deduction or additional security must be obtained.	Prior default: ❑ Yes ❑ No Was prior default reported as a deemed distribution: ❑ Yes ❑ No
22.	If the Plan is subject to ERISA: Employer must have a loan policy in place with the requirements under ERISA Section 408(b)(1)(A); Section 2550.408b-1(b)(1)(i) DOL Regulations and DOL Advisory Opinion Letter 89-30A	❑ Yes ❑ No
23.	Is refinancing permitted?	❑ Yes ❑ No
24.	Are quarterly payments required and monitored?	❑ Yes ❑ No

DOL Safe Harbor Exemption

In 29 CFR § 2510.3-2(a), the DOL created an exemption for certain tax sheltered annuity programs under section 403(b) of the Internal Revenue Code that met the requirements set forth in the DOL regulation. For purposes of defining what was considered to be a "plan" for purposes of ERISA inclusion or exclusion, subparagraph (f) relating to tax sheltered annuities provides the following:

It states that for the purpose of title I of the Act (ERISA) and this chapter, a program for the purchase of an annuity contract or the establishment of a custodial account described in section 403(b) of the Internal Revenue Code of 1954 (the Code), pursuant to salary reduction agreements or agreements to forego an increase in salary, which meets the requirements of 26 CFR 1.403(b)–1(b)(3) **shall not be "established or maintained by an employer" as that phrase is used in the definition of the terms "employee pension benefit plan" and "pension plan"** if

(1) Participation is completely voluntary for employees.

(2) All rights under the annuity contract or custodial account are enforceable solely by the employee, by a beneficiary of such employee, or by any authorized representative of such employee or beneficiary.

(3) The sole involvement of the employer, other than pursuant to paragraph (f)(2) of this section, is limited to any of the following:

(i) Permitting annuity contractors (which term shall include any agent or broker who offers annuity contracts or who makes available custodial accounts within the meaning of section 403(b)(7) of the Code) to publicize their products to employees,

(ii) Requesting information concerning proposed funding media, products or annuity contractors;

(iii) Summarizing or otherwise compiling the information provided with respect to the proposed funding media or products which are made available, or the annuity contractors whose services are provided, in order to facilitate review and analysis by the employees;

(iv) Collecting annuity or custodial account considerations as required by salary reduction agreements or by agreements to forego salary increases, remitting such considerations to annuity contractors and maintaining records of such considerations;

(v) Holding in the employer's name one or more group annuity contracts covering its employees;

(vi) Before February 7, 1978, to have limited the funding media or products available to employees, or the annuity contractors who could approach employees, to those which, in the judgment of the employer, afforded employees appropriate investment opportunities; or

(vii) After February 6, 1978, limiting the funding media or products available to employees, or the annuity contractors who may approach employees, to a number and selection that is designed to afford employees a reasonable choice in light of all relevant circumstances. Relevant circumstances may include, but would not necessarily be limited to, the following types of factors:

(A) The number of employees affected,

(B) The number of contractors who have indicated interest in approaching employees,

(C) The variety of available products,

(D) The terms of the available arrangements,

(E) The administrative burdens and costs to the employer, and

(F) The possible interference with employee performance resulting from direct solicitation by contractors; and

(G) The employer receives no direct or indirect consideration or compensation in cash or otherwise other than reasonable compensation to cover expenses properly and actually incurred by such employer in the performance of the employer's duties pursuant to the salary reduction agreements or agreements to forego salary increases described in this paragraph (f) of this section.

What is a Non-ERISA 403(b) Plan for 501(c)(3) Organizations?

IMPORTANT NOTE: In order for 501(c)(3) Organizations to be considered Non-ERISA, the Department of Labor has provided safe harbor criteria listing what employers may and may not engage in as part of the day-to-day administration of the Plan.

The Employer may:

- engage in a range of activities to facilitate the *operation* of the program
- permit investment providers—including agents or brokers who offer annuity contracts/custodial accounts—to publicize their products
- request information concerning proposed funding media, products, or annuity contractors
- compile investment information to facilitate review and analysis by the employees
- enter into salary reduction agreements and collect annuity or custodial account considerations required by the agreements, remit them to the providers, and maintain records of such collections
- hold one or more group annuity contracts in the employer's name covering its employees and exercise rights as representative of its employees under the contract, at least with respect to amendments of the contract
- limit funding media or products available to employees, or annuity contractors who may approach the employees, to a number and selection designed to *afford employees a reasonable choice in light of all relevant circumstances*
- certify to an annuity provider a statement of facts within the employer's knowledge as employer, such as employee addresses, attendance records or compensation levels
- transmit to the investment provider another party's certification as to other facts, such as a doctor's certification of the employee's physical condition
- identify in the plan the parties that are responsible for administrative functions, including those related to tax compliance. The plan should correctly describe the employer's limited role and allocate discretionary determinations to the vendors/investment provider(s)
- discontinue a provider due to non-compliance with 403(b) regulations or inclusion of optional features
- refuse vendors whose operational practices force an employer to make discretionary decisions

The Employer may not:

- permit any type of employer contributions under the plan.
- have responsibility for, or make, discretionary determinations in administering any part of the 403(b) plan/program, or hire a TPA to do the same
- This prohibition includes:
  - authorizing plan-to-plan transfers;
  - processing distributions;
  - satisfying applicable qualified joint and survivor annuity requirements, and making determinations
  - regarding hardship distributions;
  - determining whether a domestic relations order is a qualified domestic relations order (QDRO);
  - determining eligibility for and enforcement of loans
- limit investments to one provider. (FAB 2010-01 permits "reasonable choice" for cost considerations where for example multiple investments are available under a broker-dealer or an "open architecture program".)

Important Note: New rules apply beginning for years after 12/31/08 with respect to "controlled groups of businesses" when dealing with 501(c)(3) Employers. If there is commonality in directors, trustees, or individuals on boards of directors in multiple organizations, such organizations may need to be treated as one employer. The Employer should check with their legal counsel if such commonality exists.

ERISA Compliance Quick Checklist

Compliance with the Employee Retirement Income Security Act (ERISA) begins with knowing the rules. Plan administrators and other plan officials can use this checklist as a quick diagnostic tool for assessing a plan's compliance with certain important ERISA rules; it is not a complete description of all ERISA's rules and it is not a substitute for a comprehensive compliance review. Use of this checklist is voluntary and it is not to be filed with your Form 5500-SF.

If you answer "No" to any of the questions below, you should review your plan's operations because you may not be in full compliance with ERISA's requirements.

