403(b) Plan Fundamentals:
Your guide to compliance
How TIAA-CREF helps

Our comprehensive suite of fiduciary and compliance services is delivered with a consultative approach. Your Relationship Manager can work directly with you, and any plan advisor you may be working with, to review this guide and offer help where you need it. If you are served exclusively through the Administrator Telephone Center, please call 888 842-7782.

Together we can identify the right combination of services and tools for your plan’s specific needs, and help implement best practices to reduce risk and keep your plan compliant.

403(b) Plan Fundamentals: Your Guide to Compliance provides the information you need to help you satisfy ever-evolving regulatory requirements. Whether working on your own or with the assistance of a plan advisor, use this guide to understand your responsibilities and help maintain your 403(b) plan compliance.

There are three main sections:

1. **Overview:** A brief summary of the primary 403(b) regulations that affect your plans.

2. **403(b) details:** In-depth analysis of each provision, steps to ensure you’re in compliance and how TIAA-CREF can help.

3. **Additional resources:** Web addresses to help you find online reference materials, FAQs and a comprehensive glossary.

We also offer a variety of information and resources on various aspects of the regulations and best practices for maintaining compliance in the Compliance section of the TIAA-CREF PlanFocus® website.

**Stay updated. Stay informed.**

As a thought leader with many years of experience in the retirement industry and as the not-for-profit retirement market leader,* TIAA-CREF is positioned to guide and support you in meeting your fiduciary and compliance responsibilities. Our goal is to help you understand your responsibilities, provide best practices and simplify the process of staying in compliance so that you can focus on improving participant outcomes and maximizing the value and benefits of your plan.

Please note that TIAA-CREF does not provide legal or tax advice, so we strongly encourage you to discuss matters pertaining to your 403(b) plan’s compliance with applicable legal requirements and the regulations covered in this guide with your own legal counsel.

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* Source: LIMRA Secure Retirement Institute, Not-for-Profit Market Survey, first-quarter 2015 results. Based on a survey of 28 companies. TIAA-CREF ranked first in total assets. Ranking does not reflect investment performance.
# 403(b) Plan Fundamentals

## Overview

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Overview

Final 403(b) and other regulations have lessened the differences in rules that apply to 403(b) and 401(k) plans. The major implications of what has been rolled out over the past few years are as follows.

- A written plan is required for all 403(b) plans including non-ERISA plans;
- There is a general limitation on transfers of amounts accumulated under the plan to vendors approved under the terms of the plan or to vendors that agree to share information with the plan sponsor;
- Employer-funded 403(b) retirement plans (other than governmental and certain church plans) are required to apply the statutory nondiscrimination requirements, including new controlled group rules; and
- A triggering event is required prior to virtually all in-service distributions from 403(b) plans. This includes distributions of amounts attributable to employer contributions in annuity contracts issued after 2008.

What remained the same

The following unique characteristics of 403(b) plans remain.

- 403(b) plans continue to be available only to 501(c)(3) organizations, state colleges and universities, and public schools.
- Unlike elective deferrals to 401(k) plans, elective deferrals to 403(b) plans continue to be exempt from the actual deferral percentage (ADP) test. In lieu of the ADP Test, 403(b) plans continue to be subject to the “universal availability” rule for elective deferrals.
- The 15-year rule continues to permit long-service employees at qualifying institutions to make special catch-up contributions.
- Employers continue to be able to make contributions for former employees for up to five years after severance from employment (subject to possible nondiscrimination requirements).
403(b) details

Following is a brief summary of ten primary areas affected by the final 403(b) plan regulations. Each is covered in detail starting on page 7.

Plan documents

Plans subject to the Employee Retirement Income Security Act (ERISA) have had a plan document requirement under ERISA since 1974. Final 403(b) regulations extended the written plan requirement to all 403(b) plans, with no exemption for governmental, most church or non-ERISA salary deferral-only plans.

Nondiscrimination requirements

Employer-funded ERISA 403(b) retirement plans must apply the statutory nondiscrimination requirements, including controlled group rules which apply to tax-exempt organizations (other than governmental and certain church plans). Unlike 401(k) plans, elective deferrals to 403(b) plans continue to be exempt from the actual deferral percentage (ADP) test. In lieu of the ADP Test, 403(b) plans continue to be subject to the "universal availability" requirement for elective deferrals.

Contribution limits

The Internal Revenue Code limits the amount an employer and employee can contribute on a tax-deferred basis to both types of plans. The maximum amount on which an employee may defer tax in a 403(b) or 401(k) plan is governed by Sections 415 and 402(g) of the Internal Revenue Code. The 15-year rule continues to permit long-service employees at qualifying institutions to make special catch-up contributions.

Loans

Plan loans may be made available to 403(b) plan participants, using their retirement account as collateral for the loan, as long as they are permitted by the terms of the retirement plan (and the funding vehicle used to fund the plan), and certain legal requirements imposed under IRC Section 72(p) are satisfied. Plan sponsors or their designated third-party provider must ensure compliance with the IRC imposed restrictions on loans without relying on the representation of participants.

Distributions

Account balances attributable to employee elective deferrals in 403(b) plans cannot be paid to a participant until the participant has a “distributable event,” such as disability, severance from employment, or the participant reaching age 59½. These withdrawals are subject to income tax, and withdrawals prior to age 59½ may be subject to an additional 10% tax penalty. A distributable event, similar to those imposed upon a profit sharing plan, is now also required for distributions of amounts attributable to employer contributions in annuity contracts issued after 2008.

If provided for in the plan document, the following are two exceptions to these withdrawal restrictions.

1. Pre-1989 403(b) annuity accumulations attributable to employee elective deferrals
2. After-tax employee contributions
Minimum distribution requirements
Federal law normally requires participants in tax-favored plans, including qualified 401(a) and 403(b) plans, to begin receiving income or taking required distributions by a specific date. With some exceptions, whether a participant is in a 403(b) plan or a qualified plan, this Required Beginning Date (RBD) is April 1 following the year they attain age 70½ or terminate employment, if later.

Information Sharing Agreements
The final 403(b) regulations made significant changes in the rules governing how a 403(b) contract or custodial account can be exchanged for another 403(b) annuity contract or custodial account of another vendor.

Form 5500 for ERISA plans
You generally have to file Form 5500 by the last day of the seventh month following the end of the plan year. For example, if you use a calendar-year plan year, your 2014 Form 5500 is due on or before July 31, 2015, unless you file Form 5558 for an extension.

SPDs and SMMs for 403(b) plans subject to ERISA
When an employee becomes a participant in an ERISA-covered 403(b) retirement plan, or a beneficiary begins receiving benefits under such a plan, they are automatically entitled to receive a summary of the plan called the Summary Plan Description, (SPD). If a provision of the plan that is required to be in the SPD is modified, participants must be informed either through a revised SPD or in a separate document called a Summary of Material Modifications (SMM).

Fiduciary liability
ERISA provides a definition of who is a fiduciary, along with the requirements fiduciaries are expected to meet. Plan sponsors may be formally designated as fiduciaries or considered to be a fiduciary by virtue of the role or activities they perform. Either way, fiduciaries are responsible and liable for some or all aspects of plan operation.
Plan document

Written plan requirements

Plans subject to the Employee Retirement Income Security Act (ERISA) have had a plan document requirement under ERISA since 1974. Final 403(b) regulations extended the written plan requirement to all 403(b) plans, with no exemption for governmental, most church or non-ERISA salary deferral-only plans.

Written plans have to include material plan provisions, such as plan eligibility and benefits (including the timing and form of distributions available), limits on contributions and benefits, and a list of the annuity contracts and mutual funds offered under the plan. The regulations do not mandate that all plans satisfy this written plan requirement with a single document. Plans are permitted to incorporate other documents, such as annuity contracts and custodial agreements, into their written plan by reference.

If an employer fails to put the terms of its plan in writing, the plan will fail to satisfy the requirements of section 403(b) and all plan contributions could be treated as fully and immediately taxable.

Plans with multiple vendors need to work with all of the vendors to ensure that their written plan accurately reflects the provisions of all the 403(b) contracts and custodial accounts used to fund their plans, and that, collectively, the documents meet the regulatory requirements. The primary goal is to ensure that all plan sponsors have properly documented plan terms and that the plan is administered according to those terms.

If 403(b) plan sponsors find discrepancies between the plan terms and how the plan is being administered ("operational failures"), the IRS provided guidance on how to proactively correct those failures through the Employee Plans Compliance Resolution System (EPCRS) which was updated to include the final 403(b) regulation in 2012. Additional information on the EPCRS is included later in this section. Under this updated guidance, 403(b) plans can correct operational failures that occur after 2008 through a self-correction program (SCP) for insignificant and certain significant operational violations, provided certain conditions are met. There is also limited availability to use a plan amendment to conform terms to prior operation, either in SCP or Voluntary Correction Program (VCP). Employers should work with their legal counsel to identify and correct failures.

How TIAA-CREF helps

TIAA-CREF’s Plan Document Service helps you ensure compliance with applicable regulatory requirements, while also increasing the efficiency of your plan administration. The service supports your creation and maintenance of specimen plan documents, adoption agreements, and a specimen ERISA Summary Plan Description (SPD), if applicable.

TIAA-CREF’s plan documents are designed to meet evolving regulatory requirements. Use of the service helps you ensure your plan is accurately documented in order to facilitate consistency between documentation and ongoing TIAA-CREF annuity contracts—providing you with peace of mind.

The service is easy to get started. Consult with your plan advisor, or contact your Relationship Manager or the Administrator Telephone Center and they will assist you in completing an adoption agreement. Since the provided plan documents are only specimens, they have not been reviewed or approved by the IRS, and TIAA-CREF cannot provide legal or tax advice. We recommend that you review them with your legal counsel.
Do you already have a written plan document?

If you already had a plan document, but did not review it by the December 31, 2009 deadline, review it now to determine if amendments are needed to satisfy regulatory requirements. You should also review the document to ensure that the provisions of the document conform to your administrative practices and the terms of the underlying funding vehicles. If there are inconsistencies, you should consider amending it under the Employee Plans Compliance Resolution System.

If you didn’t adopt a plan document by the December 31, 2009 deadline, you have the option of correcting the failure under VCP. If successful, the issuance of a compliance statement will result in the 403(b) plan being treated as if it had been adopted in time to take advantage of the extended remedial amendment period originally set forth in Announcement 2009-89. However, the issuance of a compliance statement does not constitute a determination as to whether the written plan, as drafted, complies with the applicable requirements of §403(b) and the final §403(b) regulations.

Model plan documents

Rev. Proc. 2007-71, which the IRS published following release of the final 403(b) regulations, provides model 403(b) plan language for a basic salary deferral-only plan. It is designed primarily for use by a public school. This model plan is not designed for a 403(b) retirement plan that provides for employer contributions (matching or non-elective) or for a plan that permits Roth contributions. Adoption by a public school of the entire model language (either word for word or using language that is substantially similar in all material respects) will have the same status as a private letter ruling. While it can be used by private, tax-exempt organizations as sample language to comply with the written plan requirement, revisions and additional provisions will be necessary to comply with the final regulations and, if applicable, ERISA. Adoption by an employer that is not a public school will not have private letter ruling status.

403(b) preapproved program

As you review or create your plan document, you may want to consider the 403(b) preapproved plan program for future plan documents.

The proposed 403(b) preapproved program is intended to help institutions meet the written plan requirement of the final 403(b) regulations. It will allow plan sponsors that have preapproved plans, including service providers like TIAA-CREF, to obtain IRS approval of their 403(b) plans. This approval will give adopting employers the assurance that their 403(b) plan satisfies the requirements of the IRC and final 403(b) regulations.

The IRS’s proposed sample 403(b) plan language is based on language previously developed for the qualified prototype plan program. Sample language is provided for salary deferral plans (Roth and non-Roth), non-elective and matching retirement plans and after-tax employee contributions. This language supplements the model language for salary deferral plans of governmental employers that was included in Rev. Proc. 2007-71. Governmental employers may continue to rely on the language in Rev. Proc. 2007-71 if they adopt it word for word.

The IRS opened up the application process for 403(b) preapproved plans on June 28, 2013 via Revenue Procedure 2013-22. The original April 30, 2014 deadline for submission of preapproved 403(b) plan documents was extended to April 30, 2015 in Revenue Procedure 2014. It is anticipated that the IRS will approve submitted documents in March/April 2017 and plan sponsors will be given about two years to adopt them.

In the meantime, TIAA-CREF’s Plan Document Service continues to offer specimen 403(b) plan documents (which have not been approved by the IRS) for review by your legal counsel.
Operational compliance

Even if you have a plan document that meets all of the regulatory requirements, your plan will still be out of regulatory compliance if it is not operated in compliance with plan terms. For example, if you have a voluntary matching plan, you can satisfy matching test requirements by using either current or prior-year testing methods or by satisfying one of the design-based safe harbors. The method to be used to satisfy these requirements must be specified in your plan document and must be the method you actually use in practice. On a more basic level, your plan provisions and your administrative practices regarding matters such as eligibility must align.

Consistency between plan documents and funding vehicles

It is essential for plan sponsors to ensure that there is no conflict between the terms of the written plan and the terms of 403(b) contracts used as funding vehicles. If there are inconsistencies, you risk loss of 403(b) status.

The regulations provide that in the event of inconsistency between the terms of the written plan and the provisions of annuity contracts or custodial agreements that are used to fund the plan, the plan terms will control. Nevertheless, in the case of an annuity contract, the relationship between plan participants and the issuer of the annuity contract is generally governed by the terms of the annuity contract or certificate. The issuer will be legally bound by the applicable terms of the annuity contract, notwithstanding a potential conflict between the plan and contract.

Non-ERISA plans

While most 403(b) plans sponsored by nonprofits are subject to ERISA, there is a safe harbor exemption available for salary deferral-only 403(b) plans where employer involvement in the operation of the plan is sufficiently limited. When the written plan requirement was initially set forth in the proposed 403(b) regulations, the 403(b) community expressed concern that a written plan requirement could have the ancillary impact of making plans that were previously exempt from ERISA suddenly subject to Title I of ERISA.

Immediately following the release of the final regulations, the Department of Labor (DOL) issued Field Assistance Bulletin (FAB) 2007-02 to address this issue. The FAB provides that compliance with the written plan requirement will not, in and of itself, cause a deferral-only 403(b) plan to lose its ERISA exemption. Whether the manner in which an employer decides to satisfy the written plan requirement would cause any particular plan to lose its exemption would be determined on a case-by-case basis, taking into consideration the employer’s involvement in the plan’s administration, as contemplated in the plan documents and in operation.

In February 2010, the DOL issued FAB 2010-01, which in part included further guidance on qualification for the safe harbor from ERISA coverage. The FAB indicated that:

- Subject to some exceptions, the plan sponsor must offer a reasonable choice of both 403(b) vendors and investment products.
- An employer may not have the right to unilaterally move funds from one 403(b) investment to another 403(b) investment.
- The employer may make optional plan features available, such as loans and hardships, as long as the vendor is responsible for any discretionary determinations.
- An employer sponsoring a safe harbor arrangement may not hire a third-party administrator (TPA) to make discretionary decisions under the plan, as the act of hiring the TPA is itself a discretionary decision that the employer cannot make while staying within the safe harbor. However, the 403(b) plan documents can allocate discretionary determinations to the annuity provider or other responsible third-party selected by a person other than the employer.
An employer may limit the safe harbor arrangement only to vendors whose products and services comply with the section 403(b) requirements without making the safe harbor arrangement subject to ERISA.

FAB 2010-01 makes it clear that if a plan sponsor makes discretionary determinations in administering the plan, that plan no longer qualifies for the safe harbor. Therefore, if an institution wants to retain a salary deferral-only 403(b) plan’s non-ERISA status under the limited involvement exemption, it should not make (or have responsibility for making) discretionary determinations (such as determining participants’ eligibility for hardship distributions). However, institutions may still limit investments to a reasonable choice or enter into a group annuity contract with a vendor without losing their exempt status.

If your plan seeks non-ERISA status, you are urged to consult with your own legal counsel to advise you on appropriate plan provisions and appropriate administrative practices.

Please note that the non-ERISA status of government and church plans is not affected by these changes.
Nondiscrimination requirements

Internal Revenue Code (IRC) nondiscrimination requirements for 403(b) plans

Since 1989, most 403(b) retirement plans have been subject to the same nondiscrimination requirements of the IRC that are applicable to 401(a) qualified plans. Governmental and certain church retirement plans are generally exempt from these requirements. Salary deferral-only 403(b) plans (including plans of governmental employers) are exempt from most but not all nondiscrimination requirements. Instead, they are subject to the universal availability rule.

