This guide is not intended and may not be used to avoid tax penalties, and was prepared to support the promotion or marketing of the matters addressed in this document. The taxpayer should seek advice from an independent tax advisor.
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INTRODUCTION

This 403(b) Plans – A Guide for 501(c)(3) Organizations is intended to assist tax-exempt organizations who sponsor 403(b) plans by providing general information about the Internal Revenue Code (“Code”) and the Employee Retirement Income Security Act of 1974 (“ERISA”) rules governing 403(b) plans’ operation and administration.

A tax-sheltered 403(b) annuity, also known as a tax deferred annuity or “403(b) plan” is a deferred compensation arrangement, which may only be sponsored by organizations that are exempt from taxation under Code Section 501(c)(3) and public school systems. Please note that this Guide focuses solely on 403(b) plans sponsored by tax-exempt Code Section 501(c)(3) organizations and does not address 403(b) plans sponsored by public school systems, religious organizations, or entities that have both governmental and non-profit status.

Please note that this Guide is intended for general informational purposes only. No part of this Guide is intended to provide tax or legal advice – this is ING’s interpretation of the Code and ERISA rules. Any questions involving tax or legal matters should be referred to your 403(b) plan’s legal counsel or tax advisor.

For more information on 403(b) plans, please visit ING’s dedicated website at www.ing.com/us/403bregs.
SECTION I - ERISA CONSIDERATIONS

403(b) Plans that are subject to ERISA

All 403(b) plans are subject to Title I of ERISA unless an exemption applies. The three scenarios by which a 403(b) plan can be exempt from ERISA are:

- the 403(b) plan is maintained by a governmental entity
- the 403(b) plan is maintained by a church or,
- the 403(b) plan is administered in accordance with a safe harbor available for plans that are maintained with limited employer involvement.

Employee Retirement Income Security Act of 1974 (“ERISA”) Defined

In addition to the Code, this is the basic federal law governing employee benefit plans.

Safe harbor exception from ERISA

For those 403(b) plans sponsored by non-governmental/non-church organizations that are tax-exempt under IRC Section 501(c)(3), a safe harbor exemption may apply if the employer maintains limited employer involvement by satisfying the following criteria as provided by the Department of Labor (“DOL”) under Reg. Section 2510.3-2(f):

- Participation is voluntary for employees (e.g., no negative election or automatic enrollment provisions).
- It is a salary reduction-only 403(b) plan – that is, the only contributions permitted under the plan are salary reduction and Roth 403(b) contributions. No employer contributions are allowed.
- All rights under the 403(b) plan are enforceable only by the employee, beneficiary or authorized representative of the employee or beneficiary.
- There is limited employer involvement in the 403(b) plan. Limited involvement for an employer means permitting providers to publicize their products, requesting and summarizing information regarding the available funds or products, collecting salary reduction contributions and forwarding the contributions to the provider(s), signing a group annuity contract with a provider and limiting the number of funds and products under the 403(b) plan. However, the employer must provide participants with a reasonable choice of investments. According to the DOL, an employer may limit the number of providers to which it will forward salary reduction contributions as long as employees may transfer all or a part of their funds to any provider whose annuity contract or custodial account complies with the Code requirements and who is willing to enter into an information sharing agreement with the employer. In the view of the DOL, a “reasonable choice of investments” is generally more than one 403(b) vendor and more than one investment product.”
- The employer cannot receive compensation for performance of its duties under the 403(b) plan other than compensation to cover reasonable expenses.

In response to the requirement in the final 403(b) regulations that an employer must be more involved in operating its 403(b) plan, the DOL released Field Assistance Bulletins (“FAB”) No. 2007-02 and 2010-01 which provide a roadmap for those employers who wish to continue to maintain their 403(b) plan under the safe harbor.

The FABs make clear that the ultimate determination of whether or not a 403(b) plan meets the non-ERISA safe harbor depends on individual facts and circumstances. As a result, the DOL will make an assessment of such a plan’s non-ERISA status on a case-by-case basis. However, the DOL notes that the
following activities would be considered non-discretionary determinations of the employer and thus be consistent with the requirements of the safe harbor:

- Conduct administrative reviews of the program’s structure and operation;
- Fashion and propose corrections;
- Develop improvements to the 403(b) plan’s administrative processes that will obviate the recurrence of tax defects;
- Obtain the cooperation of independent entities needed to correct tax defects;
- Keep records of its activities;
- Certify facts related to an employee known by the employer to a funding vehicle provider;
- Adopt a written 403(b) plan;
- Conduct periodic review of documents making up the 403(b) plan for conflicting provisions and compliance with the tax rules; and
- Choosing whether to include optional features such as loans and hardships in the 403(b) plan, provided that the vendor takes on the responsibility for discretionary determinations.

However, the following employer activities would cause a 403(b) plan to fall outside of the safe harbor, causing it to be considered subject to ERISA:

- Authorize plan-to-plan transfers;
- Process distributions;
- Satisfy applicable QJSA requirements;
- Determine eligibility for hardship distributions, QDROs and loans;
- Negotiate with funding vehicle providers to change the terms of their products for purposes other than compliance with the Code and regulations; and
- Selecting a TPA to perform administrative functions on behalf of the plan.

### Department of Labor ("DOL") Defined
One of the federal government agencies responsible for the enforcement of the reporting and disclosure provisions of ERISA.

### ERISA Requirements for Fiduciaries

If a 403(b) plan is subject to ERISA, there are stringent duties and requirements placed on plan fiduciaries. A fiduciary is a person who exercises discretionary control over the management of the 403(b) plan or its assets or who is paid to give investment advice regarding plan assets. Service providers such as insurance companies, actuaries, attorneys, accountants, brokers and recordkeepers who are performing administrative functions at the direction of the plan fiduciary are not fiduciaries because they are not considered to be exercising discretion or to be responsible for the management of the 403(b) plan or its assets. At least one fiduciary must have the ultimate authority to control and manage the operation and administration of the plan (usually the plan administrator).

### Plan Administrator Defined
A fiduciary who is responsible for the day-to-day administration of the 403(b) plan including determination of eligibility for participation in the plan and determination of participant benefits.

A fiduciary must:

- Operate the 403(b) plan for the exclusive benefit of participants and beneficiaries, and control expenses of administration,
- make decisions with the level of care, skill, and diligence that a prudent person familiar with retirement plans would use under the same circumstances,
- diversify investments to minimize the risk of large losses, unless it is clearly prudent not to do so,
- hold 403(b) plan assets within the jurisdiction of U.S. courts,
- act in accordance with the terms of the written plan documents unless the documents are in conflict with ERISA, and
- not engage in prohibited transactions.

### Prohibited Transactions Defined

Fiduciaries must operate a 403(b) plan for the exclusive benefit and in the best interest of participants. To satisfy this requirement, a fiduciary must not engage in economic transactions that directly or indirectly involve plan assets and parties related to the plan unless the plan is covered by a statutory ERISA exemption or an exemption granted by the DOL. Prohibited transactions cover the sale, exchange or lease of property, extension of credit, provision of goods or services, transfer or use of plan assets, the investment in employer securities or employer real estate in excess of legal limits, and any situation where a plan fiduciary may have a conflict of interest (e.g., self-dealing, kickbacks, etc.).

The plan administrator is responsible for:

- determining eligibility for participation in the 403(b) plan,
- determination of benefits,
- approval or denial of claims,
- distribution of summary plan descriptions, summary annual reports and statement of vested benefits,
- filing Form 5500 and other required filings,
- maintaining the 403(b) plan records for at least six years,
- determining if a domestic relations order is a QDRO, and
- providing written explanation of rollover treatment to participants.

A 403(b) plan fiduciary who breaches his responsibilities may be subject to both criminal and civil penalties.

The DOL has provided information on fiduciary responsibilities under a retirement plan subject to ERISA (click on below link):

**Meeting Your Fiduciary Responsibilities**

### Investment of Plan Assets under ERISA Section 404(c)

One of the most important fiduciary responsibilities is investment of 403(b) plan assets. Although it is not required, a fiduciary can shift the responsibility for investment losses onto participants by electing to operate the plan under ERISA Section 404(c). In order to comply with ERISA Section 404(c), participants must be:

- Permitted to choose from a broad range of investment alternatives consisting of at least three diversified investment categories, each of which is characterized by materially different risk and return factors;
- Permitted to give investment instructions as frequently as the market volatility of the particular investment alternative dictates (but in no event, less frequently than quarterly); and
- Be provided with sufficient information to make informed investment decisions.

Compliance wit these rules only insulates fiduciaries from poor investment decisions made by participants and beneficiaries. Fiduciaries are still liable for selecting funds, monitoring investments and general fiduciary responsibilities under ERISA.
A participant who does not submit investment instructions to the plan administrator will be treated as exercising actual control over the assets in his account if the plan's fiduciary's default investments are made in accordance with the Department of Labor’s regulations.

In order for participants to be deemed to exercise actual control over assets in their account when the plan makes default investments on their behalf, the plan must provide a notice to the participants of their rights and obligations. Specifically, within a reasonable time before the beginning of each year, each participant must be provided a notice explaining his rights under the plan to designate how contributions and earnings will be invested. In addition, the notice must explain how, in the absence of any investment election by the participant, the contributions and earnings will be invested. The notice must also inform each participant that they will have a reasonable period of time after receipt of the notice and before the beginning of the year to make a designation of how contributions and earnings should be invested.

**Bonding**

Every fiduciary of a 403(b) plan who handles or has authority to handle plan assets must be bonded. The bond coverage must be at least 10% of the plan assets handled by the bonded individual. The bond must not be for less than $1,000 and need not be for more than $500,000.