1. Have you provided plan participants with a summary plan description, summaries of any material modifications of the plan, and annual summary financial reports or annual pension funding reports?
2. Do you maintain copies of plan documents at the principal office of the plan administrator for examination by participants and beneficiaries?
3. Do you respond to written participant inquiries for copies of plan documents and information within 30 days?
4. Does your plan include written procedures for making benefit claims and appealing denied claims, and are you complying with those procedures?
5. Is your plan covered by fidelity bonds protecting the plan against losses due to fraud or dishonesty by persons who handle plan funds or other property?
6. Are the plan's investments diversified so as to minimize the risk of large losses?
7. If the plan permits participants to select investments in their plan accounts, has the plan provided them with enough information to make informed decisions?
8. Has a plan official determined that the investments are prudent and solely in the interest of the plan's participants and beneficiaries, and evaluated the risks associated with plan investments before making the investments?
9. Did the employer or other plan sponsor send participant contributions to the plan on a timely basis?
10. Did the plan pay participant benefits on time and in the correct amounts?
11. Did the plan give participants and beneficiaries 30 days advance notice before imposing a "blackout period" of at least three consecutive business days during which participants or beneficiaries of a 401 (k) or other individual account pension plan were unable to change their investments, obtain loans from the plan, or obtain distributions from the plan?

If you answer "Yes" to any of the questions below, you should review your plan's operations because you may not be in full compliance with ERISA's requirements.

1. Has the plan engaged in any financial transactions with persons related to the plan or any plan official? (For example, has the plan made a loan to or participated in an investment with the employer?)
2. Has the plan official used assets of the plan for his/her own interest?
3. Have plan assets been used to pay expenses that were not authorized in the plan document, were not necessary to the proper administration of the plan, or were more than reasonable in amount?

If you need help answering these questions or want additional guidance about ERISA requirements, a plan official should contact the U.S. Department of Labor Employee Benefits Security Administration office in your region or consult with the plan's legal counsel or professional employee benefit advisor.

Information Coordinator Services (SAMPLE)

by _____

(Exclusively for 501(c)(3) Employers desiring to maintain the Safe Harbor ERISA Exemption)

Goal: 501(c)(3) Employer wishes to remain non-ERISA in light of current regulations as expanded in Department of Labor's Field Assistance Bulletin 2010-01.

Solution: _____ will act as the "Information Coordinator" for the Plan. _____ will not act as the TPA or have discretionary authority with respect to approving loans, hardships, or any other transactions under the Plan.

Information Coordinator: _____ as "Information Coordinator" will:

- Collect all the data from vendors under the Plan in order for the vendors to accurately provide and communicate to the vendor(s) in order to receive from such vendors the discretionary authority with respect to:
    - approving loans;
    - hardships as well as all other distributions;
    - transfers and exchanges; and
    - any other plan transactions
- Provide the Participants and Beneficiaries with compliant forms for the data collection and information on the requested transaction
- Contact vendors to describe the process and procedures for maintaining the Non-ERISA status under the safe harbor
- Available to discuss this option with the Employer's legal counsel and/or tax advisor
- Design or re-design, if applicable, plan provisions to minimize risk and stay within the framework of the FAB.
- _____ will provide the information back to the Vendor with supporting documentation in order to receive the vendor "sign off" on the transaction. (Note: most vendors cannot, should not, or will not share information with other vendors for privacy and competitive reasons.)

Approved Vendors: The approved Vendors under the Employer's plan must:

- be willing to assume the liability associated with transaction approvals
- make sure that their contracts or custodial agreements are consistent with the Employer's Plan documents with respect to discretionary determinations
- agree to provide _____ monthly data sharing information in either a SPARK format or other format acceptable to _____

Deselected Vendors: In order to maintain the Non-ERISA status for the Employer, any deselected Vendor or any vendor that does not agree to the above process will be restricted under the Plan and not be able to:

- Accept any contributions; and
- Process loans or hardship transactions

403(b) Contract Categories Grid

Type of Contract	Level of Employer Authorization	Employer Communication
Pre-Reg - an account/contract issued before 2005 as to which issuer no contributions were made after 12/31/2004.	• Not subject to employer "plan" oversight. • Controlled by relationship between participant and provider.	Employer letter to provider certifying that they have not contributed to that provider and notifying them that any contracts for their employees **do not** require employer authorization. (See Pre-Reg. Notice in "Best Practices Support Materials" section.)
Grandfathered - an account/ contract not connected to a plan holding the proceeds of a Rev. Rul. 90-24 transfer completed before September 25, 2007.	• Not subject to employer "plan" oversight. • Controlled by relationship between participant and provider.	To the extent the provider has the ability to identify and segregate these contracts, they should treat them as not subject to plan oversight. Providers that cannot identify these contracts should assume they are subject to plan rules unless the employer informs them otherwise.
Orphan – an account/contract held by a provider that accepted contributions for any employee of a plan sponsor after 12/31/04 but was not included under the sponsor's plan document on 1/1/09.	• Subject to reasonable good faith compliance. • Employer must contact providers in writing by 12/31/08 to request info sharing, or • Providers should check with employer prior to making distributions or loans.	Employers should identify this group of providers and request information sharing. Providers that have not established information sharing with the employer will need to reach out the employer before executing the transaction. . (See Transition Relief Letter in "Best Practices Support Materials" section.)
Post Reg Active Provider - provider received contributions after 1/1/09 and remains an active provider under the written plan.	Employer authorization required.	The employer and provider should enter into a service provider agreement under which the employer and provider agree to share information to facilitate plan compliance.
Post Reg De-Selected Provider - provider received contributions after 1/1/09 but were subsequently de-selected by the employer.	Employer authorization required.	Employer should attempt to establish information sharing with de-selected provider to facilitate compliance. Providers that have not established information sharing with the employer will need to reach out to the employer before executing the transaction.

Provider Status Worksheet for Deselected Providers

Deselected Provider Name	Date Deselected	ISA (Yes/No)	Contract Exchanges Permitted with Provider (Yes/No)	Loans Permitted with Provider (Yes/No)	Hardships Permitted with Provider (Yes/No)
Main St USA Annuity	1/1/09	N	N	N	N
Big Mutual Fund Co	5/1/09	Y	N	Y	Y
403(b) Life Insurance Co.					
Other Life Insurance Company					

Information on this worksheet should be transferred to the Plan Features Grid and distributed to all current Providers. As a lesser alternative, the TPA can share the information on this sheet with the currently authorized Providers to streamline transactions with legacy accounts.

Sample Notification Letter to Pre-Reg. Providers

Providers whose 403(b) contracts are no longer subject to employer review or authorization.