One of the primary components of nondiscrimination testing—“general nondiscrimination”—requires that plans not discriminate against non-highly compensated employees with respect to contributions and availability of other benefits, rights and features. Also, plan amendments and terminations must not result in discrimination in favor of highly compensated employees.

The other foundational component is Minimum Coverage, which requires that the percentage of highly compensated employees benefiting under the plans not be unduly high in comparison to the percentage of non-highly compensated employees benefiting under the plan.

How TIAA-CREF helps

TIAA-CREF offers information and resources to help you ensure that your retirement plans comply with the IRS nondiscrimination requirements. This includes “Keeping Your Plan in Shape,” a nondiscrimination guide for 403(b) and qualified defined contribution plans. The guide explains the nondiscrimination requirements, provides step-by-step instructions on how to perform each nondiscrimination test and offers suggestions on how to comply if your plan fails the test. It’s available for you to use in conjunction with your legal counsel and any plan advisor you may be using, or as a reference during your plans’ nondiscrimination testing.

We also offer the TIAA-CREF Matching Test System software to help plan sponsors complete the 401(m) Matching Test that applies to contributory retirement plans. Both the software and a guide are available to be downloaded from the TIAA-CREF secure Plan Sponsor website.

For additional support, we offer our Nondiscrimination Testing Service in collaboration with Deloitte.* From start to finish, the service includes the tools, resources and information you need to help fulfill your obligations:

- Guidance on current regulatory requirements
- Assistance with determining applicable nondiscrimination tests required for your plan
- Preparation of nondiscrimination tests
- A customized web-based tool to facilitate data collection
- Standardized templates for providing required plan data
- Reports summarizing test results and detail

The Nondiscrimination Testing Service may be used on its own or bundled with our Form 5500 Preparation Service.

Safe harbor for noncontributory plans under Notice 89-23—repealed January 1, 2009

Most noncontributory 403(b) plans (i.e., plans funded solely with employer contributions) satisfy nondiscrimination requirements by passing the same statutory nondiscrimination tests as noncontributory qualified 401(a) plans. For years prior to 2009, some 403(b) plans, however, relied on the alternative safe harbors created by Notice 89-23 to satisfy nondiscrimination requirements. Noncontributory 403(b) plans that met one of the disparity safe harbor tests under Notice 89-23 were exempt from the statutory nondiscrimination requirements. However, since the final 403(b) regulations repealed Notice 89-23, 403(b) plans that relied on one of the Notice 89-23 safe harbors are required to satisfy the statutory minimum coverage and general nondiscrimination requirements for plan years beginning after 2008.

In addition to establishing safe harbors, Notice 89-23 permitted all 403(b) plans to use a reasonable good faith interpretation of the nondiscrimination testing requirements. Because Notice 89-23 was repealed by the final regulations, the good faith testing standards are no longer available for plan years beginning after December 31, 2008. Plans that relied on a reasonable interpretation of the nondiscrimination requirements that was not consistent with the IRS guidance for qualified plans are now required to meet statutory nondiscrimination requirements. For example, an age-graded voluntary contributory 403(b) plan is no longer able to satisfy general nondiscrimination tests by simply passing the Matching Test. For plan years after 2008, in addition to passing the Matching Test, an age or service-graded contributory retirement plan also needs to test each grade as a separate plan feature for compliance with the general nondiscrimination requirements under IRC Section 401(a)(4).

Highly compensated employees

“Highly compensated employee” (HCE) is a key concept in nondiscrimination testing. A retirement plan is discriminatory if HCEs are unduly favored in terms of contributions, optional forms of benefits, or other plan benefits, rights and features.

No employee is considered to be an HCE unless he or she received compensation in the prior plan year above the applicable amount for that plan year (e.g., only employees with compensation of more than $115,000 in the 2014 plan year will be treated as HCEs for the plan’s 2015 plan year). For employers with many highly paid employees, an election to treat only the top paid 20% as HCEs for testing purposes may be made—even if more than 20% exceeded the dollar limit in the prior year (“top-paid group election”). Plan documents should reflect whether the HCE group will be limited to the top 20%.

A plan covering only non-highly compensated employees (NHCEs) automatically meets all nondiscrimination requirements.

Excludable employees

For employer-funded 403(b) retirement plan testing purposes, you can disregard some types of employees from the testing population, such as employees who have not satisfied the plan’s waiting period and student employees, if no employees in the excluded groups are benefiting under the plan. For an employee to be considered as benefiting under a noncontributory retirement plan, an employer contribution must be made on his/her behalf.

Under a contributory retirement plan, an employee benefits as long as he/she is eligible for the plan, whether or not actually participating. A retirement plan is contributory if employees must contribute to the plan in order to receive a matching employer contribution.
Statutory testing requirements

As previously mentioned, there are two basic statutory nondiscrimination requirements that apply to 403(b) retirement plans:

1. **Minimum Coverage** which requires that the percentage of highly compensated employees benefiting under the plans not be unduly high in comparison to the percentage of non-highly compensated employees benefiting under the plan.

2. **General Nondiscrimination** which requires that plans not unduly favor highly compensated employees in terms of contributions; benefits, rights or features; or plan amendments or terminations. The Matching Test (also known as the Average Contribution Percentage or ACP Test), falls under General Nondiscrimination, and generally applies to voluntary contributory retirement plans, requiring that employer-matching contributions (and employee after-tax contributions, if any) for highly compensated employees not be unduly high in comparison to those for non-highly compensated employees.

When to run the nondiscrimination tests

For noncontributory retirement plans, you may run the tests any day during the plan year that is reasonably representative of workforce composition and plan coverage (snapshot testing). For noncontributory retirement plans, testing may be as seldom as once every three years as long as there haven’t been any significant changes since the last test date, e.g., changes in legal requirements, plan provisions, or employee population or participation (three-year testing).

Contributory retirement plans must satisfy the Matching Test at the end of each plan year, taking into account everyone employed on any day during the plan year, unless they satisfy one of the design-based safe harbors.

Minimum Coverage Test under IRC Section 410(b)

To show nondiscriminatory coverage, plans must satisfy one of two tests:

1. **The Ratio Percentage Test**, which compares the proportion of non-highly compensated employees (NHCEs) benefiting to the proportion of highly compensated employees (HCEs) benefiting under a plan;

   OR

2. **The Average Benefits Test**, which compares both the percentage of NHCEs benefiting from the plan and also the benefits received by these employees from the plan, as a percentage of compensation to the comparable figures for HCEs.

Generally, contributory and noncontributory retirement plans are tested separately. If an employer has both a qualified plan and a 403(b) plan, the qualified plan is generally tested separately, but when testing the 403(b) plan for Minimum Coverage, the qualified plan can be taken into account. If General Nondiscrimination requires that you test your noncontributory plan by rate groups, then each rate group must satisfy Minimum Coverage on its own.

To satisfy the Ratio Percentage Test, the percentage of NHCEs benefiting under the plan must be at least 70% of the percentage of benefiting HCEs. The Average Benefits Test applies a subjective and an objective test to employee coverage, similar to the Ratio Percentage Test, and then compares all benefits received to ensure that NHCEs’ average benefits are at least 70% of HCEs’ average benefits. Because conducting the Ratio Percentage Test is easier, you should generally try that test first. If your plan fails that test, then you can try the Average Benefits Test.
If a plan fails to satisfy either of these tests and no correction is made, the plan could lose its tax-exempt status. However, there are IRS correction programs available to correct nondiscrimination failures.

General Nondiscrimination under IRC Section 401(a)(4)

The same plan(s) tested together or separately under Minimum Coverage must satisfy the general nondiscrimination requirements. Under the General Nondiscrimination Test, you must separately look at the following three aspects of your plan:

1. Contributions—To determine whether contributions to a noncontributory plan are nondiscriminatory in amount, you can perform the General Test or rely on one of the safe harbors. A contributory plan must satisfy the Matching Test or qualify under one of the design-based safe harbors (described below) to establish that the plan is not discriminatory in amount.
   - General Test—In most cases, a noncontributory plan will need to do Rate Group Testing to satisfy the General Test requirements. Rate Group Testing requires that the rate group for each HCE independently passes one of the coverage tests described above. The rate group for an HCE consists of all HCEs and NHCEs who have at least as high a contribution rate as the HCE being tested. Employees can be in the rate group of more than one HCE.
   - Safe Harbors for Noncontributory Plan—As an alternative, a noncontributory plan satisfies the requirement that contributions not be discriminatory without doing Rate Group Testing by relying on the Uniform Allocation or Uniform Points Safe Harbors:
     - The Uniform Allocation Safe Harbor requires that the same percentage of compensation (based on a definition of compensation that does not discriminate in favor of HCEs) is contributed to the account of each employee eligible for the plan.
     - The Uniform Points Safe Harbor allows an age- or service-graded plan to satisfy General Test requirements by basing plan contributions on the number of “points” credited to each participant and allocating points to all eligible employees based solely on their age or service. Few, if any, plans funded with TIAA-CREF contracts use this safe harbor since it does not allow contributions to be based on compensation.

2. Benefits, rights and features—Optional forms of benefits and other plan rights and features must be made available on a nondiscriminatory basis.

The phrase “optional forms of benefits” means any type of distribution option available under the plan. Early retirement options, lump-sum payout options, as well as standard lifetime annuity payouts are all examples of optional forms of benefits.

“Right or feature” generally means any aspect of the plan available to participants and of more than insignificant value. Examples include investment options, transfer options and loan provisions. For contributory plans, the right to each rate of matching contribution (such as each grade of an age-graded plan) and the right to make each rate of elective contributions or after-tax contributions are also rights or features that must be tested for nondiscriminatory availability.

For plan years beginning after 2008, because the good faith testing standard for 403(b) plans available under Notice 89-23 was repealed, if a contributory plan is age- or service-graded, each grade will be treated as a plan benefit, right or feature that will need to separately satisfy general nondiscrimination requirements.

3. Plan amendments and terminations—You also need to review your plan design to ensure that the nature and timing of any plan amendments are nondiscriminatory. Amendments include plan establishment or termination; any change in benefits, rights, or features; change in contribution rates; or grants of credit for prior service. Whether a plan meets the test will depend on facts and circumstances. If the timing of the amendments has a discriminatory impact, you must redesign the plan.
The “Matching Test” under Section 401(m)

Even though a plan satisfies coverage requirements, if it accepts after-tax employee contributions or if employee contributions are required as a condition of receiving employer “matching” contributions to satisfy the general nondiscrimination requirements of 401(a)(4), it must generally also satisfy the Matching Test. If the plan matches only employee salary deferral contributions that are mandatory as a condition of employment or that are made under one-time irrevocable salary deferral agreements, the plan isn’t subject to the Matching Test. Such a plan will be treated as a noncontributory plan for nondiscrimination testing purposes.

The test compares matching employer and after-tax employee contributions actually allocated to HCEs to those contributions allocated to NHCEs. Roth and pretax employee contributions are not subject to the Matching Test. The plan fails the test if the average contribution rate for eligible HCEs exceeds the average contribution rate for NHCEs by more than the permissible amount, which is determined on a sliding scale.

Within each group, HCE and NHCE, the amount of each employee’s employer-matching contribution, plus the amount of any after-tax employee contribution, is used to calculate a contribution percentage of compensation. The contribution percentages for HCEs and NHCEs are separately totaled and averaged to get the average contribution percentage (ACP) for each group.

Results for the two groups are then compared:

- If the average contribution percentage (ACP) for the NHCE group is 2% or less, the plan passes if the ACP for the HCE group is not more than twice the ACP for the NHCE group.
- If the NHCEs’ ACP is more than 2% but not greater than 8%, the plan passes if the HCEs’ ACP is not more than 2% greater than the NHCEs’ ACP.
- If the NHCEs’ ACP is more than 8%, the plan passes if the ACP for the HCE group is not more than 125% of the NHCEs’ ACP.
- If the plan fails the Matching Test, then corrective action must be taken within 12 months of the end of the plan year to avoid possible plan disqualification. Generally, correction involves refunding excess aggregate contributions to HCEs, although other correction methods such as making additional contributions for NHCEs are also available. If refunds are made more than 2½ months after the end of the plan year, an employer excise tax equal to 10% of the amount refunded must be paid to the IRS.

The Matching Test can be conducted using either the Current Year Testing Method or the Prior Year Testing Method. The testing and correction methods used must be set forth in the institution’s Plan Document.

Current year data must be used for calculating contribution percentages for HCEs. If any HCE participates in more than one contributory plan to which this test applies, all employee and employer-matching contributions for the HCE must be aggregated for purposes of this Matching Test.

- **Current Year Testing Method**—If the plan sponsor selects this method, contribution percentages for both HCEs and NHCEs are calculated based on salary and contribution data for the plan year for which the Matching Test is being conducted.
- **Prior Year Testing Method**—If the plan sponsor selects this method, contribution percentages for NHCEs are calculated based on salary and contribution data for the plan year prior to the year for which the Matching Test is being conducted. HCE contribution percentages are calculated based on salary and contribution data for the plan year being tested.
Matching Test design-based safe harbors

Some contributory 403(b) retirement plans will fail the Matching Test. But there is an alternative method to meet Matching Test requirements. Any contributory plan that meets the requirements of the design-based safe harbors will be deemed automatically to meet all the requirements of the Matching Test without having to actually conduct the test, as long as the plan doesn’t allow employees to make after-tax contributions. Noncontributory plans are not subject to the Matching Test, so these design-based safe harbors do not apply.

The design-based safe harbors must generally be satisfied on each day during the plan year. Plans that satisfy these safe harbors are deemed to satisfy all requirements of the Matching Test with regard to employer-matching contributions. Even though a plan satisfies a safe harbor, it must still satisfy Minimum Coverage and other General Nondiscrimination requirements. And if after-tax employee contributions are allowed, these are still subject to the Matching Test.

Matching Test safe harbor requirements

A. Contribution requirement—To satisfy the Matching Test design-based safe harbor, plans must provide a base employer contribution for all eligible non-highly compensated employees (NHCEs) or must meet employer match requirements.

All contributions used to satisfy the safe harbor—including employer-matching contributions—must be fully and immediately vested, nonforfeitable, and generally not distributable before the earliest of separation from service, death, disability, plan termination or attainment of age 59½. And contributions must be based on a nondiscriminatory definition of compensation, such as total compensation.

To satisfy the contribution requirement, a plan must meet one of the three following conditions:

1. Noncontributory Formula—All eligible NHCEs must receive non-elective employer contributions of at least 3% of compensation regardless of whether they elect to contribute to the plan themselves;

2. Basic Matching Formula—All eligible NHCEs who elect to contribute to the plan must receive employer-matching contributions equal to their own up to 3% of the employee’s compensation, and equal to half their own between 3%-5% of compensation; or

3. Enhanced Matching Formula—Under the enhanced formula, the plan contribution formula must provide for employer-matching NHCE contributions that are at least as generous as those NHCEs would have received under the Basic Matching Formula, at any rate of elective contribution percentage under this formula. In addition,
   a. the rate of employer-matching contributions cannot increase as the rate of elective contribution increases;
   b. HCE matching contributions cannot be higher than matching contributions for NHCEs with the same rate of elective contribution; and
   c. no employer-matching contributions can be provided for elective employee contributions in excess of 6% of compensation.

B. Notice requirement—To satisfy the Matching Test using the design-based safe harbors, all eligible employees must be given a written explanation (intelligible to the average employee) of their rights and duties under the plan.

- Generally, eligible employees must be notified annually of their rights and obligations under the plan, and the notification must occur at least 30 days but not more than 90 days before the start of the plan year. Employees who become eligible for the plan during any given year must receive notice no more than 90 days before their date of eligibility.
- The notice must describe the contribution formula (including matching, non-elective and discretionary employer contributions), and the conditions under which the contributions were made.
- The notice must also describe the type and amount of compensation that employees can contribute, and the timing and procedures for signing salary deferral agreements. Vesting and withdrawal provisions must also be described.

403(b) salary deferral plans - “universal availability”

Under 403(b) salary deferral plans, employees can voluntarily elect to make pretax or after-tax Roth contributions. 403(b) supplemental plans are not subject to the Minimum Coverage and General Nondiscrimination Tests that apply to employer-funded retirement plans.

And unlike 401(k) plans, salary deferral contributions made by HCEs to 403(b) supplemental plans are not compared with salary deferral contributions made by NHCEs.

If an employer makes a salary deferral 403(b) plan available to some of its employees, however, the employer must generally make it available to all employees. This is referred to as “universal availability.” For this purpose, however, certain categories of employees may be excluded.

The final 403(b) regulations include only the statutorily excludable categories of employees. For salary deferral plans, the excludable categories of employees as permitted by the IRC generally are: (i) employees who are eligible to defer to a governmental 457(b) plan; (ii) employees eligible to defer to a 401(k) or another 403(b) plan of the employer; (iii) employees who are nonresident aliens with no U.S. earned income; (iv) employees who are students performing services described in section 3121(b)(10); and (v) employees who normally work fewer than 20 hours per week.

