The following publications cover 403(b) tax-sheltered annuity plans, other retirement plans, and correction programs:

- Publication 15, Circular E, Employer’s Tax Guide
- Publication 4483, Tax-Sheltered Annuity Plans (403(b) Plans) for Employers of Public Schools and Certain Tax-Exempt Organizations
- Publication 596, Individual Retirement Arrangements (IRAs)
- Publication 4482, 403(b) Tax-Sheltered Annuity for Participant
- Publication 4484, Choose a retirement plan for employees of tax exempt and government entities
- Publication 4546, 403(b) Plan Checklist
- Publication 4224, Retirement Plan Correction Programs

Download these publications at www.irs.gov/ep, or order a free copy through the IRS by dialing (800) TAX-FORM (829-3676).

Visit www.irs.gov/ep for online resources covering specific retirement plans (including 403(b) plans). This site has tools such as:

- a checklist for maintaining your plan,
- answers to frequently asked questions, and
- a page devoted to correction programs to assist you in correcting errors if you discover them in the operation of your plan.

Be Aware of Common Mistakes

As a 403(b) plan sponsor/employer, you need to pay attention to the operation of your 403(b) tax-sheltered annuity plan so that you can:

- be compliant with the law,
- maximize your employees’ retirement benefits, and
- avoid additional taxes and penalties.

403(b) Tax-Sheltered Annuity Plan for Sponsors

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Highlights for Employers on the Final 403(b) Regulations

IRS published 403(b) Regulations on July 26, 2007. These regulations were generally effective on January 1, 2009, and cover the changes made by legislation from the past 10 years.

Written Plan Requirement: The 403(b) Regulations require 403(b) programs to be maintained pursuant to a written plan that satisfies the requirements of IRC 403(b), both in form and operation, and contain all the terms and conditions for eligibility, limitations and benefits under the plan. This means all provisions of the way the plan works have to be spelled out in a plan and it must be operated accordingly.

Many organizations may already have these types of programs. For example, the plan may be composed of the aggregate of a salary reduction agreement, the contracts that fund the plan and administrative procedures regarding eligibility, benefits, dollar limitations and nondiscrimination for universal availability for salary reductions and non-elective contributions.

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- be compliant with the law,
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New In-Service Exchanges and Transfer Rules: The Regulations impose new requirements on in-service exchanges and transfers. The new rules distinguish between within-plan exchanges to vendors not currently on the plan’s approved list and the moving of funds to another plan. These replace the old rules under Revenue Ruling 90-24.

- In-service exchanges take place within the same plan. To be allowable, the 403(b) plan must permit the movement of the funds and the terms must be followed in operation.
- Benefits cannot be reduced and if the moved funds were subject to distribution restrictions, they must continue to be subject to the same restrictions.
- The employer and the contract issuer must agree to share certain required information so the employer can follow the rules of the Code and Regulations, especially those concerning loan restrictions and hardship distributions.
- Plan transfers are the plan-to-plan movement of funds. To be allowable, the transferor plan must permit the movement out and the receiving plan must permit and approve the acceptance of the funds. In addition, the participant must be an employee or former employer of the employer of the receiving plan. Benefits cannot be reduced and if the moved funds were subject to distribution restrictions, they must continue to be subject to the same restrictions.

Employer non-elective post-severance contributions: The employer may make non-elective post-severance contributions up to the maximum legal overall limit into a former employee’s 403(b) account for up to five years following the end of the year in which the employee ceased service with the employer. (Note: The former employer can have no part in electing whether to receive this money in cash or have it deferred into their 403(b) account.) All post-severance contributions must end upon the former employee’s death.

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403(b) Tax-Sheltered Annuity Plan—COMMON MISTAKES

It is important to know the tax rules applicable to a 403(b) plan to help you comply with the tax law and ensure that your employees get the maximum benefit out of your 403(b) plan.

In a national sample of audited 403(b) plans, the IRS found recurring mistakes in the following areas:

Failure to be a Qualified Employer. Only employers established as public schools and certain tax-exempt charitable organizations classified under IRC §501(c)(3) may sponsor a 403(b) plan.

Failure to Properly Apply Universal Availability. This failure arises when employers exclude eligible employers from participation. These employers often misapply eligibility and coverage conditions to improperly not give employees who are otherwise eligible (for example, otherwise eligible part-time employees) the right to make elective deferrals.

The Regulations allow employers to use a 1,000-hour concept to identify eligible part-time employees for participation. These employers often misapply eligibility and coverage conditions to improperly not give employees who are otherwise eligible (for example, otherwise eligible part-time employees) the right to make elective deferrals.

Failure to Identify and Report Defaulted Loans. Loans that fail to comply with the provisions of §72(p) may be deemed a taxable distribution that is reported to the employee as income. For example, loan defaults often occur when required payments are missed or aggregate loans exceed the maximum limit, often as a result of loans from multiple vendors.

Failure to Satisfy Hardship Distribution Requirements. The Regulations clarify that 403(b) plan hardship distributions will follow the 401(k) rules. Hardship distributions are considered premature distributions when:

- adequate documentation of the financial hardship was not obtained;
- other available financial means were not previously exhausted; or
- total distributions from multiple vendors exceeded the amount needed to relieve the hardship.

If you find a mistake in your 403(b) plan, take steps to bring it into compliance so your employees can continue to benefit on a tax-favored basis. As an employer, mistakes in your plan need to be corrected timely to avoid additional taxes and penalties that may affect both you and your employees. You may want to contact a tax professional for help.

Most 403(b) plan mistakes can be corrected through the Employer Plans Compliance Resolution System (EPCRS). Information on EPCRS is available through www.irs.gov/ep. See Corrective Plan EPCRS.


A 403(b) tax-sheltered annuity (TSA) plan is a retirement plan offered by public schools and certain tax-exempt organizations. An individual’s 403(b) annuity can be obtained only under an employer’s TSA plan. Generally, these annuities are funded by elective deferrals made under salary reduction agreements and non-elective employer contributions.

Read on to learn about specific 403(b) topics where mistakes are common, and IRS products, services and assistance to help you keep your 403(b) tax-sheltered annuity plan healthy.

Note: Underlined topics identify electronic links to detailed information on that topic. For those reading a print version of this product, you can access an electronic version online at www.irs.gov/eo to link to your topic of interest.