Provider Name
Address
Address

Re: Contracts for (Identify by Employee Names or Account Numbers)

This letter confirms that the above referenced 403(b) contracts/accounts issued by your organization are not included under the 403(b) plan sponsored by this organization pursuant to Revenue Procedure 2007-71 since, according to our records, your company as issuer has not received a contribution after December 31, 2004. Accordingly, please do not seek authorization for any transactions related to these accounts from us or any or administrative organization that may be servicing our 403(b) plan. As directed in Rev. Proc. 2007-71, these contracts are governed by the terms of contracts between the issuer (your organization) and the contract holder. Because we have no authority over these agreements, we cannot and will not authorize any transaction request related to these contracts/accounts.

Thank you for your cooperation in this matter.

Signature

Sample Alternative Relief Employer Letter to "Orphan" Providers

Vendors who are no longer authorized to provide investment products under an employer's 403(b) plan.

Provider Name
Address
Address

Re: Insert Name of Plan (the "Plan")

Your company _____ has been identified as a 403(b) investment provider under the Plan that received contributions to 403(b) contracts/accounts after December 31, 2004 under our Plan, but are no longer authorized to accept contributions under the Plan document. Pursuant to Revenue Procedure 2007-71, this letter advises you to follow the alternative relief offered under Section 8 of that revenue procedure with respect to the 403(b) accounts and/or contracts held by your company under the Plan ("Orphan Accounts").

Accordingly, we are requesting that your organization use all reasonable good faith efforts to exchange information on Orphan Accounts under the Plan prior to making any loans or distributions from any Orphan Accounts to assist us in fulfilling our compliance oversight responsibilities as applicable to the Plan.

Choose One
We have contracted with _____ (Administrator) to act as a third party administrator for the Plan. All communication about the Plan should be directed to the Administrator at:

[Insert Contact Person for Administrator and Mailing Address]

Phone _____ Fax _____

E-mail _____

Or

You should contact _____ [Insert name of individual at Employer who will be responsible for coordinating Plan information with Provider] at [Insert contact information for named individual] to coordinate information prior to making a loan or distribution from any Orphan Accounts.

Thank you for your cooperation.

Signature

Sample 403(b) Information Sharing Agreement for Deselected Providers

This Information Sharing Agreement ("Agreement") is entered into as of this ____ day of _____ 20__, by and between _____ ("Provider"); and _____ ("Employer"). The Agreement establishes the mutual understanding between Provider and Employer relating to the sharing of information for the purpose of compliance with final IRS regulations ("Regulations") issued under Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code"), Provider and Employer intend for the Agreement to describe the respective duties and obligations of the parties with respect to information sharing as set forth below.

Section I. Employer represents that:

a. it is eligible to establish, and has established and maintains a retirement plan for eligible employees intended to qualify under Section 403(b) of the Code ("Plan");
b. it will notify Provider promptly in writing in the event it ceases to be an eligible employer under Section 403(b) of the Code, ceases to exist, or terminates the Plan.

Section II. Both Parties agree:

to provide information necessary to comply with the Plan and Regulations, including information concerning the participant's employment status and information that takes into account other annuity contracts or custodial accounts maintained under Section 403(b) of the Code, and any other information deemed necessary to ensure compliance, including but not limited to information required for distributions from the Plan, Plan loans, rollovers into the Plan, Plan-to-Plan transfers, and Plan exchanges. Such information shall be provided in a form and manner, and within time periods, as shall be agreed from time to time between Employer and Provider.

Section III. Term of the Agreement.

This Agreement shall continue from year to year unless terminated by either party, in writing, by no less than sixty (60) days written notice.

By executing this Agreement, dated _____ both parties acknowledge that they have read this Agreement and agree to its terms.

AGREED TO

Provider Name	Employer Name
_____	_____
By _____	By _____
Authorized Provider Signatory	*Authorized Provider Signatory*
Name _____	Name _____
Title _____	Title _____
Dated _____	Dated _____

Exchanges, Rollovers and Plan to Plan Transfers Transaction Definitions

Plan to Plan Transfer

This is a transfer of all or some portion of a participant's 403(b) account from one employer's 403(b) plan to a *different* employer's 403(b) plan. Plan-to-plan transfers may only be made to a plan where the participant is a current or former employee. This is an optional plan feature, so both plan documents would have to allow for these types of transfers. Providers do not report these transactions to the IRS on Form 1099-R. The provider disbursing the account/contract proceeds must indicate (if possible) the type of funds (employee deferrals, employer contributions, earnings, rollovers, etc.) forwarded or the proceeds will be treated as a "restricted" source and the most restrictive distributable events will apply to the amounts received in transfer.

Exchange

This is a movement of all or some portion of an employee's 403(b) account under an employer's 403(b) plan from one provider to a different authorized provider under the employer's 403(b) plan. The receiving provider must be an approved vendor under the employer's current 403(b) plan or the receiving vendor must have an information sharing agreement on file with the employer sponsoring the plan. This is an optional plan feature, so the plan document would have to allow exchanges between the vendors. Exchanges are not reported to the IRS on Form 1099-R. The vendor sending the exchange must indicate (if possible) the type of funds (employee deferrals, employer contributions, earnings, rollovers, etc.) forwarded or the proceeds will be treated as a "restricted" source and the most restrictive distributable events will apply to the amounts received in the exchange.

Exchange from Deselected Vendor to Approved Vendor

This is a movement of all or some portion of an employee's 403(b) account under an employer's 403(b) plan from a deselected vendor (one that holds plan assets but is no longer accepting on-going contributions) to a currently approved vendor under the employer's 403(b) plan. This is an optional plan feature, so the plan document would have to allow such exchanges. Exchanges are not reported to the IRS on Form 1099-R. The vendor sending the exchange must indicate (if possible) the type of funds (employee deferrals, employer contributions, earnings, rollovers, etc.) forwarded or the proceeds will be treated as a "restricted" source and the most restrictive distributable events will apply to the amounts received in the exchange.

Exchange from a Grandfathered Orphan 403(b) Account to an Approved Vendor

A grandfathered Orphan account is a 403(b) account held by a participant under which the issuer did not accept additional contributions after 12/31/2004. Currently, until the IRS provides guidance to the contrary, such accounts should not be "exchanged" to another 403(b). These contracts are not a part of an employer's plan. Each vendor must do its own due diligence in proving a distribution, i.e. verify attainment of age 59 ½, verify separation from service, loan amounts, hardship etc. prior to authorizing the transaction without the employer's involvement.

Exchange from a Grandfathered Orphan 403(b) Account to an Approved Vendor

A grandfathered Orphan account is a 403(b) account held by a participant with a product vendor that did not accept additional contributions after 12/31/2004. While these accounts are not currently part of the plan, they can become a part of a plan with an exchange to an approved provider (if the plan permits exchanges). Each vendor must do its own due diligence in proving a distribution, i.e. verify attainment of age 59 ½, verify separation from service, loan amounts, hardship etc. prior to authorizing the transaction without the employer's involvement.