The final regulations provide that an employee normally works fewer than 20 hours per week only if:

1. For the 12-month period beginning on the date the employee’s employment commenced, the employer reasonably expects the employee to work fewer than 1,000 hours of service in such period; and
2. For each subsequent 12-month period, the employee worked fewer than 1,000 hours of service in the preceding 12-month period.

The final regulations further provide that a plan subject to ERISA that elects to take advantage of this 20-hour-a-week exclusion may go against the ERISA minimum participation standards if an employee works 1,000 hours or more in a 12-month period.

Notice 89-23, which was repealed by the final regulations, specified other excludable classes of employees who are not included in the statute. Effective January 1, 2010, these additional excludable categories of employees are no longer available:

- Employees who make a one-time election to participate in a governmental plan instead of a section 403(b) plan
- Union employees
- Visiting professors for up to one year under certain circumstances
- Employees affiliated with a religious order who have taken a vow of poverty.

The final regulations do, however, allow the following to be excluded:

- Individuals who have taken a vow of poverty if their compensation is not treated as wages for purposes of income tax withholding.
- Visiting professors who continue to receive compensation (and salary deferral opportunity) from their home university.
Also, there were delayed effective date rules provided for the elimination of the exclusions for union employees (a date between January 1, 2009 and July 26, 2010, depending on the collective bargaining agreement) and governmental plans (a date between January 1, 2009 and January 1, 2011, depending on when the legislative body met).
Contribution limits

Tax deferral is a fundamental benefit offered by retirement and supplemental plans. The Internal Revenue Code limits the amount an employer and employee can contribute on a tax-deferred basis to both types of plans. The most an employee can tax-defer in a 403(b) or 401(k) plan is governed by Sections 415 and 402(g) of the Internal Revenue Code. Here’s an explanation of each limit:

Section 415—Annual Additions
This section of the Code specifies the maximum contribution—employer plus employee (pretax and after-tax, including Roth 403(b))—that can be made to a retirement/supplemental plan in a taxable year. In 2015, this amount is the lesser of $53,000 or 100% of compensation.

Section 402(g)—Limit on Salary Deferral Contributions
The maximum amount employees can contribute to a 403(b) or 401(k) plan in 2015 through employee elective deferrals is $18,000. (This amount is adjusted for inflation in $500 increments.)

402(g) Monitoring
The ability to make voluntary retirement contributions is a valuable benefit for employees. Monitoring those pretax and Roth 403(b) contributions to ensure they don’t exceed legal limits is an important institutional responsibility. Employees can save on a tax-advantaged basis through employee elective deferrals. Under the law, employees can sign more than one salary deferral agreement in a calendar year, but your plan may limit the number of agreements employees may enter into.

403(b) vendors must take reasonable steps to help ensure that 403(b) elective deferrals don’t exceed the Section 402(g) limit. For employees with at least 15 years of service at an eligible institution, deferrals of up to $21,000 to a 403(b) plan may be possible (plus additional amounts for employees who are age 50+). Deferral limits lower than $21,000 may be mandated for some employees by Section 415 of the Internal Revenue Code.

The 402(g) limit only applies to elective deferrals. Certain employee contributions aren’t considered elective deferrals and don’t count toward the 402(g) limit. Here are some examples:

- Contributions that are mandatory as a condition of employment and the condition is enforced by the institution;
- Contributions that are made under a one-time, irrevocable salary deferral agreement at the time the employee initially becomes eligible to participate in any plan of the institution; or
- After-tax employee contributions, excluding Roth 403(b) contributions.

How TIAA-CREF Helps
TIAA-CREF helps you efficiently manage your responsibility to monitor contribution limits and to ensure that your plan remains compliant with IRS rules and regulations on contribution limits.

We’re currently enhancing our capabilities to include and report on additional limits, and to provide proactive notifications related to adjusting or discontinuing contributions when limits are reached and to resuming them at the beginning of the new calendar year. This adds to our existing ability to monitor and report on limits such as 402(g) and applicable catch-up provisions.
15-Year rule

The 15-year rule allows employees to exceed the otherwise applicable 402(g) limit if they have at least 15 years of service (which do not need to be consecutive) with the same qualifying tax-exempt employer organization (teaching institution, hospital, church, home healthcare organization, or health and welfare service agency). Under the 15-year catch-up rule, if an employee’s elective deferrals in prior years were less than the 402(g) limit, he or she may be able to make deferrals of up to $3,000 over the otherwise applicable 402(g) limit for the current year, subject to a lifetime limit of $15,000. This 15-year rule is available only under 403(b) plans (not 401(k) or 457(b) plans). This is also in addition to the age 50+ catch-up discussed below.

A health and welfare service agency is an organization whose primary activity is to:

- provide medical care (such as a hospice), or
- prevent cruelty to individuals or animals, or
- provide substantial personal services to the needy.

The final regulations expand this definition of health and welfare service agency to include agencies that provide:

- adoption services,
- home health services,
- assistance to individuals with substance abuse problems or
- help to the disabled.

Age 50+ catch-up elective deferrals

Employees age 50 and older can make additional elective deferrals to 403(b), 401(k) and public/governmental 457(b) plans. In 2015, the amount is $6,000. These elective deferrals can exceed the statutory dollar limits otherwise imposed by the 415 or 402(g) limits, or any lower limit applicable under the terms of their plans (but cannot exceed the 100% of compensation limit under Section 415).

Age 50+ contributions are not subject to any other contribution limits (other than those mentioned above) or to any nondiscrimination rules. However, the plan must allow all plan-eligible employees age 50 and older (other than union members) to participate in the same manner. Age 50+ contributions are in addition to any contributions allowed under Section 402(g). Participants have one age 50+ catch-up for all 403(b) and 401(k) plans, if they participate in both types of plans. An employee age 50 or older who is also eligible for the 15-year rule may be able to contribute up to $27,000 to a 403(b) plan in 2015 ($18,000 under 402(g), $3,000 under the 15-year rule and another $6,000 in age 50+ catch-up contributions).

Ordering rule

The final regulations did not change the contribution limits for 403(b) plans; however, they do clarify the application of various limits. They contain guidance on the treatment of contributions in excess of the 415 limit, and the ordering rules for individuals who are eligible for both special 15-year catch-up contributions and age 50+ catch-up contributions.

Under the ordering rule, if a participant who is eligible for both catch-ups contributes more than the general limit under 402(g), but less than the maximum amount permitted, then the amount contributed in excess of the general limit is counted first against his or her $15,000 lifetime limit under the 15-year rule, then the age 50+ catch-up, if eligible.
If an employee contributes too much, what penalties might the IRS impose?

Institutions and participants may face substantial penalties if the contributions to a 403(b) plan exceed applicable Internal Revenue Code requirements. The IRS has historically refrained from classifying a 403(b) plan as having lost its 403(b) status except in extreme cases since the protection of benefits for the rank and file employees is of great concern to the IRS. Actual penalties will vary from institution to institution and plan to plan based on the nature and extent of compliance problems. Paying close attention to fiduciary and administrative responsibilities, and performing a self-audit prior to a possible IRS audit will give you an opportunity to identify and correct defects before the IRS finds them in an audit.

In general, the guidelines distinguish between defects that result in the plan losing its tax-exempt status, defects that affect only individual annuity contracts and/or custodial accounts, and transactional failures that do not affect either the plan or contract/account status. Defects in annuity contracts and/or custodial accounts can be separated between those that affect only individual contracts and/or accounts and systemic defects that could adversely affect the entire tax-exempt status of the plan. If the defect affects an entire 403(b) plan (i.e., all contracts and/or accounts), all contributions made to the plan (for all participants) in the first taxable year of the defect (and all subsequent years until the defect is corrected) may be includible in participants’ gross income. Earnings on custodial accounts, but not annuity contracts, could also be includible in gross income. Transactional defects affect only a portion of a participant’s annuity contract and/or custodial account—only the tainted portion of the contract and/or account may be included in the participant’s gross income. All defects generating participant income will also result in employment tax/withholding repercussions for the employer.

Common violations
Contributions exceeding 402(g) limit

If employees are permitted to make elective deferrals in excess of the 402(g) limit ($18,000 in 2015), the 403(b) contract may lose its tax-exempt status unless the excess deferrals are corrected in a timely manner, which is no later than April 15 of the year following the year in which the excess occurred. Amounts contributed to the disqualified contract are includible in the employee’s gross income and subject to FICA tax. Furthermore, the employer is responsible for any employment taxes and withholding that apply.

Ordinarily, employees whose elective deferrals exceed the 402(g) limit must report the excess as income on their tax return forms for the calendar year the deferral was made as well as on their tax returns for the calendar year when the excess amounts are withdrawn. The only way they can correct the mistake and avoid double taxation is to have the excess amounts, plus earnings, refunded to them by the tax filing deadline for the year in which the contributions were made—for example, by April 15, 2015 for excess contributions made during calendar year 2014. In that case, the excess contribution need only be reported as taxable income for the year the contribution was made. Refunded earnings attributable to an excess deferral must also be reported as income in the year refunded; losses attributable to an excess deferral can reduce reported income in the refund year.
When an excess deferral occurs, TIAA-CREF will usually issue two IRS Form 1099-Rs. One reports the excess amount, which generally must be entered in the employee’s tax return for the year the deferral was made, and the other reports the earnings amount, which must be included on the tax return for the year the earnings are refunded. Employees do not need to attach 1099-Rs with their returns because there is no income tax withholding on a refund. When employees incur an investment loss on the contributions, we will send a letter stating the amount which should be reported on the “other income” line of Form 1040. The letter also tells employees to describe the loss as one “attributable to a refund of excess deferrals,” and to bracket the amount to flag it as an investment loss on the contributions. Employees who file their tax returns before receiving their 1099-Rs must file amended tax returns to include the excess deferrals.

The foregoing covers only the federal income tax consequences of excess deferrals. Employees should consult tax authorities or their own attorneys or financial advisors concerning state and local income tax requirements.

**Excess 415 amounts**

Internal Revenue Code Section 415(c) requires that a participant’s annual additions not exceed the lesser of $40,000 (as indexed—$53,000 for 2015) or 100% of compensation. Each participant’s annual additions are the sum of the employer contributions, employee contributions (both pre- and post-tax) and forfeitures allocated to his account for a limitation year (typically the calendar year).

In regards to annuities, the regulations under 415 provide that, as a general rule, a participant in a 403(b) plan is considered to maintain an annuity contract—not the plan sponsor. Because of this provision, contributions to 403(b) annuity contracts are not typically aggregated with contributions to qualified plans for purposes of applying the 415 limit. However, limited exceptions may apply.

Plan sponsors are required to gather the necessary information to determine if the 415(c) limitations are satisfied. TIAA-CREF has a range of information-gathering tools to aid you in doing this.

**Correcting plan errors**

The Employee Plans Compliance Resolution System (EPCRS) offers a comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of sections 401(a), 403(a), 403(b), 408(k) or 408(p) of the Internal Revenue Code, but which have not met these requirements for a period of time. This system allows plan sponsors to correct certain failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis. The components of EPCRS are the Self-Correction Program (SCP), the Voluntary Correction Program (VCP) and the Audit Closing Agreement Program (Audit CAP). The IRS has information on the EPCRS on its website at: [http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors](http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors).

EPCRS was updated in Rev. Proc. 2013-12, for the requirements of the final 403(b) regulations which is important for TIAA-CREF institutions with 403(b) plans. Rev Proc 2013-12 expanded the correction program to include 403(b) plan document and plan operational failures beginning January 1, 2009. 403(b) plan sponsors are now able to correct failures to follow the terms of their 403(b) plan documents that occur after 2008.

Other update highlights included:

- Voluntary Correction program for failure to timely adopt a written 403(b) plan by December 31, 2009
- Modifications to Voluntary Correction Program (VCP) submission procedures
- Changes to the VCP fees
- Changes to correction of 415 limit violations
- A variety of other minor modifications

This Revenue Procedure was generally effective April 1, 2013, but plan sponsors were permitted to apply it to their plan corrections beginning January 1, 2013.

**Timing of contribution transmittals**

The final IRS 403(b) regulations, effective January 1, 2009, require that all 403(b) plan sponsors transmit contributions to 403(b) plans to the insurance company or other carrier within a period that is reasonable for proper plan administration. These final regulations further provide that transferring elective deferrals within 15 business days following the month in which these amounts would otherwise have been paid to the participant will be treated as reasonable.

Non-ERISA plans that took longer to remit employee contributions, had to conform to the timing rule of the final IRS regulations as of the January 1, 2009 effective date.

Keep in mind that a more stringent DOL regulation was already in place prior to the final 403(b) regulations being issued by the IRS. This more stringent DOL rule applies to plans subject to ERISA and supersedes the timing requirement of the IRS regulations. ERISA plans must transfer elective deferrals by the earlier of:

- 15 business days following the month in which the amount was withheld from the employee’s pay, or
- the earliest date on which it is administratively feasible to remit

The DOL’s 15 business day rule is not a safe harbor. If it is feasible for the employer to remit the contributions sooner, the employer is generally required to do so. However, there is a special rule for small ERISA plans (those plans filing either a Form 5500-SF or a Form 5500 with a Schedule I). Small plans will be deemed to have satisfied the timely remittance rule if employee elective deferrals are remitted no later than seven business days following the day the amount would have been payable to the employee even if it was administratively feasible to have remitted earlier.

**Contributions for former employees**

The final regulations confirm that a 403(b) retirement plan may continue making non-elective employer contributions for up to five years for a former employee, up to the lesser of the dollar amount in Section 415(c) or the former employee’s annual includible compensation during his or her most recent one-year period of service. This rule has limited application for private, tax-exempt employers because contributions for former employees are subject to separate nondiscrimination testing. It’s more useful to governmental employers, as their retirement plans are generally not subject to nondiscrimination testing.

The 403(b) regulations do not address whether salary deferral contributions may be made for a former employee if the contribution is with respect to compensation that is paid after severance from employment. The IRS issued separate guidance on this issue under section 415 with respect to not only section 403(b) plans, but also section 401(k) and 457(b) plans. The final 415 regulations generally provide that amounts received after severance from employment are not considered to be compensation for purposes of section 415, but provide exceptions for certain payments made within the later of 2½ months after severance from employment or the end of the plan’s limitation year (generally the calendar year) in which the severance occurs.
Loans

Loan overview

Plan loans may be made available to 403(b) plan participants, using their retirement account as collateral for the loan, as long as they are permitted by the terms of the retirement plan (and the funding vehicle used to fund the plan), and certain legal requirements imposed under IRC Section 72(p) are satisfied.

Under IRC Section 72(p), a loan from an employer plan (including a 403(b) plan) to a participant or beneficiary is treated as a distribution for purposes of taxation under IRC Section 72. However, a loan from a retirement plan (including a 403(b) plan) to a participant will not be treated as a distribution if the loan satisfies certain requirements, including:

1. The loan has to be repaid over not more than five years (unless used for the purchase of a principal residence).
2. The loan has to be paid in substantially level installments that include principal and interest, no less often than quarterly.
3. The loan does not exceed the lesser of:
   a. $50,000 per plan (from all vendors combined), reduced to the extent that the participant’s highest balance for plan loans outstanding during the preceding 12 months exceeds the current balance for plan loans; or
   b. 50% of the participant’s nonforfeitable benefit (or $10,000 if greater).

These limits apply by treating all loans from all plans of the employer as one loan.

If the loan repayments are not made in a timely manner, the outstanding loan balance (plus interest) will be put into default. This defaulted amount is deemed by the IRS to be a taxable distribution of retirement plan assets at that time and may also be subject to tax penalties on early withdrawals.

Responsibilities for loan administration: The final regulations provide that the written plan should coordinate the responsibilities of the employer and the vendors issuing the contracts and/or custodial accounts under the plan. For plan loans that are made by a vendor under the terms of a 403(b) annuity contract or custodial account, employers are required to provide the vendor(s) with adequate information to allow for the proper administration of the loans. The final regulations made it clear that it is inappropriate for employers to allocate this responsibility to employees, as the employees lack the necessary expertise and may have an inappropriate self-interest in the transaction. Formerly, plans may have allowed participants to self-certify their eligibility for loans. If your plan still lets employees determine whether they are eligible for a plan loan, you need to adopt new administrative procedures.