**IRS Plan Reporting Filings**

An ERISA 403(b) plan is required to file a Form 5500 annual return filed. Beginning with the first plan year beginning on or after January 1, 2009, ERISA 403(b) plans are subject to full Form 5500 disclosure requirements. Also, a large ERISA 403(b) plan, which is generally a plan with 100 or more participants as of the beginning of the plan year, will be required to have an independent audit conducted as part of its Form 5500 filing.

**Disclosure Requirements**

A plan administrator must automatically provide the following to participants:
<table>
<thead>
<tr>
<th>Document</th>
<th>Type of Information</th>
<th>To Whom</th>
<th>When</th>
</tr>
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<tr>
<td>Summary Plan Description (SPD)</td>
<td>Basic plan information for participants and beneficiaries. Must be written for average participant. Special rules apply for foreign language when a certain portion of plan participants are literate only in the same non-English language.</td>
<td>Participants and beneficiaries</td>
<td>Automatically to participants within 90 days of becoming covered by the plan and to beneficiaries within 90 days after first receiving benefits. Updated SPD must be furnished every 5 years if changes made to SPD information or plan is amended. Otherwise must be provided every 10 years.</td>
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<tr>
<td>Summary of Material Modification (SMM)</td>
<td>Describes material modifications to a plan and changes in the information required to be in the SPD. Distribution of updated SPD satisfies this requirement.</td>
<td>Participants and beneficiaries</td>
<td>Automatically to participants and pension plan beneficiaries; not later than 210 days after the end of the plan year in which the change is adopted.</td>
</tr>
<tr>
<td>Summary Annual Report (SAR)</td>
<td>Narrative summary of the Form 5500.</td>
<td>Participants and beneficiaries</td>
<td>Automatically to participants and beneficiaries receiving benefits within 9 months after end of plan year, or 2 months after due date for filing Form 5500 (with approved extension).</td>
</tr>
<tr>
<td>Periodic Pension Benefit Statement</td>
<td>Statements must indicate total account balances and vested percentage of those accounts or the earliest date on which benefits become fully vested. In addition, statements must also provide the value of each investment to which assets in the accounts have been allocated. If the plan permits participant direction of accounts, statements must also include an explanation of any limitation or restriction on any right of the participant or beneficiary under the plan to direct an investment; an explanation of the importance of a well-balanced and diversified portfolio.</td>
<td>Participants and beneficiaries</td>
<td>In general, at least once each quarter for plans that permit participants to direct their investments and at least once each year, in the case of plans that do not permit participants to direct their investments. In addition, the plan administrator must provide a benefit statement upon request to a beneficiary that does not receive statements automatically, limited to one request during any 12-month period.</td>
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**Claims Procedures**

A benefits claim is a request made by or on behalf of a participant or beneficiary for plan benefits in accordance with reasonable procedures established by the plan. If no procedure has been established, the claim is considered filed when the claimant makes a written or oral communication reasonably calculated to bring the claim to the attention of the individual or committee that primarily handles the employer’s benefit matters. ERISA generally requires a plan to provide adequate notice in writing of the denial of a claim for benefits and to give a reasonable opportunity for full and fair review of the decision to deny the claim. DOL regulations provide the following guidelines for determining when claims procedures are reasonable:
the procedures must be described in the SPD;
- the procedures must not contain any provision, or be administered in such a way, that improperly prevents or hampers filing or processing a claim;
- the procedures must comply with the rules for claim procedures set forth in the DOL regulations; and
- the procedures must specifically provide for certain written notices to participants and beneficiaries.

SECTION II- ELIGIBILITY

Eligible Employers

Employers that are permitted to establish 403(b) plans include:

- Public school systems: a teaching institution with a faculty, curriculum and enrolled students and includes public primary and secondary schools, state colleges and universities, and public junior colleges.
- Organizations qualified under Code Section 501(c)(3).

501(c)(3) Organizations Defined

A tax-exempt organization qualified under Code Section 501(c)(3) organized and operated exclusively for religious, charitable, scientific, literary, educational or safety testing purposes. In addition, certain public institutions, such as government-operated hospitals, libraries and museums may also have a favorable determination letter from the IRS regarding their status as Code Section 501(c)(3) organizations.

A 501(c)(3) organization includes not only the organization whose employees participate in the 403(b) plan, but also any other tax exempt organization that is under common control. Common control is based on 80% of the directors or trustees being either representatives of, or directly or indirectly controlled by an exempt organization.

It should be noted that in such a “controlled group” situation, only entities that are either tax-exempt organizations under Code Section 501(c)(3) or public schools may participate in a 403(b) plan, e.g., a public university and a 501(c)(3) alumni association. If a tax-exempt organization operates a for-profit corporation, the employees of the for-profit corporation cannot participate in the organization’s 403(b) plan.

Eligible Employees

Only common law employees are permitted to participate in a 403(b) plan. In general, independent contractors and leased employees are not considered common law employees and may not be covered by a 403(b) plan.

Leased Employee Defined

An individual who provides services to an employer of a type historically performed by employees, pursuant to an agreement with the employer and a leasing organization, on a substantially full-time basis for a period of at least one year provided the services performed are under the primary direction or control of the employer.
Universal Availability

Salary reduction and Roth 403(b) (if permitted under the 403(b) plan) contributions are subject to the “Universal Availability Rule,” which is satisfied only if the 403(b) plan permits every eligible employee (subject to the exceptions listed below) to have the opportunity to make salary reduction and Roth 403(b) contributions of at least $200 annually. An employer is not permitted to impose a minimum percentage of contributions on salary reduction and Roth 403(b) contributions as an administrative convenience.

A 403(b) plan may exclude the following employees from making salary reduction and Roth 403(b) contributions:

- Employees whose maximum salary reduction and Roth 403(b) contributions under the 403(b) plan would be no greater than $200,
- Nonresident aliens with no U.S. source of income,
- Students performing services for the employer whose compensation is not subject to wages under the Federal Insurance Contributions Act (“FICA”), unless such student regularly works more than 40 hours per week,
- Employees eligible to make deferred compensation contributions to a 457(b) plan, a 401(k) plan or another 403(b) plan sponsored by the employer, or
- Employees who normally work less than 20 hours per week,

An employee is considered to work fewer than 20 hours per week only if:

- For the 12-month period beginning on the date the employee’s employment began, the employer reasonably expects the employee to work fewer than 1,000 hours of service in such period; and
- For each plan year ending after the close of the 12-month period beginning on the date the employee’s employment commenced (or, if the plan provides, each subsequent 12-month period), the employee worked fewer than 1,000 hours of service in the preceding 12-month period.

Plan Year Defined

Any 12-month period elected by the employer and stated in the 403(b) plan document over which 403(b) plan records and administration are maintained.

Notice to Eligible Employees to meet “Universal Availability”

At least once each plan year, an employer must provide employees who are eligible to participate in a 403(b) plan a notice informing them that they have the opportunity to make salary reduction and, if applicable, Roth 403(b) contributions, or change deferral elections, when they can make those elections, the maximum amount permitted and whether there are conditions on those elections.

Other Types of Contributions

There are no Code provisions restricting the permissibility of other types of contributions. For that reason, 403(b) plans may contain eligibility requirements for non-salary reduction contributions subject to specific nondiscrimination requirements. A 403(b) plan may require an employee to reach a certain age and/or work for the employer sponsoring the 403(b) plan for a certain period of time in order to receive employer contributions.
Rehired Employees and Breaks In Service

With respect to employer contributions, if a participant terminates employment and is later reemployed before incurring a one-year break in service, he will be considered to be a participant as of his reemployment date. However, if a participant terminates employment and is later reemployed after incurring a one-year break in service, his prior years of service for vesting and eligibility purposes will include his prior service subject to the following rules:

- In the case of a terminated participant who did not have any percentage of vesting in his employer contributions, his prior years of service will not be taken into account if the number of consecutive one-year breaks in service equals or exceeds the greater of (a) five or (b) the aggregate number of pre-break years of service.
- A terminated participant who did not have any years of service before incurring a one-year break in service will be eligible to participate in the 403(b) plan as of the date of his reemployment, or if later, as of the date he would have otherwise been eligible to participate in the plan.
- Subject to the employer electing in the 403(b) plan document, a terminated participant who is reemployed by the employer before incurring five consecutive one-year breaks in service and who had received a distribution of his vested employer contributions, may elect to repay the full amount which had been distributed to the participant. If the participant repays the distributed amount, then any forfeited amounts will be reinstated. The repayment must be made before the earlier of five years after the first date on which the participant is subsequently reemployed by the employer or the close of the first period of five consecutive one-year breaks in service beginning after the distribution. If a distribution occurs for any reason other than a severance from employment, the time for repayment is not permitted to end earlier than five years after the date of distribution. In the event the former participant repays the full amount distributed, the undistributed forfeited amount of the employer contributions will be restored in full.

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<tr>
<th>Hour of Service Defined</th>
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<td>Any hour for which an employee is paid or entitled to be paid. An hour of service includes payments made due to vacation, sickness, holiday, disability, layoff, jury duty, military duty, or leave of absence, even if the employee no longer works for an employer.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Year of Service Defined</th>
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</thead>
<tbody>
<tr>
<td>A plan year where at least 1,000 hours of service are credited to an employee for purposes of determining eligibility and vesting.</td>
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</tbody>
</table>

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<tr>
<th>One-Year Break in Service Defined</th>
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</thead>
<tbody>
<tr>
<td>A computation period (generally, a plan year) during which an employee fails to complete more than 500 hours of service. Generally, hours of service are credited for “authorized leaves of absence” and “maternity and paternity leaves of absence” in order to prevent the employee from incurring a one-year break in service.</td>
</tr>
</tbody>
</table>

SECTION III - CONTRIBUTIONS AND RELATED LIMITATIONS

Contributions to a 403(b) Plan

A 403(b) plan may provide for more than one type of contribution, including participant and/or the employer contributions in the 403(b) plan document. The following is an overview of the rules for 403(b) contributions.
Participant Contributions

**Salary Reduction**: amounts deferred on a before-tax basis by a participant from compensation.

**Roth 403(b)**: amounts deferred on an after-tax basis by a participant from compensation. Note: If a 403(b) plan permits Roth 403(b) contributions, participants must have the choice to make salary reduction contributions or Roth 403(b) contributions or a combination of the two types of contributions. A participant’s election to make Roth 403(b) contributions is irrevocable once the election is made.