Rollovers from the 403(b)

To qualify for a rollover, a participant must first receive an "eligible rollover distribution" of all or some portion of his or her 403(b) account from the employer's 403(b) plan. It may only occur after the participant has experienced a "distributable event" (separated from service, attained 59 ½, died, qualified for disability). The amount distributed is reported to the IRS on Form 1099-R and the participant must report these amounts on their Form 1040. To defer immediate taxation, the participant may "rollover" the distribution into another "eligible retirement plan," such as an IRA, another 403(b) plan, a SEP, a Roth IRA, a governmental 457(b) plan or other qualified retirement plan that accepts rollovers and where the individual is eligible to make a rollover into the plan. This may be done as a "direct rollover" or as a "60-day indirect rollover."

90-24 Transfers

These were transfers or exchanges, plan to plan or within a plan, which were done in accordance with IRS Rev. Rul. 90-24. The final regulations effectively eliminated this type of transfer or exchange. Contracts which were transferred or exchanged under Rev. Rul. 90-24 on or before Sept. 24, 2007 are essentially grandfathered from the IRS final regulations, but any further transfers or exchanges must satisfy the final regulations.

Checklist for 403(b) Plan Exchanges, Rollovers or Plan to Plan Transfers

(To be used by Providers)

1. **Identify Type of Transaction**
   - ❑ **Exchange:** Movement of all of some portion of a participant's 403(b) account under an employer's plan from one provider to an approved provider under the current employer's plan
   - ❑ **Direct Rollover:** Upon having a qualifying distributable event, the movement of assets from the current employer's 403(b) plan to another "eligible retirement plan" or from another "eligible retirement plan" (including another 403(b) plan) to an approved provider under the employer's 403(b) plan.
   - ❑ **Indirect Rollover**: Upon having a qualifying distributable event, the distribution of assets from the current employer's 403(b) plan to the Participant who may in turn roll those assets to another plan within 60 days.
   - ❑ **Plan to Plan Transfer:** Upon separation of service from an Employer, an employee who is now employed by a different 403(b) eligible employer may elect to move his or her 403(b) account(s) to an approved provider of the new employer's plan. To complete this transaction, both the old and new employer's plan documents must permit Plan to Plan transfers as optional features. If transfers are not permitted, the employee may use the rollover rules to move the account to the new employer's plan, provided the plan accepts rollovers in.
2. **General information on Employer/Plan Sponsor**
   - ❑ Employer Name, Address, Contact Name and Phone. Note: If this is a Plan to Plan transfer, also need Prior Employer's Name, Address, Contact Name and Phone
   - ❑ Name of sending plan (if applicable)
   - ❑ Name of receiving plan (if applicable)
3. **General Information on Plan Participant**
   - ❑ Name, SSN#, Resident address, Phone and E-mail
4. **Delivery Instructions (Destination)**
   - ❑ Must indicate where the proceeds are going with instructions for delivery.
5. **Funding Source for Incoming Rollovers - Origination for Incoming Rollovers ONLY** (Plan to Plan Transfers and Exchanges MUST by funded by 403(b) source.)
   - ❑ IRA, SEP IRA, SIMPLE IRA, SARSEP, 403(b), 457(b), Defined Contribution Qualified Plan (including 401(k)), Defined Benefit Plan, or other.
6. **Information on Receiving Plan Account**
   - ❑ Need to know account number under the 403(b) plan
   - ❑ Need to know if new account, so that an account application form can be attached
   - ❑ Need to know amount of the transaction requested
   - ❑ Need to have directions on expected activity. (For example*: Liquidate all or some portion of the account. Transaction request is based on approximate value of $ _____ being annuitized for a period of _____years, move all shares in kind. Do not liquidate. Estimated Value: _____, or Exchange between accounts at the current custodian (Internal Transfer, also includes movement of monies between investments within a mini common remitter*)
7. **Timing of Transaction**
   - ❑ Need to know when to execute request. (For example: Process immediately. Liquidate funds at maturity to avoid penalty. Liquidate on _____ (specified date).

8. Information on Proceeds

- ❑ Is any part of the transaction composed of required minimum distribution proceeds? If yes, how much? Has the RMD for the year been satisfied prior to this transaction?
- ❑ Need to know information on proceeds by funding source including information on principle and earnings
  - ❑ Pre-Tax Elective Deferrals
    - ❑ Indicate 12/31/88 annuity contract values if available
  - ❑ Designated Post-Tax Roth Deferrals
    - ❑ Indicate Roth establishment date:
  - ❑ Employer Contributions
    - ❑ Indicate if different types of employer contributions (matching, post- employment, discretionary, etc.)
    - ❑ Indicate unrestricted annuity balance (if applicable) on 12/31/08
  - ❑ Rollovers into the Plan
  - ❑ Other source (including corrective contributions under EPCRS)

9. Tax Reporting Requirements

- ❑ Need voluntary and mandatory withholding explanations and elections where required.
- ❑ Check resident address for possible requirement for W-8BEN and 1042-S reporting
- ❑ Participant signature and certifications (suggested and required)
  See suggested participant certifications for consideration at the end of this checklist

10. Employer/TPA Authorization of Transaction

- ❑ Need place for signature certification to approve a distribution signed by the TPA or other employer representative
- ❑ Certificate authorization. In lieu of a signature, accept TPA certification as approval of the transaction for specified dates.

Suggested Participant Certifications for Exchange, Plan to Plan Transfer and Rollover Transaction Forms

By executing this form, I, the participant, acknowledge the following:

(1) This tax free exchange, plan to plan transfer, or rollover is taking place directly from the current Custodian/Insurer to the successor Custodian/Insurer and I am not in actual or constructive receipt of all or any part of the liquidation proceeds;

(2) If I am executing a direct rollover of pre-tax assets to a 403(b) account, I attest that the rollover contains only deductible IRA or pre-tax qualified plan contributions and I acknowledge that all future distributions will be reported as taxable;

(3) If I am executing a direct rollover of post-tax "Roth" assets to a 403(b) account, I attest that the rollover contains only post-tax Roth amounts from another 403(b) or 401(k) account;

(4) I have received and read the prospectus for the fund(s) in which I am making my investment;

(5) If I am over age 70 ½ and requesting a direct rollover, I attest that none of the amount to be transferred will include the required minimum distribution for the current year pursuant to Section 401(a)(9) of the Internal Revenue Code;

(6) My distribution may be subject to taxes if my employer's plan: a) does not include exchanges, transfers or direct rollovers or b) does not include the receiving vendor as an authorized or approved vendor under my employer's plan;

(7) I am responsible for any tax consequences related to the movement of assets, which could include the imposition of penalties, additional taxes and interest. Vendor assumes no responsibility or liability for any adverse tax effects of this transaction;

(8) I am aware that information about me or my 403(b) account/contract may need to be provided to my employer or to an authorized representative of the employer to complete this transaction request and I hereby authorize the custodian/insurer to provide such information as may be necessary to complete this transaction or to otherwise satisfy the requirements of Section 403(b) of the Internal Revenue Code and the relevant regulations applicable to 403(b) plans.