“Orphan” and “Grandfathered” contracts

If you eliminated vendors between January 1, 2005 and January 1, 2009, you must follow certain procedures with respect to the “orphan” contracts and/or custodial accounts that were issued by the “deselected” vendors. In Rev. Proc. 2007-71, the IRS set forth good faith procedures that must be followed with respect to these contracts or accounts before loans, hardship withdrawals and other distributions are made from them. Prior to January 1, 2009, you should have notified the deselected vendors that no such distributions should be made without first contacting you. You should have noted the process in your file so you can produce it if you are ever audited by the IRS. Contracts or accounts issued by vendors that were deselected prior to 2005 are “grandfathered.” No information sharing is required for loans and other distributions from these pre-2005 contracts and vendors.
TIAA-CREF industry leadership in information-sharing standards

Many retirement plan administrators work with a number of investment providers and other third parties. Information sharing between these organizations is key to ensuring that participant loans and distributions are compliant. TIAA-CREF is actively involved with the Society of Professional Asset-Managers and Record Keepers (SPARK) to help drive industry information-sharing standards that will facilitate these transactions.

For multi-vendor employers

For our institutional clients with more than one investment provider, we offer our Compliance Coordinator service, which is designed to help prevent noncompliant transactions before they occur. Compliance Coordinator is an easy-to-use, web-based tool designed to help plan sponsors with multiple investment providers ensure that loans and hardship withdrawals are processed by all investment providers in compliance with applicable IRS regulations. To provide this service, we contracted with an independent, industry-leading financial data firm that aggregates data from multiple investment providers on the plan.

The tool is transparent to the participant, but allows providers to verify that the maximum loan amount available is not exceeded and that the participant has received the maximum allowable loan amount before a hardship withdrawal is permitted. Each investment provider is required to supply the independent firm with data on loans and hardship withdrawals so that it can be aggregated and used exclusively for monitoring and reporting purposes.

The tool is completely electronic, allowing you to view information via a web-based application that provides both detailed and summary reports by investment provider and participant.

Talk to your Relationship Manager, the Administrator Telephone Center or to your plan advisor for guidance on the most efficient way for you to monitor your participants’ loans.
Distributions

In-service withdrawals

Under the IRC, amounts attributable to employee elective deferrals in 403(b) plans cannot be paid to a participant until the participant has a “distributable event” such as disability, severance from employment or the participant reaching age 59½. These withdrawals are subject to income tax, and withdrawals prior to age 59½ may be subject to an additional 10% tax penalty. The statutory withdrawal restrictions do not apply to 403(b) salary deferral amounts in 403(b)(1) annuities accumulated prior to December 31, 1988, although they do apply to 403(b)(7) mutual fund accumulations for that period. Further, until the issuance of the final 403(b) regulations, required withdrawal restrictions did not apply to employer contributions in a 403(b)(1) annuity contract.

The final 403(b) regulations retain the rule that exempts pre-1989 403(b) annuity accumulations attributable to employee elective deferrals from the withdrawal restrictions. They also clarified that after-tax employee contributions are not subject to withdrawal restrictions.

However, under the final regulations, employer contributions to a 403(b) annuity became subject to the withdrawal restrictions, but only for annuity contracts issued after December 31, 2008. Plans that permitted in-service distributions (lump sum or annuitization) of employer contributions at that time had to be amended to reflect the new withdrawal restrictions for annuity contracts issued after 2008, if the plan did not already have a restriction for these contributions.

Hardship withdrawals

The IRC imposes limitations and possible tax penalties on in-service distributions from 403(b) retirement plans. However, distributions of certain 403(b) accumulations may be permitted when required to meet the financial burden of a qualifying hardship of participants and their dependents. Qualifying hardships include medical and tuition expenses, purchase of a primary residence, payments for funeral expenses, expenses relating to major natural catastrophes, and prevention of eviction/foreclosure. These withdrawals are subject to income tax, as well as possible early withdrawal penalties.

Prior to the issuance of the final 403(b) regulations, there was no clear guidance on administration of hardship distributions for 403(b) plans. The final regulations applied the same rules for hardship withdrawals from 403(b) plans as those governing hardship distributions from 401(k) plans.

Under the 401(k) guidance for hardship distributions, before taking a hardship withdrawal, the participant may be required to first obtain all loans and distributions available under all plans of the employer. If those amounts do not meet the participant’s needs, then he or she can take a hardship withdrawal.

The final regulations also made it clear that the hardship determination is the employer’s ultimate responsibility, and that it is inappropriate for the employer to allocate responsibility for determining eligibility for hardship distributions to participants, as they lack the necessary expertise and objectivity. You should ensure that your current practice for determining hardships does not allow employees to self-certify. If it does, you should adopt new administrative procedures, which may include allocating safe harbor hardship determination to a third party.
Administration of requests for hardship withdrawals from non-ERISA salary deferral-only safe harbor 403(b) plans

Under a safe harbor spelled out in the Department of Labor (DOL) ERISA regulation 2510.3-2(f), a 403(b) plan sponsored by a private, tax-exempt organization that is not a governmental or church entity, where the plan is funded solely with employee elective deferrals, is exempt from ERISA if certain conditions are satisfied. Under this safe harbor, employer involvement in the plan operation must not rise to the level that would make it a plan “established or maintained” by the employer.

In Field Assistance Bulletin 2010-01, the Department of Labor provided updated guidance impacting safe harbor 403(b) plan arrangements sponsored by private tax-exempt employers that may be exempt from ERISA. The Field Assistance Bulletin also provides guidance on 5500 reporting requirements for 403(b) plans. The safe harbor arrangement guidance addressed in the Field Assistance Bulletin included, in question-and-answer format:

- The requirement that the safe harbor arrangement offer participants a reasonable choice of vendors and investment products
- The ability of an employer offering a safe harbor arrangement to make optional features such as loans available
- The inability of an employer offering a safe harbor arrangement to maintain the unilateral decision to move funds from one vendor or contract to another, or to make use of a TPA.

The FAB indicates that compliance with the safe harbor requirements will be determined on a case-by-case basis. Employers who want their plans to retain non-ERISA status cannot have responsibility for or make discretionary determinations (such as determinations regarding hardship distributions) in administering their salary deferral-only safe harbor 403(b) plans. These employers, particularly those with safe harbor plans, can use services like TIAA-CREF’s Compliance Coordinator, which helps ensure distribution rules are followed.

Rollovers

Assets can be rolled over from a 403(b) plan to a traditional IRA or an eligible retirement plan, e.g., 401(a), 401(k), public 457(b) and other 403(b) plans that accept it. Rollovers are not permitted to private 457(b) plans. Similarly, assets can be rolled over to a 403(b) plan from a traditional IRA or an eligible retirement plan, e.g., 401(a), 401(k), public 457(b) and other 403(b) plans that allow such transfers. Rollovers are not permitted from private 457(b) plans.

The final 403(b) regulations made it clear that neither a qualified plan nor an eligible public 457(b) plan may transfer assets to a 403(b) plan unless the transfer is affected by direct rollover. In addition, a 403(b) contract may not be exchanged for an annuity contract that is not a 403(b) contract.

Mandatory 20% withholding applies to 60-day rollovers. Taxes are not required to be withheld on the amounts directly rolled over. However, certain distributions do not qualify for this exemption from immediate taxation, including hardship distributions and required minimum distributions. Refer to Page 30 on Information Sharing Agreements for more information on 403(b) plan-to-plan transfers and contract exchanges.

Automatic small sum cash-outs

Some sponsors of ERISA retirement plans may mandate the distribution of small accumulations totaling $5,000 or less under the plan when an employee separates from service. EGTRRA provided that unless participants make an affirmative election to take cash-out or to roll over the accumulation to a self-selected plan or IRA, the accumulation will be directly transferred to an IRA of an issuer selected by the plan sponsor.
Very few plans funded with TIAA-CREF contracts or custodial accounts mandate distribution or rollover of small accumulations on separation from service since:

- Plans do not incur any additional expenses for allowing separated employees with TIAA-CREF contracts to continue to leave their accumulations in the plan if they wish to do so;
- TIAA-CREF sample plan documents do not include provisions for automatic distribution or rollover of small accumulations on separation from service unless the plan is funded with a contract that permits it; and
- The plan must designate an IRA vendor for receipt of automatic rollovers if it wants to implement such a provision. (TIAA-CREF does not currently provide such a product).

Qualified Domestic Relations Orders (QDROs)

A Qualified Domestic Relations Order or QDRO, is a legal judgment, decree or order involving a participant in a retirement plan, and relating to payment from the participant’s plan assets, of child support, alimony or marital property rights to the participant’s spouse, former spouse, child or other dependent. It must contain certain specific information, such as the name and last known mailing address of the participant and each alternate payee, and the amount or percentage of the participant’s benefits to be paid to each alternate payee. It may not award an amount or form of benefit that is not available under the plan.

For multi-vendor employers

Understanding and complying with distribution requirements is difficult at best, and even more so if you are monitoring across multiple providers. As discussed in relation to loans, we offer our Compliance Coordinator service for our institutional clients with more than one investment provider. Compliance Coordinator is an easy-to-use, web-based tool designed to help plan sponsors with multiple investment providers ensure that distributions are processed by all investment providers in compliance with applicable IRS regulations. To provide this service, we contracted with an independent, industry-leading financial data firm that aggregates data from multiple investment providers on the plan.

The tool is transparent to the participant, but allows providers to verify that the maximum loan amount available is not exceeded and that the participant has received the maximum allowable loan amount before a hardship withdrawal is permitted. Each investment provider is required to supply the independent firm with data on loans and hardship withdrawals so that it can be aggregated and used exclusively for monitoring and reporting purposes.

The tool is completely electronic, allowing you to view information via a web-based application that provides both detailed and summary reports in relation to investment provider and participant.

Talk to your Relationship Manager, the Administrator Telephone Center or to your plan advisor for guidance on the most efficient way for you to monitor your participant’s distributions.
Minimum distribution requirements

General rule

Federal law normally requires participants in tax-favored plans, including qualified 401(a) and 403(b) plans, to begin receiving income or making required distributions by a specific date. For most participants, whether they’re in a 403(b) plan or a qualified plan, this Required Beginning Date (RBD) is April 1 following the year they attain age 70½. There is an exception for participants who continue working after age 70½. They do not have to withdraw accumulations from their current employer’s plan until April 1 following the year in which they separate from service. Under a 403(b) plan, accumulations—contributions and earnings—credited before 1987 need not be withdrawn until the year the participant attains age 75, or April 1 following the year after he or she retires, if later.

How TIAA-CREF helps

TIAA-CREF provides efficient monitoring, notification and payment of required minimum distributions. Each year we mail a notice to participants age 70 and over (and a letter to their beneficiaries if the participant has died), explaining the minimum distribution requirements and the consequences for failing to take required distributions. TIAA-CREF calculates the amount of required distributions on request. We also inform participants that: in most cases, lifetime annuity benefits from TIAA-CREF annuities will satisfy the minimum distribution requirement without the need for additional payments; and that minimum distribution requirements are calculated based on total 403(b) accumulations on account with TIAA-CREF and can be satisfied by either taking pro rata distributions from each 403(b) plan account, or by taking a large enough distribution from one or more of such accounts to meet the annual distribution requirements for all of their 403(b) plans. We also offer our minimum distribution option—an income option that enables participants to satisfy the required minimum distribution.

Determining the distribution amount

The amount of the required minimum distribution varies from year to year, depending on the age of the employee and the balance as of December 31 of the prior year. For 403(b) plans, the minimum distribution requirement can be satisfied by withdrawing the required amount from each 403(b) plan or from a single 403(b) plan (as long as the distribution is enough to cover all 403(b) plans). For qualified plans, the minimum distribution requirement applies on a per-plan basis, and the employee would have to determine the minimum distribution amount for each plan and then withdraw that amount from that plan.

Penalty for noncompliance

If the participant doesn’t receive the required annual minimum distribution in a timely way, he or she may have to pay a nondeductible penalty tax equal to 50% of the amount that should have been distributed, in addition to ordinary income tax.

Notice requirements

The plan sponsor is responsible for notifying participants about required minimum distributions. While the penalty for failing to satisfy minimum distribution requirements generally applies to participants who fail to take the required distributions, 403(b) plans whose participants show a pattern of noncompliance with minimum distribution requirements are subject to disqualification, which would make all plan assets, not just those affected participants, fully and immediately taxable.
Information Sharing Agreements

New rules for plan-to-plan transfers/contract exchanges

The final 403(b) regulations made significant changes in the rules governing how a 403(b) contract or custodial account can be exchanged for another 403(b) annuity contract or custodial account within the same plan or directly transferred to a contract or account under another 403(b) plan.

IRS Revenue Ruling 90-24

Nontaxable direct transfers between 403(b) contracts and custodial accounts were permitted under Revenue Ruling 90-24 to the extent permitted under the transferor contract or account, so long as the successor contract or custodial account included distribution restrictions that were the same as or more restrictive than the distribution restrictions in the contract or account that was being exchanged. Under the ruling, the contract or account to which the transfer was made did not have to be authorized by the plan. For transfers after September 24, 2007, Revenue Ruling 90-24 was repealed. The following rules were established by the final regulations:

- Intra-plan contract exchanges to unapproved (nonpayroll slot) funding vehicles after September 24, 2007, are only allowed if the unapproved (nonpayroll slot) vendor has entered into an Information Sharing Agreement (ISA) with the employer that is sponsoring the 403(b) plan to share information that is required for compliance purposes.
- ISAs are not required for approved (payroll slot) vendors because the regulations presume that the information necessary for proper plan administration will be shared.
- This does not impact plans that limit transfers to approved vendors only.

Information Sharing Agreements

Under the Information Sharing Agreement, the vendor and employer must agree to provide each other with information from time to time, including information on the participant’s employment status, eligibility for hardship distributions, and satisfaction of plan loan limitations.

For approved (payroll slot) vendors, information sharing with the employer will be required to ensure the plan’s compliance with Internal Revenue Code requirements and the final regulations’ requirements, including information on the participant’s employment status, eligibility for hardship distributions, and satisfaction of plan loan limitations.

The regulations make it clear that the vendors cannot rely on the participant for certain information in the manner that was permitted before 2009. This changes the way transactions such as loans and distributions on severance from employment are handled by the regulations’ effective date, January 1, 2009.
Form 5500 for ERISA plans

5500 Overview

Federal pension law generally requires administrators of employee benefit plans to file an annual return/report or Form 5500 with the Department of Labor (DOL) for each plan subject to the Employee Retirement Income Security Act of 1974 (ERISA). Each year, pension and welfare benefit plans generally are required to file an annual return/report with the DOL.

You don’t have to file a Form 5500 for your plan if it is:

- A governmental plan
- A non-electing* church plan
- A voluntary savings plan exempt from ERISA under DOL regulation 2510.3-2(f), because:
  - participation is completely voluntary;
  - investment options are limited to a number and selection designed to afford employees a reasonable choice;
  - employer involvement is limited to administering salary deferral agreements;
  - the annuity and custodial account vendors are permitted to publicize their products to employees;
  - all rights under the contracts and custodial accounts are enforceable only by the participant; and
  - the employer receives no direct or indirect consideration or compensation other than reasonable compensation to cover the expenses of administering the salary deferral agreements.

Starting with the 2009 plan year, the Form 5500 must be electronically filed. It can be filed online using the ERISA Filing Acceptance System (EFAST2) web-based filing system or through an EFAST2 approved vendor. See the DOL’s web page at http://www.efast.dol.gov/ for details.

You generally have to file Form 5500 by the last day of the seventh month following the end of the plan year. For example, if you use a calendar-year plan year, your 2014 Form 5500 is due on or before August 1, 2015.

How TIAA-CREF helps

Form 5500 and Audit Requirements for Small and Large Plans

TIAA-CREF offers tools and informational resources designed to help ensure that you meet regulatory requirements relating to Form 5500 filings and audits for plans subject to ERISA and falling under the large plan requirements.

Plans subject to ERISA must comply with comprehensive reporting requirements, including submitting schedules and conducting financial audits. Large plans (generally those with 100 or more eligible participants at the beginning of the plan year) are required to attach audited financial statements to the Form 5500. Small plans (generally those with fewer than 100 eligible participants at the beginning of the plan year) that don’t qualify for a waiver are subject to the same requirement.

* A church must make a valid IRC section 410(d) election in order for ERISA to apply to the plan.
Whether your plan is a small or large plan, as defined above, TIAA-CREF provides a financial reporting package for plan sponsors and auditors following the end of the plan year. Use the package on your own or in conjunction with any Form 5500 preparer or plan advisor you may be using. It includes:

- Detailed and certified reports that provide essential industry-standard plan information
- Supplemental reports providing additional plan information
- Form 5500 filing summaries to assist in your Form 5500 preparation
- The TIAA-CREF Plan Sponsor Reporting and Audit Guide: A comprehensive resource for meeting annual reporting and fee disclosure requirements
- Optional Form 5500 Preparation Service delivered in collaboration with Deloitte*

**Audit support for ERISA plans subject to audit**

TIAA-CREF provides a variety of plan-level reports. We certify the Schedule of Assets held for investment pursuant to 29 CFR 2520.103-5(c) as of the last date of the plan year and the Statement of Changes to net assets pursuant to 29 CFR 2520.103-5(d) (e.g., December 31 for calendar-year plans). This report provides auditors with a certified opening asset balance for the beginning of the plan year (e.g., January 1 for calendar-year plans).