### Salary Reduction Agreement Defined
A participant elects in a salary reduction agreement to defer salary reduction or Roth 403(b) contributions from his salary into a 403(b) plan. A participant must make or modify a salary reduction agreement election at any time before the affected salary would otherwise become payable. Also, the salary reduction agreement must be legally binding under law. For example, in most states, an individual who is under the age of 18 or who is mentally incapable of entering into a contract may not make a salary reduction agreement.

### Rollovers into plan
If permitted by the plan, an individual may roll over eligible amounts from an **eligible rollover plan** to a 403(b) plan.

### Eligible Rollover Plan Defined
An eligible rollover plan is another 403(b), 401(a)/(k) or governmental 457(b) plan or traditional or Roth IRA. However, amounts in a Roth IRA cannot be rolled into a 403(b), 401(a)/(k) or governmental 457(b) plan or traditional IRA. In addition, amounts rolled over to a Roth IRA must be directly rolled over from another type of eligible rollover plan. Finally, a 403(b) plan that has a Roth account feature may permit a participant or spousal beneficiary who has a distributable event to directly roll over eligible amounts to the plan's Roth account.

Payments after Severance from Employment

A participant who has had a severance from employment may be able to defer certain payments to a 403(b) plan for up to the later of 2 1/2 months or the end of the calendar year following severance from employment. Payments that are eligible to be deferred include regular compensation, payments for overtime, commissions, bonuses, sick pay, vacation pay or other leave that would have been payable or available if the participant had not had a severance from employment.

Employer Contributions

Employer contributions made to a 403(b) plan may be a discretionary amount, a fixed amount or percentage or may match participants’ salary reduction or Roth 403(b) contributions. Employer contributions must meet the nondiscrimination tests.

**Non-Elective Employer Contributions**: may either be a discretionary amount or based on the 403(b) plan’s contribution formula.

**Employer Matching Contributions**: contributions that match all or a portion of a participant’s salary reduction or Roth 403(b) contributions.
An employer may require that a participant complete a certain number of hours of service (not more than 1,000) and/or be employed on the last day of the year in order to receive an allocation of the employer contributions.

Employer Contributions after Severance from Service

Employers are permitted to make contributions to a 403(b) plan on behalf of retired or terminated participants for a period of up to 5 years after the year of the participant’s retirement or termination. Such contributions may be made to participant accounts up to the Code Section 415(c) annual additions limit for each of the 5 post-retirement years, based on the terminated employee’s final year’s includible compensation.

Eligible 403(b) Investments

There are three different types of investments for 403(b) plans:

- **403(b)(1) annuity contract**: contributions are invested in either individual or group annuity contracts issued by life insurance companies.
- **403(b)(7) custodial accounts**: Assets under a custodial account must be held by a bank, trust company, or other authorized entity and must be invested solely in regulated investment company stock (i.e., mutual funds). Any dividends from the investment in mutual funds must be reinvested.
- **403(b)(9) retirement income account**: contributions are held in retirement income accounts maintained for employees of certain church-affiliated organizations.

Taxation of Contributions

Federal and State Income Taxation

In general, salary reduction and employer contributions, including earnings thereon, are subject to federal and state income tax only when directly distributed from the plan. However, Roth 403(b) contributions are generally subject to federal and state income tax when these amounts are contributed, but earnings on those amounts may be distributed tax-free if certain conditions are met.

Taxation under the Federal Unemployment Tax Act (“FUTA”) and the Federal Insurance Contributions Act (“FICA”)

FICA imposes a tax on employers and employees in order to provide retirement and welfare benefits to individuals who are no longer employees. In addition, FUTA imposes a tax on employers to fund cash benefits to former employees who are temporarily unemployed. FUTA and FICA taxes are based on wages paid to employees of an employer. Only salary reduction and Roth 403(b) contributions, because they are deferred from a participant’s compensation, are subject to FUTA and FICA taxes when contributed to a 403(b) plan. However, no contributions to a 403(b) plan, regardless of source, and earnings under a 403(b) plan are subject to FICA and FUTA taxes when distributed.

Saver’s Tax Credit

A nonrefundable tax credit for salary reduction and Roth 403(b) contributions may be available to certain participants. The maximum annual contribution eligible for the credit is $2,000, and the maximum credit rate is 50%. The credit is prorated and depends on a participant’s adjusted gross income and his/her federal income tax filing status.
<table>
<thead>
<tr>
<th>Credit</th>
<th>Joint-filer AGI</th>
<th>Head of Household AGI</th>
<th>All others</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>$0 – $34,000</td>
<td>$0 – $25,500</td>
<td>$0 – $17,000</td>
</tr>
<tr>
<td>20%</td>
<td>$34,001 – $36,500</td>
<td>$25,501 – $27,375</td>
<td>$17,001 – $18,250</td>
</tr>
<tr>
<td>10%</td>
<td>$36,501 – $56,500</td>
<td>$27,376 – $42,375</td>
<td>$18,251 – $28,250</td>
</tr>
</tbody>
</table>

**Vesting Requirements**

A 403(b) plan may require that a participant earn the right to his account balance attributable to employer or matching contributions by completing a certain number of years of service. The applicable vesting schedule(s) are stated in the 403(b) plan document. An employer may choose a vesting schedule that is at least as liberal as one of the following vesting schedules:

**3-year cliff vesting schedule**

- 0-2 Years of Service 0%
- 3 Years of Service 100%

**6-year graded vesting schedule**

- 0-1 Years of Service 0%
- 2 Years of Service 20%
- 3 Years of Service 40%
- 4 Years of Service 60%
- 5 Years of Service 80%
- 6 Years of Service 100%

**Other Contributions**

A participant is always 100% vested in his salary reduction, Roth 403(b) and rollover contributions. For this purpose, as well as for distribution reasons, these contributions must be accounted for separately from those subject to a vesting schedule.

**Changing a Plan’s Vesting Schedule**

An employer may amend the 403(b) plan’s vesting schedule, subject to the following requirements:

- the vested portion of a participant’s account balance may not be impacted by the new vesting schedule, and
- participants with at least three years of service must be allowed to elect which of the two vesting schedules apply to their total account balance and their ongoing contributions.

**Forfeitures**

If a participant terminates employment without 100% vesting, the non-vested portion of his account becomes a “forfeiture.” The forfeiture, which is defined in the 403(b) plan document, occurs when a participant takes an immediate distribution of his vested account balance or after he has incurred five consecutive one-year breaks in service. Forfeitures may be used to reduce future employer contributions, pay 403(b) plan expenses or be reallocated among remaining participants’ accounts as specified by the 403(b) plan. No forfeitures in a suspense account should remain unallocated beyond the end of the plan.
year in which they occurred. If a plan uses forfeitures to reduce plan expenses or employer contributions, current year forfeitures must be used up promptly in the year in which they occurred or, in appropriate situations, no later than the immediately succeeding plan year.

Timing of Contributions

Employer contributions for a plan year can be made to the 403(b) plan after the end of the plan year.

If a 403(b) plan is subject to ERISA, generally, the salary reduction and Roth 403(b) contributions must be contributed to the 403(b) plan as soon as they can reasonably be separated from the employer’s general assets, but no later than the 15th business day of the month following the month in which the contribution was withheld from participants’ compensation or received by the employer. However, if the plan has less than 100 participants, the 15-day period is reduced to 7 business days after the amounts are withheld from wages.

If a 403(b) plan is not subject to ERISA, the 403(b) regulations provide that contributions must be remitted to the 403(b) plan's funding vehicle no later than is reasonable for the proper administration of the 403(b) plan.

Annual Contribution Limits

The two annual separate limits for contributions made to a 403(b) plan are:

<table>
<thead>
<tr>
<th>Code Section Limit</th>
<th>Contributions to be Included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code Section 415(c)</td>
<td>All contributions and forfeitures made to the plan except age 50+ and rollover contributions</td>
</tr>
<tr>
<td>Code Section 402(g)</td>
<td>Salary reduction contributions and Roth 403(b) Contributions attributable to all employers of the participant</td>
</tr>
</tbody>
</table>

The following is a general description of the various limitations. For more detailed information, please refer to IRS Publication 571 – Tax-Sheltered Annuity Plans for Employees of Public Schools and Certain Tax-Exempt Organizations. This Publication can be found on the IRS website at www.irs.gov.

Code Section 415(c) Contribution Limits

Code Section 415(c) provides that annual additions to a 403(b) plan on behalf of a participant cannot exceed the lesser of:

- $49,000 (for 2011, subject to annual cost of living adjustments) or
- 100 percent of the participant's includible compensation.

Watchout: If a participant in a 403(b) plan also participates in another defined contribution retirement plan of the employer, such as a 401(a) qualified plan, in general, the amounts contributed to a participant’s 403(b) account are considered “separate” for Code Section 415(c) contribution limitation purposes from the amounts under the 401(a) plan. However, a participant will have a combined Code Section 415(c) contribution limit in the case where he also participates in a defined contribution plan (typically, a Keogh plan) in which he has a controlling interest in that plan sponsor (more than a 50% interest) (“Common Control Rule”). In the Common Control Rule situation, all retirement plans are deemed to be “owned” by the participant.
For example:

Doctor Jones is employed by a 501(c)(3) hospital that maintains a 403(b) plan and also owns a private practice where he is a 60 percent shareholder. Doctor Jones’ private practice sponsors a 401(a) plan. Because Dr. Jones is deemed to “own” both the 403(b) plan and the 401(a) plan, the retirement plans must be combined for purposes of Code Section 415(c).