Participant signs and dates

Sample Vendor Service Agreement for 403(b) Plan with TPA

Non-ERISA Public School or Nonelecting Church, Organization Using Services of a TPA

Vendor Agreement

This Agreement, effective as of the date hereof, by and between _____ the "Employer") and _____ the "Vendor") describes the terms and conditions of the agreement between Employer and Vendor related to the 403(b) plan established and maintained by Employer (the "Plan").

Duties and Responsibilities of Vendor

Vendor shall:

1. Adhere to the terms of the written Plan document and any policies and procedures (if any) relating to the Plan.
2. Offer only investment products ("Investments") that fully qualify under §403(b) of the Internal Revenue Code of 1986 (the "Code"), any regulations issued there under and any other applicable state or federal law.
3. Update and modify its documentation and procedures as needed to maintain qualification of its Investments offered under the Plan, and take such reasonable action as necessary to correct any deficiencies in its documents and practices.
4. Make available to the Employer or its representative, copies of master custodial accounts and/or annuity contracts, account and/or annuity contract endorsements or amendments, or other written materials sent or received by Plan participants pertaining to the Plan as requested by Employer or its representative.
5. Share information on participant Investments under the Plan with Employer and/or its representative as necessary for compliance with the Plan and applicable law and regulations. For this purpose, information includes, but is not limited to contributions, distributions, hardship withdrawals, loans, QDRO determinations, required minimum distributions, and other relevant account activities governed by the Plan.
6. Distribute to each participant and beneficiary, at its own expense, all prospectuses, proxy statements, annual reports, tax information and other written materials relating to the products offered under the Plan.
7. Comply with all written solicitation rules of employees of the Employer and exert its best efforts to cause any agents or financial representatives approved to distribute its products to similarly comply with such directives.
8. Properly administer all transactions in accordance with the written Plan and applicable policies and procedures, including if applicable, directions from a Plan administrator appointed by the Employer.
9. Provide proper tax reporting and required notices to Plan participants and withhold taxes as required by applicable law.
10. Permit corrective distributions of excess deferral contributions and cooperate in Employer efforts under any voluntary compliance program with the Internal Revenue Service or state regulating authority.
11. Provide notification of "required minimum distributions," as applicable to Plan participants holding Investments with Vendor.
12. Provide Employer or its representative any information relating to Plan participant accounts and/or annuity contracts in the event of an audit by a taxing or regulatory authority.
13. Assert a diligent effort, except for casualties beyond the control of the Vendor, to maintain information relative to the Plan and Plan participants for a period of seven (7) years following the conclusion of this relationship, and during such time to afford the Employer or its representatives reasonable access to the information. For the purposes of this provision, "information" shall include, but may not be limited to payroll contribution data and transaction data maintained on behalf of Plan participants.

Duties and Responsibilities of Employer

Employer certifies that it is an employer eligible to sponsor a 403(b) plan, and has established and maintains a written 403(b) plan document that reflects its Plan and, subject to the execution of this Agreement by Vendor, Vendor shall be authorized as an approved vendor under the Plan. Employer and any representative appointed to act on its behalf further shall:

14. Determine which employees are eligible to participate in the Plan and certify that the 403(b) program will be made available to all eligible employees as required by law or applicable regulations.
15. At least once per year, provide written notice to employees of their right to participate in the Plan, including information on procedures to enroll in the Plan.
16. Make available to Vendor a copy of the Plan or a detailed summary of the Plan's features and any written policies and procedures incident to the Plan.
17. Transmit contributions to Vendor in a time and manner acceptable to both parties and consistent with applicable income tax regulations. If Employer make nonelective employer contributions to the Plan, Employer shall provide information sufficient to allocate those contributions, including but not limited to names, personal identification numbers, account numbers, contract numbers, applicable investment direction and the dollar amount of the contribution to be allocated to each eligible employee.
18. Provide any information known by or available to the Employer which is necessary for the Vendor to perform its duties and responsibilities covered by this Agreement.
19. Provide changes or updates to the employment status of Plan participants in a time and manner acceptable to both parties.
20. Comply with Vendor's requests for information concerning the Plan, including information on the plan document, all amendments, plan descriptions, and any other documents that have a bearing on the services covered by this Agreement.
21. Provide contact information to Vendor. If Employer uses an administrator, Vendor will be so advised and provided with contact information on the designated administrator. In such event, Vendor is authorized to share information necessary for Plan compliance directly with the designated administrator in a manner that is consistent with applicable privacy and confidentiality requirements.

Duties and Responsibilities of both Parties

All parties agree to the following terms and conditions:

22. **Plan Conformity**. To act in accordance with the terms of the Employer's 403(b) Plan document.
23. **Information Sharing**. Each party agrees to provide information necessary to comply with the regulations under Section 403(b) of the Code and the Plan, including information concerning participants' employment status and information that takes into account Investments under the Plan and any other information deemed necessary to ensure compliance including but not limited to information required for distributions from the Plan, Plan loans, rollovers into and from the Plan, plan-to-plan transfers and Plan exchanges. Such information shall be provided in a form and manner, and within time periods, as shall be agreed from time to time between Employer (or its representative) and Vendor.
24. **Indemnification**. Each party agrees, to the extent permitted by applicable law, to indemnify and hold harmless the other, including any individual member of the governing boards, and their employees from every claim, demand or suit which may arise out of, be connected with, or be made by reason of the party's failure to meet the requirements of this Agreement. However, this indemnification shall not cover any claim, demand, or suit based on the willful misconduct or fraud of either party or its employees. Either party shall, at its own expense and risk, defend, or at its option settle, any court proceeding that may be brought against it, members of the governing board, and employees on any claim, demand or suits covered by this indemnification, and shall satisfy any judgment that may be rendered against any of them with respect to any such claim or demand, provided that such party notifies the other party, in writing, within thirty (30) business days of receipt of such claim or demand. Each party's liability hereunder shall be limited to actual damages, including, where applicable, income tax penalties (but not the taxes themselves) and out-of-pocket legal fees and expenses only.
25. **Confidentiality.** Any information provided under this Agreement shall be kept confidential ("Confidential Information") and shall be used only for Plan compliance purposes. Personal information on employees and Plan participants and their accounts under the Plan is considered to be Confidential Information and shall be pro-

tected by the parties and their respective delegees. Confidential Information shall not be disclosed for any purpose other than as required for 403(b) plan compliance. Both parties agree that the obligation to protect Confidential Information is satisfied if the party receiving such information utilizes the same degree of control and care as it employs to avoid disclosure of its own Confidential Information. Either party may disclose Confidential Information pursuant to a requirement of a governmental agency or pursuant to a valid court or administrative subpoena, order or other such legal process or requirement of law; provided that, prior to disclosing such Confidential Information, the other party will be informed of such order.