If your auditor deems it necessary to request information in support of your audit, TIAA-CREF will provide additional information, including documentation for selected transactions. To assist your auditor in getting necessary information, web access to your plan’s reports can be granted to them with your approval. Standardized audit sample procedures have also been developed to ensure an efficient auditor experience. In addition, TIAA-CREF provides you and your plan auditor with a Service Organization Controls (SOC 1) report that includes control objectives, along with the detailed activities that are designed to meet those objectives. The report is intended to provide reasonable assurance that control objectives are designed and operating effectively. The control objectives and control activities are defined and written by TIAA and audited by PricewaterhouseCoopers LLP (PwC), TIAA’s service auditor. Please note that the SOC 1 reports replace the Statement on Standards for Attestation Engagements (SSAE) No. 16 reports.

**More information**

TIAA-CREF has prepared a comprehensive set of informational and instructional materials on Form 5500 requirements and procedures. These are available on the secure TIAA-CREF PlanFocus website, www.tiaa-cref.org/plansponsors. The materials provide detailed, easily accessible information on the requirements, what is needed from plan sponsors, and what TIAA-CREF can do to help. Use them on your own or in conjunction with any plan advisor or Form 5500 preparer you may be using.

We also provide a webinar that can help clients with ERISA plans understand their year-end financial reports and prepare for an audit. A schedule of these and other upcoming webinars is available on the Webinars page on the TIAA-CREF Plan Sponsor website.

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* "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.
For 401(a) or other qualified plans, the Form 5500 filing requires reporting on their financial condition, investments and operations. And large plans (generally plans with 100 or more participants as of the beginning of the plan year) are required to engage an independent qualified public accountant and attach an accountant’s opinion to the Form 5500.

Formerly, administrators of 403(b) plans were not required to complete the entire Form 5500 or to include any of the schedules with the annual filings. However, regulations issued by the DOL in 2007 require that, beginning with Form 5500s for 2009 plan years, 403(b) plans must complete all of the questions and schedules required for any other type of retirement plan subject to ERISA. Electronic filing is required for all Form 5500 reports and, as with qualified plans, large 403(b) plans (generally plans with 100 or more participants at the beginning of the plan year) are required to provide an independent auditor’s report.

Both qualified and 403(b) plans are also required to make Summary Annual Reports (SARs), which summarize the information on Form 5500, available to participants by the end of the ninth month following the end of the plan year. If an ERISA 5500 filing extension is requested and granted, SARs may be made available an additional two months past the ninth month following the end of the plan year.

Which types of plans need to file Form 5500?

Federal pension law generally requires employee benefit plans to file an annual return/report regarding the financial condition, investments and operations of the plan. This reporting requirement is generally satisfied by filing the Form 5500 Annual Return/Report of Employee Benefit Plan with the DOL for each plan subject to ERISA.

As described above, you may not have to file a Form 5500 if your plan is:

- A governmental plan
- A church plan not electing coverage under Internal Revenue Code section 410(d)
- A deferral-only 403(b) plan exempt from ERISA under DOL regulation 2510.3-2(f) because:
  - participation is completely voluntary;
  - employer involvement is limited to administering salary reduction agreements;
  - investment options are limited to a number and selection designed to afford employees a reasonable choice;
  - the annuity companies are permitted to publicize their products to employees;
  - all rights under the contracts and custodial accounts are enforceable only by the participant; and
  - the employer receives no direct or indirect consideration or compensation other than reasonable compensation to cover the expenses of administering the salary reduction agreements.

You should confer with your tax or legal advisor to determine if any of these exclusions apply to your plan.

What are the filing requirements?

403(b) plans subject to ERISA are required to file Form 5500 annually. For plan years beginning prior to January 1, 2009, only Part I and Part II, lines 1 through 5, and line 8 of the Form 5500 were required to be completed. However, for plan years beginning on or after January 1, 2009, 403(b) plans subject to ERISA have the same filing requirements, including schedules and financial audit, as qualified 401(a) and 401(k) plans.

In addition, large 403(b) plans (generally those with 100 or more eligible participants at the beginning of the plan year) are required to attach audited financial statements to the Form 5500.
Small plans (generally less than 100 eligible participants at the beginning of the plan year) may qualify for an exemption if the plan meets certain conditions set forth by the Small Pension Plan Audit Waiver (SPPAW) under the DOL. This exemption allows a plan to use an abbreviated Form 5500 and the plan administrator is not required to attach audited financial statements.

**What are the audit requirements?**

Large plans (generally those with 100 or more eligible participants at the beginning of the plan year) are required to have their financial statements audited by an independent auditor for plan years beginning on or after January 1, 2009.

The audited financial statements are required to include a comparative Statement of Net Assets (the balance sheet) but do not require comparative Statement of Changes in Net Assets (the income statement). Additionally, the complete audited financial statements should also include the auditors’ opinion and any applicable footnotes to the financial statements.

As part of the audit, your auditors will need to assess the reasonableness of the beginning balances. The 2009 beginning asset balance represents the accumulation of the plan’s historical activity since inception. Auditors will generally gather and review evidence to support the completeness and accuracy of the beginning balance. Although approaches to review your plan may vary between audit firms, most will include a combination of analytical procedures and testing of participant transactions. In their evaluation, the auditors typically seek assurance that: a plan generally operated in accordance with its terms, participants were properly included or excluded, distributions occurred for valid reasons and for the proper amount, and all assets were captured.

You should ensure that you have: established internal policies, procedures and controls for administering your plan; verified that your written plan document requirements have been met; and selected an independent qualified auditor to review your participant records (including former employees) and verify the records are complete and accessible.

The DOL provides guidance on selecting an independent qualified auditor on their website which can be found at [http://www.dol.gov/ebsa/publications/selectinganauditor.html](http://www.dol.gov/ebsa/publications/selectinganauditor.html).

The 403(b) Plan Sponsor Resource Center of the AICPA’s Employee Benefit Plan Audit Quality Center also has helpful information on audit quality and auditor selection. The website can be found at [http://www.aicpa.org/InterestAreas/EmployeeBenefitPlanAuditQuality/Resources/PlanSponsorResourceCenter/Pages/default.aspx](http://www.aicpa.org/InterestAreas/EmployeeBenefitPlanAuditQuality/Resources/PlanSponsorResourceCenter/Pages/default.aspx).

**Are there additional requirements?**

**Summary Annual Report**

For plan years beginning on or after January 1, 2009, 403(b) plans are also required to provide a Summary Annual Report (SAR) to plan participants and beneficiaries. The SAR summarizes the information reported on Form 5500 and is required to be distributed by no later than nine months following the end of the plan year or two months following the end of the extended filing due date.

**Electronic Filing**

Effective with plan years beginning on or after January 1, 2009, electronic filing is mandatory using the computerized ERISA Filing Acceptance System (EFAST). Paper filings are no longer permitted and will be rejected from processing. For more information regarding the DOL requirements go to [http://www.efast.dol.gov/](http://www.efast.dol.gov/).
When is the Form 5500 due?

Form 5500 reports are required to be filed for each applicable plan no later than the last day of the seventh month following the end of the plan year. For example, if a plan year ends December 31, 2014, the filing deadline for your 2014 Form 5500 is on or before July 31, 2015. If the filing date falls on a weekend or national holiday, the date will be extended to the next business day. The Form 5500 Filing Calendar by Plan Year has been provided for your reference below.

If you are not able to file by the deadline, an extension of time (up to 2½ months) to file may be obtained by filing Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, with the IRS on or before the regular filing due date. Other types of extensions may be available under limited circumstances.

### Form 5500 Filing Calendar by Plan Year

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Where should you file Form 5500?

For plan years beginning prior to January 1, 2009, the completed Form 5500 should be filed with the DOL Employee Benefits Security Administration as specified in the Form 5500 instructions under Where to File.

Refer to the DOL’s website [http://www.dol.gov](http://www.dol.gov) for more information about obtaining the required forms and instructions, or call the IRS directly at 800 829-3676.

How do we help you with your Form 5500?

The Compliance tab on TIAA-CREF’s secure PlanFocus website brings together the tools, resources and information you need to work through your plan financial reporting, audit and filing responsibilities. Use them on your own or in conjunction with any plan advisor or Form 5500 preparer you may be using. A link to your year-end plan financial report package, which includes up to 40 reports, is provided via email and is also accessible through PlanFocus at any time.
Plan sponsors who prefer additional support may elect to use our **Form 5500 Preparation Service**. Offered in collaboration with Deloitte,* the service increases your efficiency and helps you manage your risk in meeting Form 5500 and related reporting obligations:

- Preparation of Forms 5500/5500-SF and Form 8955-SSA with all applicable schedules
- Automatic completion and filing of Form 5558 extensions
- Summary Annual Report (SAR) Preparation
- Assistance with electronic filing of Form 5500 and Form 8955-SSA
- Aggregation of multiple service providers' data onto Form 5500 and appropriate schedules (if applicable)

The service is available on its own or bundled with our Nondiscrimination Testing Service. If you have any questions regarding the Form 5500 materials, please contact our Administrator Telephone Center at 888 TIAA-SRVC (888 842-7782).

SPDs and SMMs for 403(b) plans subject to ERISA

One of the documents participants are entitled to receive automatically when becoming a participant in an ERISA-covered 403(b) retirement plan or a beneficiary receiving benefits under such a plan is a summary of the plan, called the Summary Plan Description (SPD). The plan administrator is legally obligated to provide the SPD to participants when they first become eligible for the plan, on request, and to all participants and beneficiaries receiving benefits under the plan at least once every five years.

The SPD tells participants, in basic terms, what the plan provides and how it operates. For example it explains things like:

- when an employee can begin to participate in the plan,
- when benefits become vested,
- how long participants can be away from their jobs before it might affect their benefits, and
- whether their spouses have rights to part of their pensions in the event of their deaths.

If a plan term that is required to be in the SPD is modified, participants must be informed either through a revised SPD or in a separate document called a Summary of Material Modifications (SMM). If a revised SPD is not provided, then an SMM, which summarizes only the plan amendments, must be provided to participants and beneficiaries receiving benefits under the plan within 210 days of the end of the plan year in which the plan was amended. Even if SMMs have been provided in the interim, a new SPD must be provided to participants and beneficiaries receiving benefits under the plan at least once every five years.

The final 403(b) regulations only imposed a written plan requirement. They did not change the requirements for SPDs or SMMs. To the extent a plan is not subject to ERISA, no SPD or SMM is required.
Fiduciary responsibility

How sponsors and administrators of 403(b) plans can meet their fiduciary obligations

ERISA provides that a person or entity is a fiduciary of an employee benefit plan, including a 403(b) plan that is subject to ERISA, if that person or entity:

- Exercises any discretionary authority or control over the management of the plan or its assets;
- Provides investment advice for a fee; or
- Has discretionary authority for administering the plan.

An ERISA plan fiduciary must:

- Act solely in the interest of plan participants and their beneficiaries for the exclusive purpose of providing plan benefits while defraying reasonable plan expenses (“Exclusive Benefit” rule);
- Act prudently using the care and skill that a comparable fiduciary of a comparable plan would use under similar circumstances (“Prudence Rule”);
- Diversify plan investments to minimize large losses (“Diversification”); and
- Administer the plan in accordance with the plan documents unless those documents are inconsistent with ERISA requirements.

In meeting these responsibilities, one of the key requirements is that plan fiduciaries must be prudent in selecting and monitoring funding vehicles for plan assets. Fiduciaries who fail to satisfy these requirements can be held personally liable for participants’ investment losses.

How TIAA-CREF helps

Prudence in selecting and monitoring investment options for plan assets is a key fiduciary requirement. We provide information and resources that help you manage and mitigate these responsibilities through the implementation of fiduciary processes that maximize participant outcomes. This support allows you to meet fiduciary responsibilities on your own or in collaboration with a third-party advisor. We also offer the option of using Ibbotson Associates as an independent fiduciary to assist you and any plan advisor you may be using with investment menu selection and monitoring.

Support in understanding and managing additional fiduciary responsibilities is available via your Relationship Manager, the Administrator Telephone Center and through the Compliance section of our secure PlanFocus website. As always, we recommend that you consult with your legal counsel and any plan advisor you may be using to ensure all your responsibilities are managed.

Section 404(c)

Section 404(c) of ERISA provides that fiduciaries of defined contribution plans can be relieved of some of their potential fiduciary liability for participants’ investment losses if certain conditions are met. Specifically, if the DOL 404(c) regulation is followed, an ERISA plan fiduciary will not be liable for the investment elections made by plan participants but will still be responsible for exercising prudence in the selection and monitoring of the investment products offered under the plan. Not all courts agree with DOL on this and some of them treat ERISA section 404(c) as a complete defense to fiduciary liability for participant investment choices.
Compliance with the ERISA section 404(c) regulation is voluntary. For those plan sponsors who want to comply, there are four standards that must be met:

1. Participants must be free to allocate assets in their plan accounts among a broad range of investment alternatives, including at least three core diversified investment options with materially different risk and return characteristics.

2. Each core investment alternative offered must provide a sufficient amount of internal diversification (e.g., a stock account must hold stock in a wide range of companies).

3. Participants must be able to transfer funds among the investment alternatives with a frequency “appropriate” to the market volatility and risk of each alternative. Transfers among the three core investment alternatives must be permitted at least once a quarter.

4. Participants must be provided with sufficient information to enable them to make informed investment decisions.

Additional investment options: A plan that provides participants with at least three qualifying core investment options can qualify for ERISA section 404(c) protection regardless of how many additional investment alternatives it offers. The plan can even continue to enjoy 404(c) protection if some of the additional investment alternatives do not meet the four standards listed above. Note that the liquidity restrictions applicable to the TIAA Traditional Annuity under some contracts prevent TIAA Traditional from being a “core” investment alternative. However, because participants invested in TIAA Traditional cannot lose interest or principal, the volatility requirement, described in 3 above, is arguably met and section 404(c) protection for the TIAA Traditional arguably will apply.*

Qualified Default Investment Alternatives (QDIAs)

The Pension Protection Act (PPA) amended ERISA section 404(c) to provide relief for plan fiduciaries who, in the absence of affirmative investment instructions, invest participant plan assets in a Qualified Default Investment Alternative (QDIA). The DOL issued a final regulation implementing this provision that was effective on December 24, 2007.

Under the final regulation, a plan fiduciary who invests the assets of participants who have not given affirmative investment directions in a QDIA will generally not be liable for any investment losses of participants and beneficiaries if the participants are provided with advance notice of the circumstances under which investments in QDIAs will be made, the QDIAs’ investment objectives and their right to move assets out of the QDIAs.

In order to receive QDIA protection, the plan sponsor is required to:

- Adopt an acceptable QDIA and provide ongoing monitoring of the QDIA
- Provide the initial QDIA notice to existing participants and beneficiaries
- Provide the ongoing initial notice to new employees at least 30 days in advance of a participant’s date of plan eligibility, or first investment in a QDIA, or on or before the date of plan eligibility (if the participant has the opportunity to make a permissible withdrawal as determined under section 414(w) of the Code under an Auto Enroll provision).
- Provide the annual QDIA notice to participants and beneficiaries at least 30 days before the start of each plan year.

*All guarantees issued under TIAA Traditional are based upon TIAA’s claims-paying ability.
Under the regulation, QDIAs include:

- lifecycle funds
- certain balanced funds
- certain managed accounts that act like lifecycle funds.

In addition, there is limited QDIA treatment for:

- money market funds for 120 days after the first contribution, provided the plan is an
  - auto-enrollment plan and the amounts defaulted into money market are moved
to a QDIA
  - described in the bullets above when the 120-day period expires
- stable value funds for investments made prior to December 24, 2007 (the effective date
  of the final QDIA regulation).

**QDIA and Auto Enroll participant notices**

Written notices must be provided to participants by plan sponsors who offer a qualified
default investment alternative (QDIA) for their ERISA governed plan and/or Auto Enroll as
described below. The notice must contain a description of the circumstances in which
default investments will be made; the participant’s right to direct the investments; a
description of the QDIA, if applicable, including a description of the investment objectives,
risk and return characteristics, and fees and expenses; the transfer rights from the QDIA to
other plan investment alternatives; and where the participant may obtain information about
the plan’s other investment alternatives.

TIAA-CREF has prepared sample participant notices designed to meet the final QDIA and
Auto Enroll notice requirements. These notices are available for download on our secure
PlanFocus website. The notices should be reviewed with your legal counsel and modified to
conform to your retirement plan’s provisions.