Includible Compensation

Generally, includible compensation is the amount of compensation determined on a calendar year basis received from the employer sponsoring the 403(b) plan that is includible in the employee's gross income for the most recent period that may be counted as a “one-year period of service” and also includes:

- Salary reduction and Roth 403(b) contributions,
- Deferrals under 457(b) and 403(k) plans,
- Qualified transportation benefits excluded from gross income under Code Section (132(f)(4)),
- Code Section 125 cafeteria plan salary reduction amounts, and
- Deferrals under a salary reduction simplified employee pension (“SARSEP”) and a savings incentive match plans for employees (“SIMPLE”).

Includible Compensation does not include:

- Employer contributions, and
- Contributions made to the 403(b) plan that are considered made pursuant to a one-time irrevocable election.

One-Year Period Service Defined

For full time employees: generally, the current taxable year.
For part-time and retiring employees: the most recent one-year period of service consists of the service in the current year and the service for as many previous years as is necessary to total one full year of service.

Code Section 401(a)(17) Compensation Limit

For purposes of employer contributions, the Code requires that compensation be limited to $245,000 (for 2011, subject to annual cost of living adjustments).

Code Section 402(g) Contribution Limits

In general, Code Section 402(g) imposes a limit on salary reduction and Roth 403(b) contributions. The limit is $16,500 in 2011 and is subject to annual cost of living adjustments. This limit is coordinated with all elective deferrals made by a participant under another 403(b) plan, a 401(k) plan, a salary reduction simplified employee pension (SARSEP) plan or a SIMPLE retirement plan in a tax year.

If an employer maintains a 457(b) deferred compensation plan, the salary reduction contribution limits of 403(b) plans do not impact an individual’s ability to make deferrals to a 457(b) deferred compensation plan. Generally, this means for the 2011 calendar year that a participant can defer up to $16,500 to a 403(b) plan and separately defer up to $16,500 to a 457(b) plan.
15-Year Catch-Up Provision

A 15-year catch-up election for salary reduction and Roth 403(b) contributions is available to employees of “eligible employers.” Employees who have 15 or more years of service with an eligible employer may be able to contribute an amount up to $19,500 (for 2011, as indexed annually for cost of living adjustments). For eligible employees, the general $16,500 limit is increased by the lesser of the following amounts:

- $3,000,
- $15,000 reduced by salary reduction and Roth 403(b) contributions not included in gross income for prior taxable years because of this provision (which was effective 1/1/87), or
- $5,000 times years of service minus all prior elective deferrals made to Code Section 403(b), 401(k), SARSEP and SIMPLE plans of the employer in prior taxable years.

Note: the 15-year catch-up of up to $3,000 per year cannot exceed cumulatively $15,000 over the lifetime of the employee.

For example:

Mary Smith, a nurse, who has worked 15 years for a hospital, has never used the increased limit and has made $30,000 in salary reduction and Roth 403(b) contributions in prior years. Ms. Smith’s calculation would be as follows:

The lesser of a), b) or c):
- a) $3,000
- b) $15,000 (because increased limit was never used)
- c) $5,000 times 15 minus $30,000

Therefore, in 2010, Mary Smith is eligible to use the 15-year catch-up to make salary reduction contributions in the amount of $19,500.

Eligible Employer for Purposes of the 15-Year Catch-Up Election Defined

- An educational organization described in Code Section 170(b)(1)(A)(ii). This type of educational organization normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place which its educational activities are regularly carried on.
- A hospital.
- A home health service agency. This type of organization must be specifically designated as such an organization under section 1861(o) of the Social Security Act by the Secretary of Health and Human Services.
- A health and welfare agency. This is an organization whose primary activity is to:
  - Provide medical care;
  - Prevent cruelty to individuals or animals;
  - An adoption agency, or
- A church, convention or association of churches, or an organization described in Code Section 414(e)(3)(B)(ii) (this is an organization that is tax-exempt under Code Section 501 and that is controlled by or associated with a church or a convention or association of churches).

Age 50 Plus Catch-Up Provision

If a participant is at least 50 years old by the end of a calendar year, he is eligible to make additional contributions to a 403(b) plan in the amount of $5,500 (for 2011, as indexed annually for cost of living
adjustments), provided he has contributed the maximum amount up to the Code Section 402(g) limit as well as any available amounts under the 15-year catch-up. As with the Code Section 402(g) limit, the age 50 plus catch-up contributions are coordinated with age 50 plus catch-up contributions under another 403(b) plan, a 401(k) plan, a SARSEP or a SIMPLE retirement plan. Age 50 plus catch-up contributions are not subject to the Code Sections 415(c) and 402(g) limits. In addition, an employer is permitted to make matching contributions with respect to these catch-up contributions.

<table>
<thead>
<tr>
<th>Overview of 403(b) Contribution Limits: 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Deferral</td>
</tr>
<tr>
<td>$16,500</td>
</tr>
<tr>
<td>15-year catch-up</td>
</tr>
<tr>
<td>3,000</td>
</tr>
<tr>
<td>Age 50+ catch-up</td>
</tr>
<tr>
<td>5,500</td>
</tr>
<tr>
<td>Employer contributions*</td>
</tr>
<tr>
<td>29,500</td>
</tr>
<tr>
<td>$54,500**</td>
</tr>
</tbody>
</table>

*Subject to nondiscrimination testing
**The age 50+ catch-up contributions do not count toward the 415(c) contribution limit

Contributions in Excess of the Code Section 415(c) Contribution Limit

Excess contributions are contributions made to a 403(b) plan that are in excess of the Code Section 415(c) limit. Under the final 403(b) regulations, excess contributions (and earnings) must be separately accounted for. Although the IRS provides for methods of correction both in the IRS regulations and under EPCRS, it is unclear whether these correction methods can be used in lieu of the separate accounting requirement.

If the employee also participates in a defined contribution plan in which he has “common control” and he has an excess of the Code Section 415(c) limit, the excess must first be corrected under the 403(b) plan.

Excise Tax

Code Section 4973 imposes a 6% cumulative excise tax on excess contributions made to a custodial account. (The excise tax is not applicable to excess contributions made to an annuity contract.) However, the excise tax does not apply to excess deferrals under a custodial account. The excise tax is imposed specifically on the employee (and not the employee or provider), and is not tax deductible. The excise tax is determined as of the close of the taxable year and is imposed for each taxable year until the excess contribution is eliminated by an allowable method of correction.

Contributions in Excess of the Code Section 402(g) Contribution Limit

Excess deferrals are salary reductions and Roth 403(b) contributions made by a participant in excess of the Code Section 402(g) limit. To correct an excess deferral, both the excess and any associated earnings must generally be distributed to a participant by the April 15 immediately following the close of the taxable year in which the contribution was made. The excess deferral is includible in income in the year deferred; however, earnings associated with the excess deferral are includible in income in the year distributed. The distribution is not rollover eligible and is not subject to the IRS 10% premature distribution penalty tax.

Generally, if correction of excess deferrals does not occur by the April 15 following the year in which the deferral was made, the excess deferral may only be distributed to the participant when he is entitled to receive a distribution. Such distributions are subject to double taxation. That is, the excess deferral is
taxable in the year the excess was made and in the year the amount is distributed. Additional correction methods may be available under EPCRS.

**Military Leave**

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), veterans returning to employment from certain military service are entitled to the restoration of pension benefits that would have accrued but for the employee’s military service. Specifically, the re-employed veteran’s military service is considered service with the employer for purposes of 403(b) plan contributions. Make-up contributions on behalf of re-employed veterans are neither subject to the contribution limitations for the year made, nor are they considered in applying the limits to any other contributions made during the year. However, the make-up contributions are subject to the applicable limitations (including any previous cost-of-living adjustments that were in effect) with respect to the year the contribution relates.

In calculating the amount of any make-up contributions, compensation used for such calculation is the compensation the participant would have earned had the participant not engaged in military service. There is no requirement that the 403(b) plan provide for earnings to be credited to make-up contributions for any period before the contributions were actually made or make-up forfeitures occurring during the period of military service. Also, if the 403(b) plan contains a vesting schedule, re-employed veterans must receive credit for purposes of vesting service for periods of military service. If any contribution under the 403(b) plan is contingent upon the making of contributions by the participant (e.g., matching contributions), the participant must make up the missed contributions before receiving the employer’s contribution. For additional information refer to the Department of Labor website at [http://www.dol.gov/ebsa/](http://www.dol.gov/ebsa/).

If an employer provides differential pay to individuals who are on military leave, that individual may defer all or a portion of that pay to a 403(b) plan. Differential pay is amounts an employer pays an individual who has been called to active military service as a way of replacing some or all of the difference between the individual’s military pay and the compensation the individual would have received from the employer had s/he remained in active employment.

If an employee takes a loan and then goes into military service:

- The individual could continue to repay the loan while on military leave or
- The loan could be suspended until the individual returns from military leave

If an individual continues to make loan repayments while on military leave, the Servicemembers Civil Relief Act of 2003 generally prohibits the employer from charging more than 6% interest on that loan during active military service.

If loan repayments are suspended during the military leave, loan repayments must resume upon rehire and the repayment period may only extended by the length of military service.

A reservist or national guardsman is permitted to take a distribution from a 403(b) plan, which is not subject to the IRS 10% premature distribution penalty tax if all of the following requirements are met:

- The participant was ordered or called to active duty after September 11, 2001.
- The participant was ordered or called to active duty for a period of more than 179 days or for an indefinite period as a member of a reserve component.
- The distribution consists of salary reduction or Roth 403(b) contributions.
The distribution was made no earlier than the date of the order or call to active duty and no later than the close of the active duty period. All or part of a qualified reservist distribution can be recontributed to an IRA within 2 years after the end of military duty.