26. **Amendment and Termination**. This Agreement can be amended or modified at any time by mutual agreement and written consent by the parties. This Agreement shall remain in effect until terminated, in writing, by either party. Notwithstanding a termination of this Agreement, Vendor agrees that it shall have a continuing obligation to maintain and share information with Employer or its representative on any Investment held by Vendor under the Plan to the extent required for compliance with applicable laws and regulations. This obligation shall continue for so long as any participant Investment is held by the Vendor (or its successor) subject to the terms of the Plan. In the event this Agreement is terminated by either party and Vendor fails to maintain and/or share information as required hereunder, Employer and Vendor agree to cooperate and work in the best interest of Plan participants to accommodate a smooth transition of vendor services. Vendor agrees to pay for time expended and fees, charges and expenses incurred during the transition that are attributable to Vendor's failure to maintain and/or share information as provided under this Agreement. Vendor shall be billed by Employer on the basis of actual s costs incurred by the Employer or the administrator handling the transition.
27. **Limitations of Liability**. Neither party shall be held liable for its inability to perform its duties and responsibilities under this Agreement for any cause beyond its control including without limitation, interference by the other party, acts of God, strikes, labor troubles, government preemption, or national emergency, provided that the party who is unable to perform shall exercise reasonable diligence to effect performance as soon as possible.
28. **Severability**. If any term or provision of this Agreement is found unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.
29. **Construction**. This Agreement shall be construed under the laws of the state in which the Employer maintains its primary address unless superseded by federal law.
30. **Fees of Plan Administrator**. If Employer uses an administrator to service the Plan, both parties recognize that there may be a cost for such service. If the administrator charges the Vendor for some or all of the costs related to administering Investments held by the Vendor, Vendor may terminate this Agreement upon notice of its allocated share of administrative costs, provided that the obligations and duty to share information on Investments held by the Vendor that is necessary for compliance shall continue.

The persons executing this Agreement warrant covenant and represent that they are authorized to execute this Agreement on behalf of such companies and corporations pursuant to their respective bylaws or a resolution of their governing board.

By executing this Agreement, dated _____ , each party acknowledges that it has read this Agreement and agrees to its terms.

For Employer_____	For Vendor_____
By _____	By _____
Name _____	Name _____
Title _____	Title _____
Dated _____	Dated _____

Sample Vendor Service Agreement for 403(b) Plan without TPA

Non-ERISA Public School or Nonelecting Church Organization Self Administering its 403(b) Plan

Vendor Agreement

This Agreement, effective as of the date hereof, by and between: _____ (the "Employer") and _____ (the "Vendor") describes the terms and conditions of the agreement between Employer and Vendor related to the 403(b) plan of established and maintained by Employer (the "Plan"). The parties intend that Vendor will provide certain services to the Employer, as needed, to support the Employer's Plan. In furtherance of this intention, the parties agree as follows:

Duties and Responsibilities of Vendor

Vendor shall:

1) **Plan Conformity**. Provide services under this Agreement in a manner consistent with the terms of the written 403(b) Plan document provided by Employer to Vendor.
2) **Qualified 403(b) Accounts**. Offer only investment products ("Accounts") that meet the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), any applicable regulations and any other applicable state or federal law.
3) **Communications**. Assist in communicating the Plan to employees, including but not limited to, presenting information about the available investment options at group meetings, responding to individual inquiries from employees, and providing the Employer with informational material describing the Plan.
4) **Informational Materials**. Provide Employer with sample written notice of eligibility/availability for distribution to employees, prepare and distribute materials that describe materials that describe the Plan, including investment options, enrollment procedures, and other information necessary for participating in the Plan.
5) **Participant Access**. Provide employees reasonable access to their Plan Accounts.
6) **Forms.** Prepare forms for Employer's consideration to facilitate enrollment and investment selection for Plan Accounts, including salary reduction agreements, Account applications and beneficiary designation forms.
7) **Participant Statements.** Send Account statements to participants' address of record no later than 15 business days after the end of each calendar quarter. If supported by Vendor, participants may also obtain statements via the secure Vendor web site.
8) **Information Sharing Agreement**. If requested by Employer, agree to execute an information sharing agreement. If Vendor fails to execute an information sharing agreement, Vendor agrees to maintain and exchange information with Employer, or Employer's designated representative, as may be necessary to enable the Plan to comply with the requirements of Section 403(b) of the Code.
9) **Roth Contributions.** If the Plan permits Roth 403(b) Contributions and such contributions are accepted by Vendor, Vendor will be responsible for tracking the 5-year period in which the participant must maintain the Roth 403(b) account in order to take a qualifying distribution. Any improper distribution, including those occurring prior to the distributable event as defined by the Plan prior to the participant satisfying the 5-year period is the responsibility of the Vendor.
10) **Plan Exchanges and Transfers**. Ensure that when receiving assets in an exchange or transfer under the Plan, distribution restrictions are not less stringent than those imposed under the transferor contract and that the accumulated benefit (as defined in applicable income tax regulations governing 403(b) plans) under the receiving contract immediately after the exchange or transfer is at least equal to the accumulated benefit under the transferor contract immediately prior to the exchange or transfer.
11) **Confidentiality.** Maintain the confidentiality and/or privacy of all information about participants and employees provided by the Employer and to provide Employer with documentation of Vendor's relevant privacy policies. All

information relating to providing services hereunder shall only be communicated to Vendor representatives, the Employer or its designated representative.

12) **Solicitation.** Vendor and its representatives shall comply with all pertinent written directives regarding the solicitation of employees of the Employer.