**QDIA notices**

There are four components that comprise the QDIA package to support your QDIA initial and
annual notification requirements:

1. **Initial QDIA notice**—Plan sponsors must provide this notice to new hires at least 30 days
   in advance of a participant’s date of plan eligibility, or first investment in a QDIA, or on or
   before the date of plan eligibility (if the participant has the opportunity to make a
   permissible withdrawal as determined under section 414(w) of the Code under an Auto
   Enroll provision).

2. **Annual QDIA notice**—Plan sponsors must provide this notice to all eligible employees 30
days before the beginning of each plan year. However, if the plan offers Automatic
Enrollment with a QDIA, the requirement is 30, but not more than 90 days before the
beginning of each plan year.

3. **QDIA TIAA-CREF Lifecycle Funds Fact Sheet**—Administrators must provide this to all
eligible employees with the Initial and Annual QDIA Notices. This fact sheet is not
required if the plan offers Auto Enroll only without a QDIA.

4. **Cover Letter**—Customizable template for plan sponsors

5. **Foreign Address Participant Notice**—Customizable template for Plan sponsors. Use only
if the participant’s address falls under the foreign address guidelines.
Auto Enroll notices

Initial Auto Enroll notice—Should be provided no later than the date of hire or as soon as practicable before first automatic contribution into the plan.

Annual Auto Enroll notice—Should be distributed 30 to 90 days prior to the beginning of each plan year.

For plans with automatic enrollment only:
- Initial notice auto enrollment
- Annual notice auto enrollment
- Cover letter

Advice

ERISA places limits on the provision of investment advice to participants and beneficiaries of employer-sponsored defined contribution plans by fund sponsors (such as TIAA-CREF) with regard to their own investment offerings.

Prior to the PPA, the DOL issued guidance permitting the provision of advice by fund companies. DOL Advisory Opinion 2001-09A, also known as the Sun America opinion, granted that a fund company may provide advice and managed allocation services with respect to its own fund offerings, as long as it relies on an independent financial advisor to actually provide the investment allocations under its program. In addition, the DOL issued Interpretive Bulletin 96-1 in which it identified categories of investment-related information and materials that do not constitute investment advice (the so-called “Investment Education IB”). The DOL also issued several advisory opinions that permitted a fund company to provide participant advice on its own funds provided the fees charged for advice and the underlying investments were the same.

The PPA created two additional exemptions for companies that charge fees to provide advice. The exemptions are:

1. a compensation-based exemption; and
2. a computer-based model exemption.
The DOL issued a final regulation implementing these provisions in October of 2011. The final regulation does not disturb any DOL guidance on advice and advisory services issued prior to the PPA, including the DOL’s Sun America opinion, other advisory opinion letters such as the so-called Frost Bank opinion (which requires complete fee leveling) and PTCEs 77-4, 84-24 and 86-128. As a result, a participant advice provider relying on such prior guidance can continue to do so. For its participant advice program, TIAA currently relies on Sun America with Ibbotson as its third-party expert and also, for certain of its advisory programs, on PTCE 77-4, which requires certain fee offsets and disclosures. Under the final regulation, TIAA can continue to rely on this past DOL guidance.

How TIAA-CREF helps

If you agree to use TIAA’s participant advice service, your employees will be provided with personalized fund-level recommendations on plan assets which they can access online, by phone or in person. Beyond the plan, we offer customized one-on-one financial planning, portfolio management and advisor services to help employees with more sophisticated investment requirements and lifetime planning needs. Over two-thirds of those receiving TIAA-CREF’s personalized advice chose to save more, adjust their portfolio allocation or rebalance.*

Participants can:

- Find answers to retirement questions at our Advice & Guidance Center, an online “one-stop shop” for financial information with a range of articles, information and webinars tailored to user lifestages.
- Manage savings with our online Retirement Advisor tool,** a simple but powerful service that can create a customized plan that helps determine if savings will support retirement goals.
- Help maximize retirement income with our Retirement Income Planner, a service that can analyze current financial assets, estimate future monthly retirement income and determine ways to help maximize it.
- Help optimize retirement savings with one-on-one financial advice—personal, one-on-one financial advice sessions designed to help participants get answers to financial questions and determine if they’re on track to meeting their financial goals.

* Source: TIAA-CREF Advice analysis of 66,617 TIAA-CREF participants who received retirement plan advice or guidance and took action in the 12 months ending 3/31/2015. The overall action rate of 71% includes 20.5% who chose to save more and 61.5% who chose to change their future allocations and/or rebalance their portfolio.

** Retirement Advisor is a third-party advice tool utilizing advice methodology by Ibbotson Associates, Inc. The advice may vary over time and with each use. IMPORTANT: Projections and other information generated through the Retirement Advisor regarding the likelihood of various investment outcomes are hypothetical, do not reflect actual investment results and are not a guarantee of future results. The projections are dependent in part on subjective assumptions, including the rate of inflation and the rate of return for different asset classes. These rates are difficult to accurately predict. Changes to the law, financial markets or your personal circumstances can cause substantial deviation from the estimates. This could result in declines in the accounts’ value over short or even extended periods of time.
Governmental and church plans

Governmental and nonelecting church plans are not subject to ERISA, but they are still subject to some federal rules. In addition, many states have their own statutes imposing fiduciary obligations on fiduciaries of retirement and other benefit plans sponsored by organizations located within their jurisdictions. For example, governmental and most nonelecting church plans must:

- Provide participants and beneficiaries with Form 1099-Rs when they take plan distributions or make rollovers
- Put their plan terms in writing
- Comply with minimum distribution requirements
- Provide a notice to participants requesting plan distributions that are eligible for rollover, that informs them of the rollover, withholding and tax rules that apply to the distributions
- Monitor and enforce the contribution limits of Sections 415 and 402(g) of the Internal Revenue Code
- Apply the Section 401(a)(17) compensation limit when calculating employer contributions, although Grandfather rules generally apply to employees hired prior to 1996 (does not apply to church plans)

A note about qualified and nonqualified church-controlled organizations

When determining which rules your organization is subject to, be careful to note the difference in applicability between qualified church-controlled organizations (QCCOs, sometimes referred to as “steeple church” plans) and organizations affiliated with churches but that do not qualify as QCCOs (non-QCCOs).

Congress carved out an exception to the definition of QCCOs for certain church-affiliated organizations, such as universities, hospitals and nursing homes. These non-QCCOs are not subject to the requirements of ERISA (unless the organization affirmatively elects ERISA coverage), but they are subject to the IRC nondiscrimination rules and to FICA taxation. In addition, these organizations must have adopted written 403(b) plans by January 1, 2009.

For plans subject to ERISA, state law requirements are generally pre-empted by ERISA. But governmental and other non-ERISA plans are subject to state law requirements which vary somewhat from state to state. Administrators of governmental and church plans should consult their own legal advisors to determine which state law requirements apply to their plan.

A governmental plan is a plan established by the U.S. government, the government of any state or any political subdivision of a state such as a county or city, or any agency or instrumentality of the U.S. government, a state government or a state subdivision.

Automatic enrollment plans—IRS regulations

The Pension Protection Act (PPA) contained provisions designed to encourage employers to maintain automatic enrollment plans that enable employee elective deferrals to be made at a specified rate unless the employee elects otherwise. These PPA provisions include the fiduciary relief provided under the Qualified Default Investment Alternative (QDIA) provisions (discussed earlier in the Fiduciary Liability section), a new design-based safe harbor for meeting certain nondiscrimination tests for ERISA plans (discussed below), and an “opt out” provision that allows employees who have been defaulted into an automatic enrollment plan to withdraw their defaulted contributions within ninety (90) days (also discussed below).
Final regulations on automatic enrollment plans were issued by the IRS and Treasury in February 2009. The regulations cover:

- the PPA’s design-based safe harbor for meeting the Actual Deferral Percentage (ADP) nondiscrimination test applicable to IRC section 401(k) plans, and the Actual Contribution Percentage (ACP) nondiscrimination test applicable to matching contributions to both 401(k) and 403(b) plans;
- the IRC section 414(w) provisions permitting automatic enrollment plans to provide that participants may elect, during the first ninety (90) days of participation, to receive a distribution of automatic elective contributions made on their behalf;
- applicable participant notices; and
- changes in the rules governing the return of excess contributions.

The design-based safe harbor is called a Qualified Automatic Contribution Arrangement (QACA) and it is in addition to the safe harbor for meeting the ADP and ACP tests that were in place prior to the PPA.

To be a QACA, the plan must provide a schedule of automatic contributions with an initial qualified percentage of 3% of compensation during the first year of the employee’s automatic enrollment (a period that begins when the employee first participates in the automatic contribution arrangement and ends on the last day of the following plan year) and increases of 1% in each of the subsequent three years. Higher contribution percentages can be provided for under the QACA, but they cannot ever exceed 10% of compensation. The employer must also make either

- a non-elective contribution of 3% of compensation
- or
- a matching contribution of 100% of employee contributions up to 1% of pay plus 50% of elective deferrals in excess of 1% up to 6% of compensation.

Employer contributions must vest in two years.

**Participant notices**—Written notices must be provided to participants by the plan sponsor upon their enrollment in the plan, and then annually thereafter, generally 30 to 90 days before the beginning of each plan year, and must contain all of the information required under the pre-PPA safe harbor. They must also disclose the employee’s right not to have elective deferrals made or to be made at a different percentage, and how contributions will be invested in the absence of any employee investment decision. Employees about to become eligible for plans using automatic enrollment generally must be sent a notice at least 30 days prior to their eligibility date informing them that they will be enrolled in the plan automatically unless they elect to opt out.

IRC 414(w), added by the PPA, provides relief from the distribution restrictions for 401(k), 403(b) and governmental 457(b) auto enrollment plans. Participants may elect, in the first ninety (90) days of participation, to withdraw the automatic contributions made on their behalf (plus income or less losses). The distribution is taxable in the year it is made, but is not subject to mandatory withholding or early withdrawal penalty. In order for a plan to provide for the opt-out provision, the plan must have an Eligible Automatic Contribution Arrangement (EACA). However, plans do not have to provide for opt-out withdrawals.

An EACA is an arrangement under which:

- the participant may have the employer make contributions to the plan or pay the participant directly in cash;
- the participant is treated as having elected to make plan contributions until he or she specifically elects not to or elects a different percentage;
- participants are provided with advance written notice.
Written notices must generally be given 30 to 90 days before each plan year and must contain:

- the information in the existing safe harbor;
- the level of elective contributions made in the absence of an affirmative election;
- the right to elect not to have elective contributions made or made at a different percentage;
- how contributions will be invested in the absence of affirmative investment decisions; and
- the right to make permissive withdrawals and the procedures to elect such a withdrawal.

In addition to the foregoing, the regulations provide that EACAs have six months after the close of each plan year (instead of 2½ months) to return to participants any excess contributions (contributions that fail the ADP test) and excess aggregate contributions (contributions that fail the ACP test). Plans no longer have to pay “gap” period income on such contributions, and the distributions for all plans are taxed in the year distributed (without regard to the amount).

**NOTE:** Public employers do not receive the protections afforded by the PPA in relation to plans with auto-enrollment features. In order to properly adopt such a plan, appropriate state legislation or legal counsel approval is needed to ensure there is no violation of state wage laws by taking elective deferrals out of employees’ paychecks without required authorization.

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**How TIAA-CREF helps**

We have prepared sample participant notices designed to meet the DOL’s final QDIA notice requirements. These notices are based on sample notices provided by the IRS for meeting the notice requirements applicable to automatic enrollment plans.

TIAA-CREF also offers participant notices based on IRS samples that can be used to help meet QACA and EACA requirements. You just need to modify the notices to the extent that your plan’s provisions differ from those of the sample.

Our comprehensive employee communication and education program also provides other required employee notifications (e.g., 402(f) tax notices, retirement equity act notices and a relative value disclosure illustration) and to ensure your employees get the information and advice they need to effectively manage their retirement accounts.

TIAA-CREF also offers an automatic enrollment service that enables you to automatically enroll eligible employees into a voluntary or voluntary match plan at a predetermined deferral rate set by the plan. The service is designed to help increase participation rates and to help employees begin building their retirement savings. Auto enrollment may be offered with or without an opt-out withdrawal provision. This is a period, typically within 30 to 90 days of when the first contribution was sent to TIAA-CREF, during which participants can elect to discontinue participation in the plan and receive a refund of their accumulations. Auto enrollment automatically gets your employees enrolled, unless they opt out. It streamlines plan administration and may help with nondiscrimination testing requirements, if applicable.

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**ERISA section 408(b)(2) service and fee disclosures for plan fiduciaries**

The Department of Labor requires that covered service providers must provide ERISA plan fiduciaries with disclosures concerning the services provided to their plans and the fees their plans pay for those services.
Plan fiduciaries are required to review the disclosures, and are responsible for ongoing monitoring of service providers to ensure the services provided to the plan are necessary and the cost of those services is reasonable based on the type and quality of services provided. This responsibility goes beyond simply reading service provider agreements. It requires having a formal governance process in place and documentation of any actions taken as a result of the assessment.

How TIAA-CREF helps

TIAA-CREF is committed to helping retirement plan sponsors understand and evaluate plan fees in order to meet their regulatory and fiduciary responsibilities. As part of that commitment, TIAA-CREF provides clear and concise information about fees and expenses charged in exchange for services provided so that plan sponsors can better understand their plan costs.

TIAA-CREF met the DOL requirement by providing all of its ERISA plan sponsors with an initial Service and Fee Disclosure Package by July 1, 2012. This package included an explanation of the plan's products and services and related TIAA-CREF compensation and an Investment Fee & Expense Disclosure Report. We now provide a similar notice to new clients.

Any changes to the compensation TIAA-CREF initially provided will be disclosed as soon as practicable, but no later than 60 days after the change is determined. In addition, any changes to the investment-related information must be disclosed every year and TIAA-CREF provides this information as part of the Investment Fee and Expense Disclosure Report, one of the four fee disclosure reports included in the annual Plan Financial Reporting package.

TIAA-CREF offers an extensive library of fiduciary and compliance tools and resources to help you manage your fee disclosure responsibilities and assess the reasonableness of your fees. You can find these and others in the Compliance section of the secure PlanFocus website:

- Deciding what is reasonable: Assessing fees using value and outcomes
  Make reasonably informed and knowledgeable assessments about fees by following a four-step framework that uses the key parameters of Who, What, How and Why.

- Checklist
  Four questions to guide your fee evaluation process

- Plan sponsor checklist
  This checklist can help assess your retirement plan service and fee disclosure(s) and identify any actions you may need to take to fulfill your fiduciary responsibilities.

- Plan Financial Reporting Package
  Includes four fee disclosure reports to help plan fiduciaries understand, evaluate and manage plan fees and comply with annual reporting requirements:
  1. Summary of Fee and Compensation for Your Plan
  2. Investment Fee and Expense Disclosure
  3. Direct Fees Paid from Plan Assets
  4. Service Provider Summary

- Plan Sponsor Reporting and Audit Guide, A comprehensive resource for meeting annual reporting and fee disclosure requirements
  This guide provides the information needed to support standard plan financial reporting, details on the DOL fee disclosure regulation, associated plan sponsor responsibilities and how TIAA-CREF helps plan fiduciaries meet their responsibilities.

Note: TIAA-CREF cannot and does not offer legal advice and we recommend that you consult with your own legal advisors for such advice.
DOL section 404a-5 regulation on participant fee disclosures

The participant disclosure regulations issued by the DOL are designed to ensure that employees and beneficiaries eligible to participate in participant-directed individual account plans are provided with enough information regarding the plan, designated investment options, fees and expenses to effectively manage their individual plan accounts.

Plan sponsors of covered plans must provide their plan participants, eligible employees and beneficiaries with an Investment Comparative Chart and Plan-Related Information. Together, these disclosures provide information on designated investment options, as well as fees and expenses, so that participants can make informed decisions. This information must be provided to the participant on or before the participant becomes eligible to direct investments under the plan.

The regulation also requires an annual participant fee disclosure, as well as quarterly statements that disclose any specific charges to a participant’s account. In addition, changes to plan-related information must be communicated at least 30, but no more than 90, days in advance.

How TIAA-CREF helps

As part of its initiative to help ERISA plan sponsors comply with the DOL’s ongoing participant fee disclosure regulations, fiduciaries must provide certain plan and investment-related information to participants on an annual basis. TIAA-CREF offers Disclosure Assist, a flexible online tool that helps you streamline the creation and distribution of your participant disclosures, facilitate regulatory compliance, simplify administration and manage fiduciary risk. Through Disclosure Assist we provide the information you need to provide a Plan and Investment Notice which includes two sections.