In addition, an employer sponsoring a 403(b) plan must treat an individual who dies or becomes disabled while performing qualified military service as if the individual has resumed employment on the day preceding death or disability and terminated employment on the actual date of death or disability. Therefore, beneficiaries obtain additional benefits such as accelerated vesting, incidental death benefits or other survivor benefits that are provided to those participants who terminate employment due to death.

**Separate Accounting**

If a 403(b) plan has employer contributions subject to a vesting schedule, then the recordkeeping system must separately account for those amounts and attributable earnings.

**SECTION IV- NONDISCRIMINATION TESTING**

**Nondiscrimination Testing for Salary Reduction and Roth 403(b) Contributions**

The nondiscrimination requirement for salary reduction and Roth 403(b) contributions requires “universal eligibility.”

**Nondiscrimination Testing for Contributions Other Than Salary Reduction and Roth 403(b) Contributions**

With respect to contributions other than salary reduction and Roth 403(b) contributions, 403(b) plans are generally subject to the same nondiscrimination requirements as 401(a) plans. The contribution may be allocated in a method that satisfies either a design-based safe-harbor formula (which are deemed to be non-discriminatory) or a formula that must be tested to ensure that it does not impermissibly discriminate in favor of HCEs.

In addition to complying with the annual compensation limits, there are a number of nondiscrimination tests which a 403(b) plan must meet on an annual basis. In order to perform these tests, an employer must identify the HCEs.

### Highly Compensated Employee (“HCE”) Defined

An employee who:
- was at any time a 5-percent owner during the plan year or the preceding plan year; or
- received compensation from the employer in excess of $110,000 (for 2011 and adjusted annually for cost-of-living) during the preceding plan year, and if the employer elects for such preceding plan year, the employee was in the top paid group (i.e., top 20 percent of employees by compensation) of the employer for such preceding plan year.
In general, the following is a list of nondiscrimination test that must be performed on an annual basis by a 403(b) plan sponsored by a Code Section 501(c)(3) organization:

<table>
<thead>
<tr>
<th>Nondiscrimination Test</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code Section 410(b) – coverage test</td>
<td>A 403(b) plan must cover a certain portion of employees</td>
</tr>
<tr>
<td>Code Section 401(a)(4) – general non-discrimination contribution test</td>
<td>Employer non-elective contributions cannot discriminate in favor of HCEs</td>
</tr>
<tr>
<td>Code Section 401(a)(4) – general non-discrimination test</td>
<td>Benefits, rights and features cannot discriminate in favor of HCEs</td>
</tr>
<tr>
<td>Actual Contribution Percentage (“ACP”) Test</td>
<td>Matching contributions cannot discriminate in favor of HCEs</td>
</tr>
</tbody>
</table>

Note: A 403(b) plan may be required to perform other nondiscrimination testing as needed and contingent upon plan design.

**Minimum Coverage Requirements under Code Section 410(b)**

The minimum coverage requirements provide that the classification of employees covered by a 403(b) plan does not discriminate in favor of HCEs. Some 403(b) plans automatically meet the minimum coverage requirements. Other 403(b) plans will need to pass one of two minimum coverage tests – the ratio percentage test or the average benefit test.

The minimum coverage requirements are complex. If your 403(b) plan does not permit a certain classification of employees to participate or if your organization is a member of a controlled group of organizations and some of the organizations do not participate in your 403(b) plan, you need to be familiar with the minimum coverage requirements. The following is a simplified explanation of the requirements to provide you with general information that you may need when discussing your 403(b) plan’s specific requirements with your tax advisor.

**Ratio Percentage Test**

The ratio percentage test requires a 403(b) plan to benefit a percentage of NHCEs that is at least 70% of the percentage of HCEs benefiting under the 403(b) plan.

**Average Benefit Test**

If a 403(b) plan cannot pass the ratio percentage test, then the 403(b) plan must pass the average benefit test. The average benefit test is a two-part test – a nondiscriminatory classification test and the average benefit percentage test. Both tests must be satisfied in order to pass the average benefit test.

*Nondiscriminatory classification test:* The classification of Employees benefiting must be a “reasonable” classification that does not discriminate in favor of HCEs. A reasonable classification is based on all of the facts and circumstances, such as whether the classification is made under objective business criteria such as job categories, method of compensation and geographic location.

*Average Benefit Percentage Test:* This test requires that the average benefit percentage of NHCEs be at least 70% of the average benefit percentage of the HCEs.

**General Nondiscrimination Testing of Employer Nonelective Contributions under Code Section 401(a)(4)**

To satisfy Code Section 401(a)(4), employer nonelective contributions under a 403(b) plan cannot discriminate in favor of HCEs. This type of testing is too complex to include in this Guide. However,
there are two types of contribution formulas which, if adopted by the employer, no testing 401(a)(4) general testing is required.

- The formula provides the same contribution percentage or a flat dollar amount for all employees, or one that provides higher contributions for employees earning over a dollar break point that complies with permitted disparity rules under Code Section 401(l), and
- The formula provides contributions based on a uniform points formula taking into account the age, service and/or compensation of the employee, provided that the average contribution (as a percentage of compensation) for all NHCEs is at least as great as the average contribution for all HCEs.

**General Nondiscrimination Testing of Benefits, Rights and Features under Code Section 401(a)(4)**

To satisfy Code Section 401(a)(4), benefits, rights and features under a 403(b) plan cannot discriminate in favor of HCEs based on all relevant facts and circumstances. Examples of rights and features include loan provisions, particular forms of investment, rate of matching contributions and rollover contributions. As this nondiscrimination test is based on specific facts and circumstances, this type of testing is beyond the scope of this Guide.

**Actual Contribution Percentage ("ACP") Discrimination Test**

The amount of matching contributions made to a 403(b) plan cannot discriminate in favor of HCEs. To ensure that matching (including contributions that match age 50 plus catch-up contributions) contributions are not discriminatory, the 403(b) plan must satisfy the ACP test.

The Code provides two methods of applying the ACP test, a prior year testing method and the current year testing method. A 403(b) plan must specify which of these methods it will use in applying the ACP test.

**Prior year testing method:** under this method, matching contributions will satisfy the ACP test if:

- The actual contribution ratio ("ACR") for HCEs for the current plan year does not exceed the ACR of the NHCEs for the preceding plan year, multiplied by 1.25, or
- The lesser of (1) the ACR for HCEs for the current plan year does not exceed by more than 2% of the NHCEs for the preceding plan year or (2) the ACR for HCEs for the current plan year is not more than the ACR of the NHCEs for the preceding plan year multiplied by 2.

**Current year testing method:** under this method, the ACR of NHCEs for the current plan year are compared with the ACR of HCEs for the current plan year. Under this method, matching contributions will satisfy the ACP test if:

- The ACR for HCEs for the current plan year does not exceed the ACR for NHCEs for the current plan year, multiplied by 1.25, or
- The lesser of (a) the ACR for HCEs for the current plan year does not exceed by more than 2% that of NHCEs for the current plan year or (b) the ACR for HCEs for the current plan year is not more than the ACR of the NHCEs for the current plan year multiplied by 2.

A 403(b) plan may correct a failed ACP test by forfeiting non-vested contributions, recharacterizing salary reduction or Roth 403(b) contributions, distributing excess contributions and in certain
circumstances, the employer may make an extra contribution to the NHCEs in the amount needed to satisfy the tests.

“Safe Harbor” Contributions

An employer may elect to make a “safe-harbor” contribution to its 403(b) plan as an alternative to passing the ACP nondiscrimination test applied to matching contributions. These safe-harbor contributions must be either a basic matching formula, an enhanced matching formula or a non-elective contribution formula (see below)

Basic Matching Formula: a matching contribution is made to each eligible NHCE based on the following formula:

- 100% match on the eligible NHCEs salary reduction and/or Roth 403(b) contributions up to the first 3% of compensation, plus
- 50% of the eligible NHCEs’ salary reduction and/or Roth 403(b) contributions for the next 2% of compensation.

Enhanced Matching Formula: The enhanced matching formula requires that the employer make matching contributions on behalf of each eligible NHCE that, for any rate of elective contributions, provides an aggregate amount of matching contributions at least equal to the aggregate matching contributions that would have been provided under the basic matching formula.

Under either of the matching formulas, the rate of matching contributions may not increase as the employee's rate of elective contributions increases, and the rate of matching contributions that applies to any HCE must not be greater than the rate of matching contributions that would apply to any NHCE who has the same rate of elective contributions. Matching contributions used to meet this ACP safe harbor must be 100% immediately vested and are not available for hardship withdrawals. In addition, the 403(b) plan cannot require NHCEs to work at least 1,000 hours during a plan year or be employed on the last day of the plan year in order to receive a safe harbor matching contribution.

Non-elective contribution formula: In addition to the above, it is also possible to offer an alternative match provided it is paired with at least a 3% non-elective contribution formula and the match does not exceed 4% of an eligible employee’s compensation and cannot be allocated based on more than 6% of employee elective deferrals. The 3% non-elective contribution must meet certain minimum vesting and withdrawal conditions.

Notice of Safe Harbor Contributions to Participants

An employer must provide each employee who is eligible to participate in the 403(b) plan a written notice of the safe harbor contributions formula in accordance with IRS guidance.

SECTION V - DISTRIBUTIONS

Permissible Distributions from 403(b) Plans

The Code permits a 403(b) plan to make distributions to a participant or beneficiary when a participant has a distributable event. A list of distributable events under a 403(b) plan are listed below. Note that a 403(b) plan document can be more restrictive than the Code requirements.
**403(b)(1) Annuity Contracts**

Salary reduction contributions (including earnings) may generally be distributed only upon:

- Attainment of age 59 ½
- Severance from employment
- Death
- Disability, or
- Hardship.