13) **403(b) Provisions.** Vendor agrees to perform the following services as may be required under the terms of the Plan:
    a) Advise employees of the annual deferral limits under Section 402(g) of the Code and, if the Plan accepts Employer contributions, of the annual limitations applicable under Section 415(c) of the Code and to provide calculations to determine eligible contribution limits upon request of any employee. Vendor shall certify the accuracy of any such calculations, based upon information provided by Employer and each participant.
    b) If catch up provisions are permitted under the Plan, provide available historical data for calculating maximum allowable contributions for employees utilizing the "catch-up" provisions of Sections 402(g)(7) and/or 414(v) of the Code in accordance with the information provided to the Vendor by the Employer and the participant.
    c) If permitted under the Plan, properly administer loans in accordance with applicable federal and state rules and regulations;
    d) Provide proper rollover notices to participants and beneficiaries as may be required under applicable law, including the right to directly roll over eligible distributions to eligible retirement plans in accordance with the Code.
    e) Provide tax reporting and required notices to participants requesting distributions;
    f) Permit and process corrective distributions of excess deferral contributions and properly track and report and/or distribute excess 415(c) contributions in accordance with applicable IRS regulations where such excess deferrals or excess contributions have been identified by the Vendor, the Employer or Employer's designated representative;
    g) Determine status of court orders as qualified domestic relations orders under Section 414(p) of the Code.
    h) Withhold and report any federal and state taxes on any distributions made directly to any employee and/or their beneficiaries as appropriate;
    i) Notify participants who are aged 70½ or older that they may be required to take Required Minimum Distributions and, upon the direction of the participant or beneficiary, calculate and distribute such amounts as may be required under the Plan and the Code;
    j) If permitted under the Plan, administer hardship distributions including (if applicable) notifying Employer of the hardship distribution with instructions for Employer to suspend all elective deferrals by participant to all plans sponsored by Employer for 6 months;
    k) Enforce applicable distribution restrictions under Section 403(b) of the Code;
    l) Administer plan to plan transfers and exchanges to the extent permitted under the Plan subject to Employer designation of authorized providers and products;
    m) In the event of a tax audit, provide information to the Employer relating to 403(b) accounts held by Vendor for participants, subject to written authorization by Employer and/or participants (as applicable). For example:
        i) Annual listing of total contributions, by investment provider, for each year under audit;
        ii) Annual listing of all participant distributions for each year under audit;
        iii) Annual listing of outstanding participant loans for each year under audit;
        iv) Annual listing of any participant defaulted loans for each year under audit;
        v) Annual listing of exchanges and transfers processed for each year under audit;
        vi) Copies of IRS tax reporting information (Forms 1099-R) for all distributions and defaulted loans for each year under audit.

Any information required hereunder shall be provided electronically, in hard copy, or in a manner otherwise mutually agreed upon by Employer and Vendor.

Duties and Responsibilities of the Employer

The Employer shall:

1. **Determine Eligible Employees.** Determine which employees of the Employer are eligible to participate in the Plan and certify that the 403(b) program will be made available to all eligible employees as required under the terms of Section 403(b)(12)(A)(ii) of the Code.
2. **Provide Annual Notice.** At least once per year, Employer shall provide written notice to Employees of their right to participate in the Plan, including information on procedures to enroll in the Plan.
3. **Primary Contact Person**. Appoint a primary contact person for purposes of implementing, administering and coordinating any issues that may arise with respect to the Plan and provide such information to Vendor in a timely fashion.
4. **Transmit Contributions.** Transmit all contributions to Vendor in a time and manner acceptable to both parties and consistent with applicable income tax regulations.
5. **Identify Investment Providers**. Make available to all employees and Vendors a current list of authorized vendors and investment providers available under the Plan and contact information for each listed provider.
6. **Provide Information**. Agree to furnish Vendor, as soon as practicable, any and all information required by Vendor to fulfill its duties under this Agreement, including but not limited to information on employment status, any exchanges and transfers authorized by Employer or its representative and information on any participant hardship withdrawals from other Accounts under the Plan .
7. **Eligible Employer**. Certify that it qualifies under Section 403(b) of the Code as an organization eligible to offer this 403(b) plan to its employees and accepts all liability for this determination. Employer agrees to notify Vendor if it becomes an ineligible organization.
8. **Plan Document**. Certify that it has adopted and maintains a written 403(b) plan document in accordance with applicable IRS regulations and will provide a copy of the Plan document or detailed summary of the Plan's features to the Vendor.
9. **Plan Exchanges**. Agree that Vendor may accept an exchange of assets from another 403(b) account under the Plan to the extent that exchanges are permitted under the Plan.
10. **Third Party Administrator**. Agree to notify Vendor if Employer has delegated certain specified administrative responsibilities to a third party and, by so notifying Vendor, authorize Vendor to share necessary Plan information with the third party administrator in a manner which is consistent with applicable privacy requirements under this Agreement and under applicable law.
11. **Employee Contributions**. Supply Vendor with a monthly total of all contributions for each employee in a format that is acceptable to both parties and notify Vendor of any change in the salary reduction agreements.
12. **Employer Contributions**. If the Employer makes non-elective contributions to Accounts, to provide Vendor with information sufficient to allocate those contributions, including, but not limited to, the names, personal identification numbers, Account numbers, applicable investment direction, and the dollar amount of the non-elective contribution to be allocated to each eligible Employee.
13. **Roth Contributions**. If the Plan includes Roth 403(b) contributions, agree to provide Vendor with sufficient information to identify the Roth 403(b) contributions separately from the pre-tax 403(b) deferral contributions for each employee, including the dollar amount of the Roth portion and the pre-tax deferral portion, the relevant Account numbers and applicable investment direction.

BOTH PARTIES AGREE that the following terms and conditions are included as part of this Agreement:

1. **Plan Conformity**. Each party agrees to adhere to the terms of the Employer's 403(b) Plan document, as made available by Employer.