I: Summary of Plan Services and Costs · This section provides important information to assist participants in making decisions related to their participation in your retirement plan. It outlines the services available under the plan, explains their rights to select the investments in their account, and explains administrative and individual fees and expenses.

II: Investment Options Comparative Chart · This section includes comprehensive data about each of the plan’s investment options, including long-term performance and expenses, comparable benchmark performance, shareholder-type fees, expense charges and investment restrictions.

Use Disclosure Assist to:

- Access disclosure documents for all of your TIAA-CREF recordkept plans subject to ERISA
- Aggregate other service provider information to create consolidated disclosure notices
- Coordinate the distribution of the disclosures to participants, eligible employees and beneficiaries

In addition, TIAA-CREF provides quarterly statements to participants that include transaction details related to any fee deductions from a participant’s account and a description of the deduction.

We round out our offer with a variety of communication templates and educational information you can share with your participants to help educate them about fees and the regulations.
Additional resources

For your reference
Information and supporting materials from TIAA-CREF on the Final 403(b) regulations, 90-24
Transfers and further guidance from the IRS.

FAQs
This section of the Guide is intended to provide administrators of 403(b) plans with answers to questions they are likely to have about the regulations and their implications for their plans.

Glossary
Descriptions for the various terms that appear in the Guide.
For your reference

History of the final 403(b) Regulations
On July 23, 2007, the IRS issued final regulations under Section 403(b) of the Internal Revenue Code that were issued in proposed form on November 15, 2004. These final 403(b) regulations replaced the original regulations that were issued in 1964 and apply to all 403(b) plans, at least in part, including government, church and non-ERISA deferral-only 403(b) plans. The new regulations generally apply in taxable years beginning after December 31, 2008.

Subsequently, in Notice 2009-3, the IRS extended to December 31, 2009, the effective date of the requirement that 403(b) plan sponsors have a written plan document (or a series of documents that function as a plan document) that outlines the terms of the plan and investment provider responsibilities. Please note, however, that the IRS did not extend the effective date of the regulations or other deadlines for operational compliance with the final 403(b) regulations.

Simultaneously, the IRS posted a new home page on their website that provides links not only to the final 403(b) regulations and the IRS’s own summary and presentations on them, but also links to a wide range of other IRS publications for 403(b) plans.

The Department of Labor also issued a Field Advisory Bulletin, DOL FAB 2007-02, providing guidance on how the regulations affect the exemption from ERISA for certain deferral-only 403(b) plans.

Information on 90-24 Transfers
The final 403(b) regulations were, for most purposes, effective on January 1, 2009. However, beginning on or after September 25, 2007, the final 403(b) regulations provide that Revenue Ruling 90-24 has been repealed. The regulations further provide that transfers from a 403(b) contract issued by a vendor approved under the plan to an unapproved vendor’s 403(b) contract are not permitted unless the unapproved 403(b) vendor enters into an Information Sharing Agreement with the 403(b) plan sponsor by January 1, 2009.

Further guidance from the IRS
On November 27, 2007, the Internal Revenue Service released Revenue Procedure 2007-71, effective on December 31, 2007, which contains guidance for implementing the required changes.

The guidance focused primarily on two subjects:

1. Transitional rules for contracts issued prior to the regulations’ effective date (January 1, 2009), including contract exchanges with vendors not authorized to accept contributions under the plan.

2. Model plan document language for salary deferral plans for public schools—The final 403(b) regulations and Revenue Procedure 2009-3 generally require all 403(b) plans (including governmental plans) to have written plan documents in place by December 31, 2009.
FAQs

This section of the Guide is intended to provide 403(b) plan sponsors with answers to questions about the regulations and implications for their plans. To make it easier to locate the answers to your questions, we have organized the FAQs by topic.

Types of plans affected by the 403(b) regulations

Q. Are all 403(b) plans affected by the final regulations?

A. For the most part, the final regulations, like the ones that they replaced, apply to most 403(b) plans. The primary impact is that 403(b) plan sponsors are required to put their plans in writing.

Q. How do I know if my 403(b) plan is subject to ERISA?

A. If you are a governmental plan, your 403(b) plan is not subject to ERISA regardless of the types of contributions made to the plan. A deferral-only 403(b) plan sponsored by a private, tax-exempt employer may also be exempt from ERISA, but only if it satisfies DOL safe harbor requirements and you do not make any discretionary determinations either in form or in operation. If your deferral-only 403(b) safe harbor plan permits hardship distributions, you may want to ensure that one of the plan’s vendors does the determinations for you, to avoid making your plan subject to ERISA.

Q. What are the DOL safe harbor requirements for a deferral-only 403(b) plan to be exempt from ERISA?

A. According to Field Assistance Bulletin FAB 2007-02 issued by the DOL immediately following the release of the final 403(b) regulations, and further clarified by DOL FAB 2010-01, deferral-only 403(b) plans can still be exempt from ERISA even though they must now satisfy written plan requirements, if the following conditions are met:

- Participation of employees in the plan is completely voluntary.
- All rights under the annuity contract or custodial account are enforceable solely by the employee or beneficiary of such employee.
- Involvement of the employer is limited to certain optional specified activities.
- The employer receives no direct or indirect consideration or compensation, other than reimbursement of expenses.

Subsequent guidance on this issue, in FAB 2010-01, indicated that:

- Subject to some exceptions, the plan sponsor must offer a reasonable choice of both 403(b) vendors and investment products.
- An employer may not have the right to unilaterally move funds from one 403(b) investment to another 403(b) investment.
- An employer may make optional plan features available, such as loans and hardships, provided the vendor is responsible for any discretionary determinations.
- An employer sponsoring a safe harbor arrangement may not hire a third-party administrator (TPA) to make discretionary decisions under the plan, as the hiring of a TPA is a discretionary decision. However, the 403(b) plan documents can allocate discretionary determinations to the annuity provider or other responsible third-party selected by a person other than the employer.
According to the FABs, compliance with these safe harbor requirements will be determined on a case-by-case basis. In administering a deferral-only 403(b) plan, however, the employer cannot make (or have responsibility for) discretionary determinations (such as determining hardship distributions) and still retain the plan’s non-ERISA status. An employer can, however, continue to perform ministerial tasks such as monitoring contribution limits and can limit the funding vehicles to a reasonable choice without jeopardizing the plan’s non-ERISA status.

Q. Is it still worthwhile to keep my deferral-only 403(b) plan exempt from ERISA if I have met plan document requirements anyway?

A. Non-ERISA 403(b) plans do not currently have to file Form 5500 each year. Since ERISA 403(b) plans are subject to all of the filing and auditing requirements that currently apply only to qualified plans, this exemption is an important advantage. Sponsors and administrators of a non-ERISA 403(b) plan are not subject to ERISA’s fiduciary requirements. And it is ERISA that requires a participant’s spouse to receive a 50% share of the participant’s account unless they sign a spousal waiver.

On the other hand, it is easy to unintentionally become subject to ERISA by becoming too involved in administering the plan. And if the DOL determines that your plan was actually subject to ERISA in prior years and you did not file a Form 5500 or meet other ERISA requirements in those years, you may be subject to penalties and perhaps claims from spouses of participants who benefit in a form other than a joint and survivor annuity.

Types of institutions eligible to sponsor a 403(b) plan

Q. Did the regulations make any changes in the eligibility rules for establishing a 403(b) plan?

A. No. Any employer can generally set up a qualified retirement plan, although government employers are not currently permitted to set up new 401(k) plans. The four types of employers that are permitted to sponsor a 403(b) plan are:

1. Public education organizations such as public elementary and high schools, boards of education, and state colleges and universities
2. 501(c)(3) nonprofit organizations such as private schools, research facilities, private hospitals, charities, social welfare agencies, healthcare organizations and religious institutions
3. Grandfathered Indian tribal governments
4. Certain religious ministers of a church or related religious organization

Q. What regulatory requirements apply to 403(b) plans?

A. 403(b) plans are subject to the Internal Revenue Code, and many are subject to the Employee Retirement Income Security Act (ERISA) and Department of Labor requirements. The basic regulatory requirements are listed in the Basic Compliance Requirements chart. Special exemptions from some of these regulatory requirements are available to plans sponsored by certain types of employers:

- A governmental plan
- A non-electing church plan*

*A church must make a valid IRC section 410(d) election for the 403(b) plan to be subject to ERISA.
A deferral-only 403(b) plan exempt from ERISA under DOL regulation 2510.3-2(f), that satisfies narrowly drawn exceptions including:

- participation is completely voluntary;
- employer involvement is sufficiently limited to, among other matters, collecting and remitting payments as required by the Salary Deferral Agreements, and limiting funding choices available to employees to a number and selection designed to provide a reasonable choice;
- the annuity companies are permitted to publicize their products to employees
- all rights under the contracts are enforceable only by the participant or beneficiary, and
- the employer is not compensated for performing duties in connection with the salary deferral agreements.

Even plans that are exempt from some federal regulatory requirements are subject to many requirements, including the following:

- All 403(b) plans must have their plan provisions in writing.
- All 403(b) plans must be operated in compliance with their written provisions.
- All 403(b) plans that permit participants to transfer accumulations to vendors not currently authorized to accept plan contributions must have entered into an Information Sharing Agreement (ISA) before 2009.
- All 403(b) plans that permit any employee to make voluntary elective deferrals must generally make this option available to any employee willing to make contributions of at least $200 a year. (Limited exceptions are permitted for certain categories of employees.)
- All 403(b) plans, other than church plans, must calculate employer contributions based on the compensation limits of Section 401(a)(17) of the Internal Revenue Code, although special grandfather rules are generally available to employees who became participants in public plans prior to 1996.
- Contributions to all 403(b) plans are subject to the limits of Sections 402(g) and 415 of the Internal Revenue Code.

Q. Who is eligible to participate in a 403(b) plan?

A. Only common-law employees of the employer who is sponsoring the 403(b) plan may participate in a 403(b) plan. Generally an individual can be covered by a 403(b) plan only if he or she qualifies as an employee of the plan sponsor for FICA and FUTA purposes. Independent contractors and employees of affiliated organizations are not eligible.

Effective dates of the new regulations

Q. My plan has a non-calendar plan year. Does this affect the effective date of the new regulations for my plan?

A. Generally these regulations were effective January 1, 2009 even for plans with non-calendar plan years, except with regard to the plan document requirement, which was effective on December 31, 2009.

Q. Were all of the provisions effective as of January 1, 2009?

A. There are a few exceptions to the January 1, 2009 effective date:

- The requirement that all 403(b) plans must put plan provisions in writing was effective on December 31, 2009.
- The new restrictions on contract-to-contract transfers to carriers that do not have an approved payroll slot generally apply to any transfers after September 24, 2007.
The repeal of Notice 89-23 nondiscrimination safe harbors for noncontributory 403(b) plans is effective for plan years beginning after December 31, 2008. The repeal of Notice 89-23 also eliminated the provision allowing salary reduction 403(b) deferral plans to exclude certain additional categories of employees, including union employees, but this provision did not apply until January 1, 2010.

The regulations extended the prohibition on in-service withdrawals prior to a distributable event such as severance from employment, disability or attaining age 59½, which formerly only applied to employee contributions to 403(b)(1) annuity contracts and not to employer contributions to such contracts. However, the new withdrawal restriction only applies to employer contributions to 403(b)(1) annuity contracts issued after December 31, 2008.

Transfers, exchanges and rollovers

Q. How do I handle direct transfers to funding vehicles not authorized by the plan?

A. Previously, under IRS Revenue Ruling 90-24, nontaxable direct transfers between 403(b) contracts and custodial accounts were permitted so long as the successor contract or custodial account included distribution restrictions that were the same as or more stringent than the distribution restrictions in the contract or account that was being exchanged. Under the ruling, the contract or account to which the transfer was made did not have to be authorized by the plan.

The final regulations made significant changes in the rules governing how a 403(b) contract or custodial account can be exchanged for another 403(b) annuity contract or custodial account within the same plan or directly transferred to a contract or account under another 403(b) plan.

Q. How do I handle intraplan transfers among approved vendors?

A. The regulations do not impose any new restrictions on transfers by participants in a 403(b) plan among vendors that are currently authorized to receive new plan contributions.

Q. How about transfers of existing accumulations to vendors who are not currently authorized to receive new plan contributions?

A. For transfers after September 24, 2007, IRS Revenue Ruling 90-24 has been repealed, and transfers to or from annuity contracts and custodial accounts offered by vendors that are not currently within a 403(b) plan (also referred to as contract exchanges) are only permitted under the final regulations if the unauthorized fund vendor has entered into an agreement with the employer that is sponsoring the 403(b) plan to share information that is required for tax reporting and compliance purposes. The employer had until January 1, 2009 to establish a written Information Sharing Agreement with the vendor and incorporate the appropriate language into the plan documents.

Q. How about plan-to-plan transfers among 403(b) plans?

A. Under the final regulations, plan-to-plan transfers are permitted for both current and former employees, provided certain conditions are satisfied:

- Both the transferring and receiving plans provide for transfers
- The participant or beneficiary’s accumulated benefit immediately after the transfer at least equals the accumulated benefit immediately before the transfer
• Distribution restrictions after the transfer are at least as stringent as they were immediately prior to the transfer

Because neither a contract exchange nor a plan-to-plan transfer meeting the regulatory requirements is treated as a distribution, exchanges and transfers may be made before severance from employment or another triggering event.

Q. How about transfers to/from non-403(b) plans?

A. The final regulations made it clear that neither a qualified plan nor an eligible governmental 457(b) plan may transfer assets to a 403(b) plan, except by direct rollover. In addition, a 403(b) contract may not be exchanged for an annuity contract that is not a 403(b) contract.

Information Sharing Agreements

Q. Are Information Sharing Agreements required to include current approved vendors?

A. Institutions are not required to enter into an Information Sharing Agreement with an approved vendor. That being said, information still needs to be shared between the approved vendor and the employer to keep the plan in compliance.

Q. Should I have an Information Sharing Agreement with approved vendors even if not required?

A. The regulations assume that you are already sharing information with your plan’s approved vendors, so an Information Sharing Agreement with them, technically speaking, is not required. That doesn’t mean you don’t have to share information. It just means that it doesn’t have to be incorporated into an Information Sharing Agreement. Certainly, you will want to make sure that you are sharing information with all your approved vendors in order to keep your plan in compliance.

If you have a third-party recordkeeper or perhaps a vendor that is providing an information exchange service for you, you don’t necessarily have to be directly involved in sharing information with all of your plan vendors. But the regulations make it clear that the vendors cannot rely just on the information provided by the employees.

Q. If I have a currently approved vendor who is later blocked from the program, must I enter into an Information Sharing Agreement with them after they’re dropped from the plan?

A. This is a question that has been debated with the IRS and among practitioners in this area. We think that the question partly is driven by whether or not you dropped the vendor before or after January 1, 2009. If you dropped the vendor between 2005 and 2009, but you want to allow participants to continue to be able to make transfers to that vendor, you need to get an Information Sharing Agreement. To the extent that transfers are made to an approved vendor that subsequently is dropped, and then you cut off transfers, we think that the right answer is that you shouldn’t need to have an Information Sharing Agreement with that vendor for the transfers already made.

Q. What makes a vendor a vendor?

A. When we refer to a vendor, we refer to an insurance company that issues 403(b)(1) annuity contracts or an investment company that issues 403(b)(7) mutual funds.
Q. How do I select and approve vendors?

A. If your plan is subject to ERISA, you have a fiduciary duty to make a prudent decision that the funding vehicles offered by the vendors are suitable for your retirement plan. And then in terms of this new concept of approved vendors, they must be vendors that are listed in your plan with whom you have a working relationship. If it’s an approved vendor, the IRS has indicated that you don’t need an Information Sharing Agreement with the vendor because you have a relationship that essentially does what the Information Sharing Agreement says you are going to do, which is to share information in a back-and-forth working relationship.

Q. What is a payroll slot vendor?

A. A payroll slot vendor is a term that’s used more in the public school K-12 market. In the public school K-12 market, employers generally have a limited number of what are called payroll slots, i.e., a limited number of vendors to which they can actually send contributions. But employers permit their participants to transfer accumulations from their payroll slot vendors to other unapproved vendors that do not have payroll slots. So a payroll slot vendor is really a vendor that is approved to accept contributions under the plan. TIAA-CREF generally refers to payroll slot vendors as approved vendors.

Q. How do the new Information Sharing Agreement rules impact former employees who are trying to roll over their 403(b)?

A. There are two separate rules for transfers and rollovers. The rollover rules apply to those distributions that are eligible for rollover, which means that a participant is entitled to receive a cash distribution from the retirement plan. Those distributions can be directly rolled over to an IRA the participant chooses or they can be rolled over to another 403(b) plan or a qualified plan of another employer that accepts those rollovers.