**Note:** Hardship withdrawals are limited to salary reduction contributions made after 12/31/88.

**Exceptions to the above distribution rules:**
No Code withdrawal restrictions apply to:

- '88 cash value (salary reduction contributions (including earnings) as of 12/31/88)
- Employer contributions (including earnings)

Note, however, employer contributions made to an annuity contract issued after December 31, 2008 may not be distributed before:

- the participant’s severance from employment, or
- the occurrence of an event, such as after a fixed number of years, the attainment of a stated age, or disability.

**Distribution of Roth 403(b) Contributions**

Distributions of Roth 403(b) contributions will be tax-free for federal income tax purposes if they are “qualified distributions” and the following criteria is met:

- The funds must be held for a 5-year holding period, AND
- The distribution must be due to attainment of age 59 ½, death, or disability.

In general, the 5-year holding period begins on the first day of the calendar year for which the employee first makes Roth 403(b) contributions to the 403(b) plan and ends when 5 consecutive taxable years have been completed.

If a participant rolls over designated Roth amounts from either a Roth 401(k) or a Roth 403(b), the following rules apply:

- If a direct rollover is made from a designated Roth account to a 403(b) plan, the 5-year holding period begins on the first day of the calendar year for which the employee first made designated Roth contributions to the prior plan.
- If an indirect rollover is made from a designated Roth account to a 403(b) plan, the 5-year holding period begins on the first day of the calendar year that the employee makes a designated Roth contribution to receiving 403(b) plan.

**403(b)(7) Custodial Accounts**

Salary reduction and employer contributions (including earnings) may only be distributed upon:

- Attainment of age 59 ½
- Severance from employment
- Death
- Disability, or
- Hardship.

**Note:** Hardship withdrawals are limited to:

- Salary reduction contributions and
- '88 cash value (earnings on salary reduction contributions and employer contributions (including earnings) as of 12/31/88)

Distributions of Roth 403(b) contributions will be tax-free for federal income tax purposes if they are “qualified distributions” and the following criteria is met:

- The funds must be held for a 5-year holding period, AND
- The distribution must be due to attainment of age 59 ½, death, or disability.

In general, the 5-year holding period begins on the first day of the calendar year for which the employee first makes Roth 403(b) contributions to the 403(b) plan and ends when 5 consecutive taxable years have been completed.

If a participant rolls over designated Roth amounts from either a Roth 401(k) or a Roth 403(b), the following rules apply:

- If a direct rollover is made from a designated Roth account to a 403(b) plan, the 5-year holding period begins on the first day of the calendar year for which the employee first made designated Roth contributions to the prior plan.
- If an indirect rollover is made from a designated Roth account to a 403(b) plan, the 5-year holding period begins on the first day of the calendar year that the employee makes a designated Roth contribution to receiving 403(b) plan.
Distribution of Rollover Contributions

If permitted by a 403(b), amounts rolled over into the plan can be distributed to a participant before a participant has a distributable event as described above.

Types of Distributions

The common distribution options under a 403(b) plan are:

- Lump sum distribution
- Immediate or deferred annuity
- Direct rollover to an eligible rollover plan
- Deferred distribution
- Periodic payments from the 403(b) plan
- Combination of these options
- In addition, if a participant dies, a spousal beneficiary may continue the account subject to the RMD rules. However, no additional contributions may be made to the account.

Severance from Employment

A 403(b) plan may allow a participant who has terminated employment with the employer to receive his vested account balance upon severance from employment in accordance with the 403(b) plan rules.

Required Minimum Distributions (“RMD”) under Code Section 401(a)(9)

The Code requires that payment of benefits under a 403(b) plan must begin no later than the April 1 of the calendar year following the later of the year in which the participant reaches age 70 1/2 or retires from the employer sponsoring the 403(b) plan.

The amount of the RMD is based on the participant’s account balance (as of the previous December 31) divided by the applicable life expectancy. Generally, there is a single table that is used to determine a participant’s applicable life expectancy that does not take into account a participant’s designated beneficiary unless the participant’s sole primary beneficiary is a spouse whose age difference is more than 10 years of the age of the participant. In this case, the applicable life expectancy is the participant’s and spouse’s joint and last survivor life expectancy. Life expectancies are determined under tables provided by the IRS.
Pre-’87 Account Balance

For RMD purposes, if the issuer or custodian keeps the records necessary to identify the pre-1987 account balance and, if the 403(b) plan so provides, the minimum distribution commencement requirements apply only to benefits that accrue after December 31, 1986, including the income on pre-1987 contributions. Generally, pre-1987 contributions and earnings must begin to be distributed no later than the April 1 of the calendar year in which the participant attains age 75 or retires, whichever is later. If records are not kept, the entire account balance is subject to the RMD requirements.

Death

Distributions, upon death of a participant, are made to a designated beneficiary. Generally, a 403(b) plan will offer various distribution options, although regulations require death benefits to be distributed within a certain period of time. The timeframe depends upon whether the beneficiary is a spouse or non-spouse.

If RMD payments have not begun upon a participant’s death, payments must be distributed to a designated beneficiary no later than:

- **Designated Beneficiary Rule:** Payment of the deceased participant’s account balance must begin no later than December 31 of the calendar year immediately following the calendar year of the participant’s death, payable over a period not to exceed the life expectancy of the beneficiary.

- **Designated Beneficiary is Surviving Spouse:** If the designated beneficiary is the surviving spouse, the payments to the spouse must begin by the later of:
  - December 31 of the calendar year immediately following the calendar year in which the employee dies, or
  - December 31 of the calendar year in which the employee would have attained age 70 1/2.

The payments to the surviving spouse must be made over a period not to exceed the spouse’s life expectancy.

In the alternative, a spouse or non-spouse beneficiary may elect to have death benefits paid under the five-year rule.

- **Five-year rule:** The deceased participant’s entire account balance must be distributed to a designated beneficiary no later than the December 31 of the calendar year containing the fifth anniversary of the participant’s death.

If RMD payments have begun to be made to a participant before death, payments of the deceased participant’s account balance must continue to a beneficiary (regardless of whether the beneficiary is a spouse or non-spouse) beginning no later than December 31st of the calendar year immediately following the calendar year of the participant’s death and must be paid over the longer of:

- the remaining life expectancy of the appropriate beneficiary (once the designated beneficiaries have been determined), or
- the remaining life expectancy of the participant.
The following chart indicates how payments generally must be made to designated beneficiaries over life expectancy:

<table>
<thead>
<tr>
<th>Designated Beneficiary</th>
<th>How Life Expectancy is calculated</th>
</tr>
</thead>
</table>
| Spouse is sole beneficiary | Year following the Year of Participant’s Death  
Life expectancy of spouse based on age of spouse in year following year of participant’s death  
Subsequent Years  
Recalculated annually  
For Years after Year of the Spouse’s Death  
Spouse’s remaining life expectancy calculated in the year of death, reduced by one annually thereafter |
| Nonspousal beneficiary | Year following the Year of Participant’s Death  
Life expectancy based on age of beneficiary in year following year of participant’s death  
Subsequent Years  
Life expectancy is reduced by one annually. |
| No Designated beneficiary (i.e., either a trust that is not being looked through or the participant’s estate) | Year following the Year of Participant’s Death  
The participant’s life expectancy based on attained age in the year he died  
Subsequent Years  
Life expectancy is reduced by one annually. |

**Trust as Beneficiary**

Only an individual may be a designated beneficiary for purposes of determining the distribution period under Code Section 401(a)(9). Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the trust is being “looked through” distributions made to the trust will be treated as paid to the beneficiaries of the trust if certain conditions are met.

**Rules of a Look-Through Trust**

- The trust is a valid trust under state law,
- The trust is irrevocable or will become irrevocable upon the death of the participant,
- The beneficiaries of the trust are identifiable from the trust instrument, and
- Appropriate documentation required under the RMD rules has been provided to the plan administrator (see below).

A participant who names a trust as a beneficiary and who intends the trust be a “look through” trust during his/her lifetime, must either:

- Provide to the plan administrator (or the party who maintains the plan’s beneficiary information) a copy of the trust document and agree to provide any subsequent amendments to the trust, or
Provide to the plan administrator a list of all of the beneficiaries under the trust, indicating that the participant’s spouse is the sole, primary beneficiary and that the spouse’s age is more than 10 years younger than the participant, and
Certify that the list of beneficiaries is correct and complete and that all necessary requirements are satisfied with respect to the trust, and
Agree to provide corrected certifications to the extent that an amendment changes any information previously certified, and
Agree to provide a copy of the trust document to the plan administrator upon request.

If a look-through trust has been named as his designated beneficiary, upon a participant’s death, the trustee of the trust must, by the October 31st of the year following the year of the participant’s death, either:

Provide the plan administrator with:
- a final list of all of the beneficiaries of the trust as of the September 30th of the calendar year following the calendar year of the participant’s death,
- a certification that, to the best of the trustee's knowledge, this list is correct and complete and that all applicable requirements are satisfied, and
- agree to provide a copy of the trust instrument to the plan administrator upon request, or
- Provide the plan administrator with a copy of the actual trust document.

Disability

A 403(b) plan may permit a disabled participant to receive a distribution of 100% of his account balance. An individual is considered disabled, under Code Section 72(m)(7), 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 be of a long-continued and indefinite duration.

Hardship Withdrawals

To be eligible for a hardship distribution, a participant must experience:

- An immediate and heavy financial need, and
- The distribution must be necessary to satisfy the financial need

There are two methods to determine if the above criteria have been met: Facts and Circumstances and the Safe Harbor method.
### Immediate and Heavy Financial Need

- Based on all relevant facts and circumstances
- A financial need may be immediate and heavy even if it was reasonably foreseeable or voluntarily incurred by the employee.
- Generally, the need to pay for funeral expenses of a family member would be considered an immediate and heavy financial need.
- Alternatively, a distribution made to an employee for the purchase of a boat or television would not be considered an immediate and heavy financial need.