2. **Information Sharing**. Each party agrees to provide information necessary to comply with the regulations under Section 403(b) of the Code and the Plan, including information concerning the participants' employment status and information that takes into account other Code section 403(b) contracts/custodial accounts and any other information deemed necessary to ensure compliance including but not limited to information required for distributions from the plan, plan loans, rollovers into the plan, plan-to-plan transfers and plan exchanges. Such information shall be provided in a form and manner, and within time periods, as shall be agreed from time to time between Employer and Vendor.
3. **Indemnification**. Each party agrees, to the extent permitted by applicable law, to indemnify and hold harmless the other party, including any individual member of the governing boards, and their employees from every claim, demand or suit which may arise out of, be connected with, or be made by reason of the party's failure to meet the requirements of this Agreement. However, this indemnification shall not cover any claim, demand, or suit based on the willful misconduct or fraud of either party or its employees. Either party shall, at its own expense and risk, defend, or at its option settle, any court proceeding that may be brought against it, members of the governing board, and employees on any claim, demand or suits covered by this indemnification, and shall satisfy any judgment that may be rendered against any of them with respect to any such claim or demand, provided that such party notifies the other party, in writing, within twenty (20) business days of receipt of such claim or demand. Each party's liability hereunder shall be limited to actual damages, including, where applicable, income tax penalties (but not the taxes themselves) and out-of-pocket legal fees and expenses only.
4. **Exclusive Services**. Except as otherwise provided in this paragraph 4, this Agreement and the underlying contracts or accounts are the exclusive arrangement between the parties for services under the Plan and the terms of this Agreement do not extend beyond such program. Neither party shall have any other obligations or liabilities not specified herein unless both parties agree to such additional obligations or liabilities in writing.
5. **Confidentiality.** Any information provided under this Agreement shall be kept confidential ("Confidential Information") and shall be used only for Plan compliance purposes. Personal information on Employees and their accounts under the Plan is considered to be Confidential Information and shall be protected by both parties and their respective delagees. Confidential Information shall not be disclosed for any purpose other than as required for 403(b) plan compliance. Either party may disclose Confidential Information pursuant to a requirement of a governmental agency or pursuant to a valid court or administrative subpoena, order or other such legal process or requirement of law; provided that, prior to disclosing such Confidential Information, the other party will be informed of such order.
6. **Not Legal Advice**. The parties agree that no service provided by the terms of this Agreement or under the Plan is to be construed as individual legal or tax advice to participants, nor to either party.
7. **Severability**. Each party agrees that it will perform its obligations in accordance with all applicable laws, rules, and regulations now or hereafter in effect. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

By executing this Agreement, each party acknowledges that it has read this Agreement and agrees to its terms.

AGREED TO:

Employer By _____	Vendor By _____
Authorized Representative	*Authorized Representative*
Title _____	Title _____
Address _____	Address _____
_____	_____
Dated _____	Dated _____

Glossary

This glossary offers consistency in terminology for purposes of the publication. Throughout the marketplace there is confusion due to changes in meaning of prior terms, technical meanings given to common words and specific definitions provided by the IRS. To ensure that we were all "speaking the same language" at the Summit, we agreed to this glossary of terms.

90-24 Transfer

Changing 403(b) investment products prior to 9/25/07 under the requirements of Rev. Proc. 90-24.

Common Remitter

A type of TPA that:

- Captures data from the employer's payroll
- Compares the amounts remitted with expected contributions
- Compiles and reconciles exceptions with the payroll department
- Identifies employees eligible for "catch-up" contributions and applies contributions in the proper order
- Distributes contributions to investment providers

Deselected Vendor/Product Provider

A vendor/product provider that previously accepted contributions from an employer but is not included under the employer's plan document.

Direct Rollover

A direct rollover is the direct movement of all or some portion of a participant's interest in a plan from the custodian, insurer or trustee holding the participant's account to the custodian, insurer or trustee of another eligible retirement plan into which the participant wishes to have his account deposited. The participant does not receive the distribution and the amount is directly deposited into his or her new account under the new plan as a "direct rollover" contribution.

Excess Contribution

Any amount contributed to a 403(b) account that exceeds the applicable §415(c) limitation for the plan year. The limit in 2011 is $49,000 (exclusive of an employee's age 50+ catch up contributions).

Excess Deferral

Any amount deferred by the employee from his compensation (including Roth contributions) into a 403(b) account under the employer's plan that exceeds the annual §402(g) deferral limit for the calendar year. The limit in 2011 is $16,500 exclusive of an employee's aged 50+ catch up contributions.

Exchange

An optional plan feature that permits the movement of all or some portion of an employee's 403(b) account under an employer's 403(b) plan from one provider to a different authorized provider under the same employer's 403(b) plan.

Full Service TPA

A type of TPA that provides comprehensive plan administration services for 403(b) plans including:

- Common remitter services
- Recordkeeping services
- Overall compliance at the Plan level with respect to loans, hardship withdrawals, tracking suspensions and reinstatement, exchanges and transfers, distributions and monitors required minimum distributions, but do not take on fiduciary responsibility
- Coordinating various vendor activities
- Maintaining employer plan website (optional)
- Acting as the central point of contact for plan level information
- Drafting and maintaining plan document (optional)
- Maintaining administrative forms
- Providing employer manual or instructions to employer
- Assisting and advising employers regarding eligibility and participation requirements, such as the universal availability rule
- If the Plan is subject to ERISA, the TPA also:
  - ❖ Assists in the calculation of contributions
  - ❖ Monitors eligibility
  - ❖ Assists in plan design to eliminate compliance problems
  - ❖ Maintains Plan and Specimen Plan Document (SPD)
  - ❖ Prepares Form 5500
  - ❖ Performs compliance testing – matching, definition of compensation, etc.

Grandfathered Account

An account/contract not connected to a 403(b) plan holding the proceeds of a Rev. Rul. 90-24 transfer completed before September 25, 2007.

- Not subject to employer "plan" oversight
- Controlled by relationship between participant and vendor

Indirect Rollover

An indirect rollover occurs when a participant receives the distribution of his or her interest under a retirement plan and then, within 60 days, re-deposits all or some portion of the amount of the distribution into another eligible retirement plan. Because the amount was paid directly to the participant, the Provider must withhold 20% of the distribution amount for federal income tax purposes.

Orphan Account

A 403(b) account/contract held by a vendor that accepted contributions for any employee of an employer/plan sponsor after 12/31/04 but was not included under the sponsor's 403(b) plan document on 1/1/09.

Plan to Plan Transfer

The movement of all or some portion of a participant's 403(b) account/contract from one employer's 403(b) plan to another employer's 403(b) plan following a separation from service.

Pre-Reg. Account

A 403(b) account/contract issued before 2005 into which no contributions were made after 2004.

- It is not subject to employer "plan" oversight
- It is controlled by the relationship between participant and vendor.

Quasi TPA

A type of TPA that:

- Provides some, but not all TPA services based on the terms of the agreement between the TPA and employer
- Usually offers one or more of the following services:
  - ❖Common remitter services
  - ❖Consulting
  - ❖Educational materials
  - ❖Documents (specimen documents)

Recordkeeper/Aggregator

A type of TPA that:

- Keeps records of plan and participant account information
- Maintains accounting of values attributable to each 403(b) plan participant
- Some track the sources of money (i.e. Roth, employee deferrals and employer contributions)
- Typically do not handle compliance transactions

Rollover

The movement of all or some portion of a 403(b) account/contract following an "eligible rollover distribution" to an "eligible rollover plan." A rollover may be a direct rollover or an indirect rollover. Rollovers may not be made in a 403(b) plan until a participant has experienced a "distributable event" under the plan and §403(b) of the Code.

Runaway Account

An account/contract that cannot be linked to an employer or that cannot be found.