Nondiscrimination

Q. My 403(b) plan excludes certain employees from making elective deferrals because they are scheduled to work less than 20 hours per week. What happens if I discover they have worked 1,000 hours in a given year?

A. If, on the date of hire, an employee is expected to work less than 1,000 hours in the year, but they actually end up working more than 1,000 hours for that first year, you’re okay. But you will not be able to exclude an employee under the 20-hour rule if, in fact, they actually worked more than 1,000 hours in any year after the first year.

Q. I have a safe harbor plan and do not have to do the nondiscrimination testing. Will these new regulations require me to start testing?

A. There are a number of safe harbors. There are safe harbor plans for noncontributory (employer-funded) 403(b) plans under Notice 89-23, which are referred to as the disparity safe harbors. If you satisfy one of those, you satisfy all your nondiscrimination testing requirements for years prior to 2009. Those safe harbors were eliminated beginning in 2009. However, other safe harbors are available for contributory plans to satisfy matching test requirements, and those safe harbors continue to apply. They have not been repealed by the final 403(b) regulations.
Contribution limits - 15 year catch-up and age 50+ catch-up

Q. For employees who may be eligible for the 15-year catch-up, am I obligated to determine if they're eligible for that before they utilize the age 50+ catch-up?

A. You don’t have to permit employees to take advantage of the 15-year catch-up. However, if you want to allow the 15-year catch-up, employees have to take advantage of the 15-year catch-up before they use the 50+ catch-up. There is a $15,000 lifetime maximum for the 15-year catch-up. If an individual is contributing less than the allowable maximum, taking into account both the 15-year catch-up as well as the age 50+ catch-up, the 15-year catch-up must be reduced first.

Terminated 403(b) Plans

Q. I no longer offer a 403(b) plan, but still have participants who have accounts under the plan. Are there any changes I need to make to that frozen plan?

A. If a plan is frozen, you must maintain that plan in accordance with law on an ongoing basis, including the written plan requirement. You can, however, if you so choose, terminate the plan under the new termination rules and distribute the benefits under the plan. However, if you terminate your 403(b) plan, no contributions of any kind may be made to another 403(b) plan that you sponsor (or is sponsored under your controlled group) for a year following your 403(b) plan termination.

Q. What should be taken into consideration when terminating a plan?

A. Pursuant to the final 403(b) regulations published in 2007, a 403(b) plan is permitted to contain provisions allowing for plan termination. Under the 403(b) regulations, termination of a 403(b) plan will be a triggering event and the person will be entitled to receive a distribution from the account to the extent it is allowed under the terms of the contract.

In order to terminate a plan, you must distribute all assets to participants. The final regulations make it clear that a distribution of an annuity contract is sufficient and the assets do not actually have to be distributed from the annuity contract. On February 22, 2011, the IRS issued additional guidance under Revenue Ruling 2011-07 governing 403(b) plan terminations. The Ruling includes key guidance relating to the treatment of the funding vehicles held under the plan that is being terminated and on employer actions necessary to evidence plan termination. Click here to access the full Revenue Ruling.

Plan documents

Q. Will TIAA-CREF review plan documents to ensure compliance?

A. Plan documents that we provide are specimen plan documents that are not approved by the IRS. If your attorney drafts a plan document and you want us to take a look at it, we will review to determine whether our contracts and your plans are consistent. We don’t look at plan documents to ensure compliance, in general, with the regulations.

In Revenue Procedure 2013-22, the IRS announced the 403(b) preapproved plan program. It opened up the application process for these plans on June 28, 2013. The original April 30, 2014 deadline for submission of preapproved 403(b) plan documents was extended to April 30, 2015 in Revenue Procedure 2014.

The proposed program is intended to help institutions meet the written plan requirement of the final 403(b) regulations. It will allow prototype plan sponsors, including service providers like TIAA-CREF, to obtain IRS approval of their 403(b) plans.

This approval will give adopting employers the assurance that their 403(b) plan satisfies the requirements of the IRC and final 403(b) regulations. It’s anticipated that the IRS will approve submitted documents in March/April 2017 and plan sponsors will be given about two years to adopt them.
Differences between 403(b) and 401(k) plans

Q. What are the ongoing differences between 403(b) and 401(k) plans?

A. There are a handful of differences. First and foremost, of course, is eligibility to sponsor a 403(b) plan. Eligibility for 403(b) plans is limited to 501(c)(3)s, public state colleges and universities, and K-12. Section 401(k)s are available to all employers, with the exception of governmental employers who are generally not permitted to establish new 401(k) plans. Section 403(b) plans generally can only be funded with annuity contracts and mutual funds. The universal availability rule applies to salary reduction contributions to 403(b) plans instead of nondiscrimination testing. Section 401(k)s are subject to the ADP Test, the Actual Deferral Percentage Test.

The 15-year catch-up rule is available only for 403(b) plans, and employer contributions to a 403(b) plan can continue to be made on behalf of a terminated employee for up to five years from severance of employment.

Penalties for noncompliance

Q. What happens if my institution’s plan does not comply with the final 403(b) regulations?

A. The final regulations address the effects of a failure to satisfy the requirements of 403(b) and the regulations:

- Contract Failure—All contracts or custodial accounts purchased for an employee are to be treated as a single contract or account for purposes of 403(b). If any contract fails to satisfy any of the 403(b) requirements, then all contracts or accounts purchased for that individual will fail to qualify for tax deferral under Section 403(b). Most operational failures that are within a single contract—for example, contribution limits, distributions, etc.—will not adversely affect other participants but will generally disqualify all contracts of the affected participant provided under the 403(b) plan.

- Plan Failure—All contracts issued under an employer’s plan will be disqualified if the employer is not an eligible employer, if there is no written plan or if the nondiscrimination rules are not satisfied.

- Separate Bookkeeping for Excess Contributions and Vesting—Contributions in excess of the 415 limit will not disqualify the entire contract provided the issuer maintains separate bookkeeping accounts for the portion that exceeds the limit. Separate bookkeeping is also required for each type of contribution that is subject to a different vesting schedule.
Glossary

401(a) or 403(a) Plan
A qualified plan established under Section 401(a) or 403(a) of the Internal Revenue Code. A 401(a) plan may be established as either a defined contribution or a defined benefit plan. A 401(k) plan is a type of 401(a) plan that, unlike other types of 401(a) plans, permits employee elective deferrals. The main difference between a 401(a) and a 403(a) plan is that a 403(a) plan may only be funded with annuity contracts whereas other funding vehicles may be used in a 401(a) plan. If an employer’s plan is qualified, funds contributed to a supplementary Section 403(b) tax-deferred annuity plan generally do not reduce the Section 415 limits for the qualified plan and vice versa.

401(k) Plan
A type of qualified 401(a) defined contribution plan established by an employer enabling participating employees to make pretax contributions by salary deferral agreements structured within the format of a cash or deferral plan. A 401(k) plan may also accept matching employer contributions.

403(b) Plan
A defined contribution plan established by a public education organization (e.g., school, college, university or board of education), a 501(c)(3) nonprofit organization (e.g., a private school, research organization, hospital, charity, social welfare agency, a healthcare organization or a religious institution), an Indian tribe or qualifying religious ministers for their employees under IRC Section 403(b). Either or both employers and participants can make contributions to a 403(b) plan.

Annuity
A contract issued by an insurance company that provides income for a specified period of time, such as a number of years, or for the life or life expectancy of an individual.

Beneficiary
The person(s), institution, trustee or estate properly designated to receive any available death benefits when the participant dies.

Contingent beneficiary
Person(s) or entity(ies) properly designated to receive benefits if the primary beneficiary becomes deceased before the participant.

Contribution
Payment to a retirement plan before retirement income begins.

Contributory plan
A retirement plan under which employee contributions are required in order to have employer contributions made to the plan. This is also known as a matching plan.

Deferred annuity
An annuity contract providing for the initiation of benefit payments at some designated future date or age. A deferred annuity is one still in the accumulating, or preretirement, stage.
**Defined benefit plan**
A retirement plan that specifies a formula for calculating the amount of income employees will receive in retirement. The formula is usually a percentage of final salary times years of service. Actuarial calculations set employer contributions to yield the benefit stipulated under the plan.

**Defined contribution plan**
A retirement plan that specifies a rate of employer and/or employee contributions. How much income a participant receives in retirement will depend on several factors, including amount and duration of contributions, investment earnings and age at retirement.

**Delayed vesting**
A retirement plan provision requiring the completion of a specific period of service at the institution before benefits become nonforfeitable. Delayed vesting never applies to participant contributions; those contributions are always fully vested immediately. A plan may use either cliff vesting, whereby a participant becomes 100% vested after completion of a specified period of service, or graded vesting, which provides that benefits become vested gradually over time. ERISA requires benefits in plans to be 100% vested within three years if cliff vesting is used, or in minimum specified increments over a period of two to six years if a graded schedule is used.

**Early retirement**
An arrangement involving the payment of a retirement allowance before a participant has reached the requirements for “normal” retirement at the institution.

**ERISA**
The Employee Retirement Income Security Act of 1974. A federal law that protects participants in most private retirement plans by providing extensive rights to plan participants and beneficiaries, and imposing stringent duties and standards on plan fiduciaries. ERISA also imposes reporting and disclosure requirements on plan sponsors. Public institutions and church plans are generally not subject to ERISA requirements. Many 403(b) plans are subject to ERISA requirements but exemptions are available to plans sponsored by certain types of employers:

- A governmental plan
- A non-electing church plan*
- A TDA plan exempt from ERISA under DOL regulation 2510.3-2(f), that satisfies narrowly drawn criteria including:
  - participation is completely voluntary;
  - employer involvement is sufficiently limited to, among other matters, collecting and remitting payments as required by voluntary salary deferral agreements, and limiting funding choices available to employees to a number and selection designed to afford employees a reasonable choice;
  - the annuity and custodial account representatives are permitted to publicize their products to employees;
  - all rights under the contracts and custodial accounts are enforceable only by the participant; and
  - the employer receives no direct or indirect consideration or compensation other than reasonable compensation to cover the expenses of administering the salary deferral agreements.

* A church must have made a valid election under IRC 410(d) in order for ERISA to apply to a church 403(b) plan.
Fiduciary
ERISA provides that an administrator, and certain other individuals who perform services for an employee benefit plan subject to ERISA’s requirements, including a 403(b) plan, is a fiduciary with respect to that plan, if he or she:

- Exercises any discretionary authority or control with regard to management of the plan or with regard to management or disposition of plan assets;
- Provides paid investment advice with regard to allocation of plan assets; or
- Has discretionary authority or responsibility for administering the plan or is named as a fiduciary by the plan.

ERISA imposes a number of responsibilities on plan fiduciaries, including:

- Acting solely in the interest of plan participants and their beneficiaries for the exclusive purpose of providing them with plan benefits;
- Carrying out their duties prudently; and
- Administering the plan in accordance with the plan documents unless those documents are inconsistent with ERISA requirements.

In meeting these responsibilities, one of the key requirements is that plan fiduciaries be prudent in selecting and monitoring funding vehicles for plan assets.

Form 5500
Federal law requires plan administrators of employee benefit plans to file an Annual Return/Report, or Form 5500, for plans subject to the Employee Retirement Income Security Act of 1974 (ERISA).

Information Sharing Agreement
Under an Information Sharing Agreement, a nonpayroll slot plan vendor and the plan sponsor agree to provide each other with various types of information from time to time, including information on the participant’s employment status, eligibility for hardship distributions and satisfaction of plan loan limitations.

Minimum distribution
The minimum amount required by federal law to be paid by attainment of a certain age from most tax-favored retirement plans. To avoid a tax penalty, minimum distribution payments must generally begin by April 1 following the calendar year the participant becomes age 70½, or retires, whichever is later.

Mutual fund
A company or trust that uses its capital to invest in the securities of other companies. There are two basic types of mutual funds—open-end and closed-end funds. Shares of closed-end funds are often listed on the New York Stock Exchange, and are traded like any other security. Capitalization of these funds remains fixed for the most part. Open-end funds issue their own shares to investors continuously and stand ready to repurchase them as required. They are not listed on a national exchange. Within the group of open-end funds there are load and no-load funds. Load funds involve a charge to cover sales commissions and all of the cost of distribution. No-load funds don’t impose a charge and offer the shares at net asset value. Mutual funds may be used as funding vehicles in 403(b)(7) plans via custodial accounts.

Noncontributory plan
A pension or benefit plan to which the employer makes all contributions.
Nondiscrimination testing
Like qualified plans, most 403(b) plans are subject to nondiscrimination requirements which prohibit them from unduly discriminating in favor of highly paid employees over non-highly paid employees with respect to contributions and availability of other benefits, rights and features. Nondiscrimination testing is the blanket term for the tests that must be performed to ensure that plans are complying with the applicable nondiscrimination requirements.

Plan contributions
Amounts remitted by the employer under the institution’s retirement plan. Contributions can include employer contributions and participant contributions via salary deferral or salary deduction.

Primary beneficiary
Person(s) or entity(ies) properly designated to receive benefits upon the death of a participant.

Qualified plan
A retirement plan established under Section 401(a) or 403(a) of the Internal Revenue Code (IRC). A 401(a) plan may be established as either a defined contribution or a defined benefit plan. A 401(k) plan is a type of 401(a) plan that, unlike other types of 401(a) plans, permits employee elective deferrals. The main difference between a 401(a) and a 403(a) plan is that a 403(a) plan may only be funded with annuity contracts whereas other funding vehicles may be used in a 401(a) plan. If an employer’s plan is qualified, funds contributed to a supplementary Section 403(b) tax-deferred annuity plan do not reduce the Section 415 limits for the qualified plan and vice versa.

Rollover
A form of tax-free movement for the distribution of funds from one retirement plan into another (including IRAs) without necessarily triggering a taxable event. Ordinary 60-day rollovers, whereby funds are distributed to the participant who then rolls them over to another retirement plan or an IRA, are subject to mandatory 20% withholding and can lead to unexpected tax consequences. Direct rollovers, whereby the retirement plan transfers funds directly to another retirement plan or an IRA at the instruction of the participant, are not subject to mandatory 20% withholding.

Roth contributions
Amounts contributed on a post-tax basis to a “Roth” form of retirement plan or IRA.

Salary deduction
Retirement plan contributions withheld from an individual’s salary which are subject to current income tax. Salary deduction contributions may take the form of ordinary after-tax contributions or Roth contributions. Amounts allocated to either type of after-tax contribution are federal tax free when withdrawn, but earnings on after-tax contributions are always taxable when withdrawn.

Salary deferral
Retirement plan contributions withheld from an individual’s salary by the employer under the terms of a salary deferral agreement. Salary deferral contributions are not subject to current federal (and usually state and local) income taxes at the time of contribution. These contributions and earnings are taxable when withdrawn.

Salary deferral agreement
An agreement between an employer and an employee whereby the employee agrees to have a dollar amount or percentage of salary withheld from payment and the employer agrees to contribute such amount to a retirement plan on behalf of the employee.
Second annuitant/annuity partner
The person selected by the first annuitant for a two-life (joint-life) income option so that lifetime income will be paid to that person should the first annuitant die before the second annuitant.

Section 402(g)
Section 402(g) of the Internal Revenue Code specifies the maximum annual amount employees can contribute to a 403(b) or 401(k) plan through voluntary salary deferral contributions.

Section 404(c)
Section 404(c) of ERISA provides that fiduciaries of defined contribution plans can be relieved of some of their potential fiduciary liability for losses arising from participants’ investment decisions to allocate amounts under the plan among specific investment options made available under the terms of the plan. In order for a fiduciary to be relieved of fiduciary liability, the plan must satisfy numerous requirements as set forth in ERISA Section 404(c).

Section 415
This section of the Internal Revenue Code specifies the maximum annual contribution—employer plus employee (before tax and after tax)—that can be made to a retirement/tax-deferred annuity plan.

Summary of Material Modifications (SMM)
A Summary of Material Modifications is a summary of material changes made to a retirement plan. If a plan is materially modified, participants and beneficiaries must be informed, either through a revised Summary Plan Description (SPD) or through a separate document referred to as a Summary of Material Modifications (SMM).

Summary Plan Description (SPD)
A Summary Plan Description is an understandable and detailed summary of the material provisions of a retirement plan. A Summary Plan Description, frequently referred to as an SPD, must be provided to plan participants and beneficiaries.

Survivor benefits
The amount payable at the annuitant’s death.

Tax-Deferred Annuity (TDA), also called Tax-Sheltered Annuity (TSA)
A 403(b) arrangement or plan (separate from the retirement plan) pursuant to which an employee is permitted to make voluntary contributions on a pretax basis.

Vesting
The participant’s nonforfeitable right to receive amounts capable of being distributed from retirement plan contributions. (See also: DELAYED VESTING.)
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