### Necessary to Satisfy the Financial Need

- Distribution cannot be more than the amount required to relieve the financial need or to the extent the need may not be satisfied from other resources that are reasonably available to the employee.
- Assets of the employee’s spouse and minor children that are reasonably available to the employee are considered the employee’s resources for these purposes.
- For example, a vacation home owned by the employee and the employee’s spouse generally will be regarded as resources of the employee.
- Alternatively, property held for the employee’s minor child under an irrevocable trust or under the Uniform Gifts to Minors Act is not treated as a resource of the employee.
- The amount of an immediate and heavy financial need may include any amounts

### Facts and Circumstances Method

- Certain medical expenses incurred by a participant, the participant’s spouse or dependent, or if permitted by the plan, a primary beneficiary designated by the participant under plan
- Payments necessary to prevent the eviction from the participant’s principal residence or foreclosure on the mortgage on that residence
- Payments for burial or funeral expenses for a participant’s deceased parent, spouse, children or dependents, or if permitted by the plan, a primary beneficiary designated by the participant under plan
- Certain expenses for the repair of damage to the participant’s principal residence
- The purchase (excluding mortgage payments) of a participant’s principal residence
- Payment of college tuition, related educational fees, and room and board expenses, for the next 12 months for a participant, the participant’s spouse, children or dependents or, if permitted by the plan, a primary beneficiary designated by the participant under plan

### Safe Harbor Method

- Only the following would be considered an immediate and heavy financial need:
- Certain medical expenses incurred by a participant, the participant’s spouse or dependent, or if permitted by the plan, a primary beneficiary designated by the participant under plan
- Payments necessary to prevent the eviction from the participant’s principal residence or foreclosure on the mortgage on that residence
- Payments for burial or funeral expenses for a participant’s deceased parent, spouse, children or dependents, or if permitted by the plan, a primary beneficiary designated by the participant under plan
- Certain expenses for the repair of damage to the participant’s principal residence
- The purchase (excluding mortgage payments) of a participant’s principal residence
- Payment of college tuition, related educational fees, and room and board expenses, for the next 12 months for a participant, the participant’s spouse, children or dependents or, if permitted by the plan, a primary beneficiary designated by the participant under plan
- The employee has obtained all distributions, other than hardship
necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. This would include any penalties incurred as a result of the IRS 10% premature distribution penalty tax.

➤ The employer may rely upon the employee’s written representation, unless the employer has actual knowledge to the contrary, that the need cannot reasonably be relieved by:
  ➤ Reimbursement or compensation by insurance;
  ➤ Liquidation of the employee’s assets/resources;
  ➤ Cessation of elective contributions or employee contributions under the plan; or
  ➤ By other distributions or loans from plans maintained by the employer or by any other employer, or by borrowing from commercial sources on reasonable commercial terms, in an amount sufficient to satisfy the need.

➤ A need cannot reasonably be relieved by one of the actions listed above if the effect would be to increase the amount of the need. For example, the need for funds to purchase a principal residence cannot reasonably be relieved by a plan loan, if the loan would disqualify the employee from obtaining other necessary financing.

distributions, and all nontaxable loans currently available under all plans maintained by the employer.

➤ The employee is prohibited under the terms of the plan from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 6 months after receipt of the hardship distribution.

Rollovers and Federal Mandatory 20% Tax Withholding

If a participant receives a distribution that is eligible for rollover, 20% federal income tax withholding is automatically withheld from the distribution. The following are not eligible for rollover:

➤ A required minimum distribution,
➤ A distribution that is one of a series of substantially equal periodic payments (at least annually) made (a) over the life or life expectancy of the participant or over the joint lives or joint life expectancy of the participant and the participant’s beneficiary or (b) over a specified period of ten or more years,
➤ The portion of a distribution that is not included in gross income, or
➤ A hardship distribution.

A direct rollover is a direct transfer from a 403(b) plan to an eligible rollover plan. In a direct rollover, the check is payable to the financial institution issuing the other eligible rollover plan for the benefit of the participant or beneficiary and there is no tax withholding.
An **indirect rollover** occurs when a participant or beneficiary receives a check for the distribution and makes a rollover within 60 days of receipt of the check. The mandatory 20% income tax withholding applies to any eligible rollover distribution made directly to a participant or beneficiary. Even though taxes have been withheld, the participant or beneficiary may contribute the amount withheld from the distribution in federal income tax withholding as part of a rollover to the subsequent eligible rollover plan (other than a Roth IRA which can accept direct rollovers only). If the participant or beneficiary does not replace the federal income tax withheld, he will be taxed on this amount. In certain circumstances, the IRS may waive the 60-day rollover requirement.

A spouse or alternate payee who is a former spouse who receives a death benefit distribution is also eligible to rollover the distribution to an eligible rollover plan, which s/he participates.

Non-spouse beneficiaries can roll their distributions to an inherited IRA instead of taking a distribution. The inherited IRA must satisfy the required minimum distribution rules.

**Contract to Contract Exchanges**

A contract to contract exchange is a transfer among vendors’ funding vehicles within the same 403(b) plan, subject to the following rules:

- The written 403(b) plan must provide for the transfer;
- The benefit transferred must be equal to the benefit received by the subsequent vendor (excluding any applicable contractual charges); and
- The distribution rules of the receiving vendor’s funding vehicle must be at least as stringent as the prior vendor's funding vehicle;
- In addition, the employer and vendor must agree to share certain participant information on an ongoing basis, including:
  - whether and when a severance of employment has occurred to determine whether the participant has a distributable event
  - information on whether a participant is entitled to a loan; and
  - information concerning whether the hardship withdrawal rules have been satisfied.

**Plan to Plan Transfers**

A plan-to-plan transfer is a transfer among the same or different employers’ 403(b) plans, subject to the following rules:

- The individual whose 403(b) account is being transferred must be an employee or former employee of the employer of the receiving 403(b) plan;
- Both 403(b) plans must provide for the transfer in their plan document;
- The benefit transferred must be equal to the benefit received by the subsequent employer’s plan (excluding any applicable contract charges);
- The distribution rules of the receiving employer’s 403(b) plan must be at least as stringent as the prior employer's 403(b) plan; and
- If the transfer involved only a portion of the 403(b) account, the receiving 403(b) plan needs to be able to account for which contributions are employee contributions and which are employer contributions.
At A Glance: Moving Money Under a 403(b) Plan

<table>
<thead>
<tr>
<th>Rollover</th>
<th>Contract Exchange</th>
<th>Plan-to-Plan Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Among eligible retirement plans</td>
<td>• Among vendors under same 403(b) plan</td>
<td>• Among different 403(b) plans — even if sponsored by same employer</td>
</tr>
<tr>
<td>• Direct or indirect</td>
<td>• Plan must permit exchanges</td>
<td>• Both plans must permit transfers</td>
</tr>
<tr>
<td>• Requires a “distributable event”</td>
<td>• No distributable event required</td>
<td>• Direct only</td>
</tr>
<tr>
<td>• Amounts must be rollover eligible</td>
<td>• No tax reporting</td>
<td>• No tax reporting</td>
</tr>
<tr>
<td>• Receiving plan must permit rollovers in</td>
<td>• Grandfathered amounts preserved</td>
<td>• Grandfathered amounts preserved</td>
</tr>
<tr>
<td>• Tax reporting</td>
<td>• Information sharing required</td>
<td></td>
</tr>
<tr>
<td>• Does not preserve grandfathered amounts</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

IRS 10% premature distribution penalty tax

In general, an IRS 10% premature distribution penalty tax applies to the taxable portion of a distribution if a participant receives a distribution before reaching age 59 1/2.

The IRS 10% premature distribution penalty tax does not apply if the distribution is made on account of one of the following reasons:

- Death of the participant,
- The participant becomes disabled,
- Payments are made in at least annual installments over the life (or life expectancy) of the participant or the joint lives of the participant and the designated beneficiary,
- Separation from service on or after attainment of age 55,
- Payments are made for certain medical care expenses;
- Corrective distributions of excess contributions and excess deferrals,
- Payments are made to an alternate payee under a QDRO,
- Payments of a federal levy for collection of taxes; or
- As a “qualified reservist distribution,” which is a distribution of salary reduction or Roth 403(b) contributions that are (1) made to a reservist or national guardsman who was called to active duty after September 11, 2001 for a period in excess of 179 days or for an indefinite period of time, and (2) made during the period beginning on the date of the order or call to duty and ending at the close of the active duty period. In addition, a qualified reservist distribution can be repaid to an IRA at any time during the two-year period after the end of the active duty period.

Loans

An employer may offer loans to participants under a 403(b) plan. Loan programs give participants access to certain amounts of money in their accounts during active employment without incurring tax liability if the loans are made under certain guidelines. Under a loan provision, participants may be allowed to
borrow from, and repay loans directly, to their own accounts. Participants will be required to repay the loans with interest. The interest is paid from after-tax dollars, is nondeductible, and will be subject to tax when finally withdrawn from the 403(b) plan. A provision permitting loans must be provided in the 403(b) plan document and the plan must establish written loan guidelines that outline the specific rules governing the loans. The Code and ERISA, if applicable, govern loans made to participants under a 403(b) plan.

In general, loans must:

- Be made available to all participants on a reasonably equivalent basis. Regulations require that loans be made available to all participants without regard to race, color, religion, sex, age or national origin. Loans cannot generally be made available to HCEs on better terms or in a greater amount or percentage than for other participants. This rule does not apply to participants who are former employees, retirees, beneficiaries or alternate payees under a QDRO.
- Be made in accordance with specific provisions that are set forth in the 403(b) plan.
- Bear a reasonable rate of interest. The rate of interest on a loan must be “commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.” Many 403(b) plan sponsors use a rate between prime rate and prime plus two points. Others use standard bank rates for secured loans.
- Be adequately secured. Up to 50% of the vested value of a participant’s account balances can be used to secure a loan.
- The loan must be set forth in a legally enforceable agreement that must specify the amount of the loan, the term of the loan and the repayment schedule.

**Maximum and Minimum Loan Amounts**

Loans must be the lesser of (a) $50,000 reduced by the participant’s highest outstanding loan balance during the last 12 months or (b) 50% of the vested account balance. The IRS rationale is that the 50% cap is necessary to ensure that the program meets its primary purpose of providing retirement income.

**Loan Repayment Requirements**

Loans must be repaid in level payments at least as frequently as quarterly within 5 years. The exception is if the participant is buying or building his primary residence, then the program can allow a repayment period of more than 5 years.

**Spousal Consent**

A 403(b) plan that is subject to ERISA must comply with the Qualified Joint and Survivor Annuity (“QJSA”) and Qualified Pre-retirement Survivor Annuity (“QPSA”) requirements. In order not to be subject to these rules:

- The plan must provide that upon death, the participant’s entire vested account balance is payable to the participant’s surviving spouse unless the surviving spouse consents to the designation of another beneficiary.
- The participant does not elect payments in the form of a life annuity. (The QJSA/QPSA requirement does not apply at all if the plan does not offer life annuities as payment options.)
- No amounts transferred from another plan were subject to the QJSA and QPSA requirements.

If amounts subject to the QJSA and QPSA rules are transferred into the plan, these amounts remain subject to these rules.
In addition, a plan may choose to be subject to the QJSA and the QPSA requirements.

**Qualified Joint and Survivor Annuity:** a QJSA is an immediate annuity for the life of the participant with a survivor annuity for the life of the spouse. The amount of the survivor annuity cannot be less than 50% and not more than 100% of the amount of the annuity that is payable during the joint lives of the participant and spouse.

**Qualified Preretirement Survivor Annuity:** a QPSA is an immediate annuity for the life of the surviving spouse purchased with not less than 50% of the value of the participant’s account balance determined as of the date of death.

If a plan is subject to the QJSA or QPSA requirements, the plan administrator must provide each participant (vested, non-vested, married or unmarried) with a written explanation of the following:

- Terms and conditions of the QJSA or QPSA.
- The participant’s right to make and the effect of an election to waive the QJSA or QPSA.
- The requirement that the spouse must to consent to the participant’s waiver. The spouse’s consent must be in writing, must acknowledge the effect of a participant’s waiver, and must be witnessed by a 403(b) plan representative or notary public. The consent must specify the nonspouse beneficiaries who will receive benefits upon the participant’s death. It must also specify, in the case of a participant’s waiver of a QJSA, the particular optional form of benefit selected by the participant.
- The participant’s right to make and the effect of, a revocation of a previously made election to waive the QJSA or QPSA, and
- A description of the condition and other material features of the plan’s other forms of benefit and their relative values.

**Waiver of the QJSA**

An election to waive the QJSA form of benefit must be made no earlier than 180 days before the date on which the benefit is payable.

**Waiver of the QPSA**

In general, a participant may waive the QPSA only after the first day of the plan year in which the participant reaches age 35. A plan may allow a participant to waive the QPSA before then if that waiver becomes invalid at the beginning of the plan year in which the participant reaches age 35. A participant must then execute a new waiver in order to avoid the QPSA requirement. A participant who separates from service before age 35 is allowed to waive the QPSA any time after the date of separation.

**Qualified Optional Survivor Annuity (“QOSA”):** an annuity for the life of the participant with a survivor annuity for the life of the spouse equal to a percentage of the amount payable during the joint lives of the participant and the spouse. The waiver rules for a QOSA following the QJSA waiver rules.

The survivor portion of the qualified optional survivor annuity is determined by the 403(b) plan’s QJSA benefit. If the QJSA provides a survivor benefit of less than 75%, the QOSA must have a survivor benefit of 75%. If the QJSA provides a survivor benefit of at least 75%, the QOSA must have a survivor benefit of 50% of the annuity payable during the participant’s lifetime.
Automatic Rollovers

If a 403(b) plan provides for an automatic cash out upon a participant’s severance from employment when the participant fails to elect a distribution method, vested amounts in excess of $1,000 but less than or equal to $5,000 (not counting amounts held in rollover accounts) are subject to automatic rollover to an IRA.

Missing Participants

A 403(b) plan can use various methods to locate lost or missing participants or beneficiaries:

- Deliver notice to participants and beneficiaries by routine methods, such as delivering notice by first class mail or electronic notification to the last known address.
- Checking with both the employer and administrator(s) of related plans (e.g., health plans) to search their records for a more current address for the missing individual. In addition, the 403(b) plan could attempt to identify and contact any individual that the missing individual has designated as a beneficiary in a related plan for updated information concerning the location of the missing individual. If there are privacy concerns, the 403(b) plan can request the employer or other plan fiduciary to contact or forward a letter on behalf of the 403(b) plan to the participant or beneficiary, requesting the individual to contact the 403(b) plan.
- Use a Letter-Forwarding Service. A 403(b) plan may choose either the IRS (www.irs.gov) or Social Security Administration (www.ssa.gov) letter-forwarding service and use it in attempting to locate a missing participant or beneficiary.
- A 403(b) plan may also consider the use of Internet search tools, commercial locator services, and/or credit reporting agencies to locate a missing participant, while factoring in the cost of any such service against the size of the account balance.

SECTION VI - MISCELLANEOUS

403(b) Plan Documents

Most 403(b) plans must have a written 403(b) plan regardless of whether the plan is subject to ERISA. The IRS does not currently have a determination letter program for 403(b) plans but is expected to open up a program in the near future.

Qualified Domestic Relations Orders (“QDRO”)

Although benefits under a 403(b) plan are not permitted to be assigned or alienated, a plan may provide that a participant’s account balance be subject to a domestic relations order. A domestic relations order is a judgment, decree, or other order made pursuant to a state domestic relations law that relates to the provision of child support, alimony, or marital property rights (including the division of community property). An order may provide that all or a portion of a participant’s account balances be paid to an “alternate payee” pursuant to a Qualified Domestic Relations Order (“QDRO”). An alternate payee is either the participant’s spouse, former spouse, child, or other dependent.
The plan administrator is responsible for determining whether a domestic relations order is a QDRO. In order for a QDRO to be “qualified,” it must contain the following information:

- the name and last known mailing address of the participant and each alternate payee,
- the name of each plan to which the order applies,
- the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee, and
- the number of payments or time period to which the order applies.

In order for a QDRO to be “qualified,” it must NOT contain the following:

- the order must NOT require a plan to provide an alternate payee or participant with any type or form of benefit, or any option not otherwise provided under the 403(b) plan,
- the order must NOT require a plan to provide for increased benefits,
- the order must NOT require a plan to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO, and
- the order must NOT require a plan to pay benefits to an alternate payee in the form of a QJSA for the lives of the alternate payee and his subsequent spouse.

QDROs - Plan Administrator Responsibilities

Providing a model or sample QDRO to participants and/or their attorneys can be a time-saver to everyone involved. The model document would include suggested wording for a QDRO that is specific to your plan. An attorney, or the participant or spouse (if representing himself) would insert the names, addresses and the distribution amount, then present the order to the judge or other official for signature.

Once the plan administrator receives a signed domestic relations order, he must determine whether or not the order meets the criteria of a QDRO.

If your plan document allows an alternate payee to take an immediate distribution, then the alternate payee’s distribution election should be stated in the QDRO.

QDRO Resources

Additional information can be found at http://www.dol.gov/ebsa/Publications/qdros.html, including a booklet entitled *QDROs: The Division of Pensions Through Qualified Domestic Relations Orders*, which provides useful information for those drafting and reviewing domestic relations orders.

IRS Tax Liens and Levies

The IRS has the right to impose a tax lien or levy on a 403(b) plan account. However, the 403(b) plan should not distribute any 403(b) plan assets to the IRS until the participant has attained a distributable event as specified in the 403(b) written plan.

Bankruptcy

A participant’s account under a 403(b) plan is exempt from the claims of that participant’s creditors in a bankruptcy proceeding. A participant in a 403(b) plan who is involved in a bankruptcy proceeding should not list a plan loan as a debt because it is collateralized by the outstanding balance of the loan.
IRS Correction Programs for Sponsors of 403(b) Plans

The ECPRS is a comprehensive system of correction programs for sponsors of 403(b) plans that have not met applicable Code requirements for a period of time. This system permits employers to correct qualification failures thereby continue to provide their employees with retirement benefits on a tax-favored basis. The three components of the EPCRS are:

- the Self-Correction Plan (SCP), which permits plan sponsors to correct certain plan failures without contacting the IRS or incurring a fee,
- the Voluntary Correction Plan (VCP), which permits a plan sponsor to, any time before audit, pay a limited fee and receive the Service's approval for correction of plan failures, and
- the Audit Closing Agreement Plan (Audit CAP), which permits a plan sponsor to pay a sanction and correct a plan failure while the plan is under audit.

For further information regarding EPCRS please visit the IRS website at http://www.irs.gov/retirement/article/0,,id=96907,00.html

DOL’S Voluntary Fiduciary Correction Program (“VFCP”) and the Delinquent Filer Voluntary Correction Program (“DFVC”)

The VFC program is designed to encourage employers to voluntarily comply with ERISA by self-correcting certain violations. VFCP describes how to apply acceptable methods for correcting violations, and examples of potential violations and corrective actions.

Additional information can be obtained from the following website:

Fact Sheet - Voluntary Fiduciary Correction Program
Fact Sheet: Delinquent Filer Voluntary Compliance Program

Termination of a 403(b) Plan

A 403(b) plan can be terminated, provided that benefits are distributed as soon as administratively practicable upon termination.