

The following publications cover 403(b) tax-sheltered annuities and correction programs:

- Publication 571, *Tax-Sheltered Annuity Plans (403(b) Plans) for Employees of Public Schools and Certain Tax-Exempt Organizations*
- Publication 575, *Pension and Annuity Income*
- Publication 590, *Individual Retirement Arrangements (IRAs)*
- Publication 4224, *Retirement Plan Correction Programs*
- Publication 4483, *403(b) Tax-Sheltered Annuity Plan for Sponsors*
- Publication 4546, *403(b) Plan Checklist*

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

For assistance or information on retirement plan tax-related issues: www.irs.gov/ep

See “Plan Participant/Employee” or See “Types of Plans,” then “IRC 403(b) Plans”

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403(b)
Tax-Sheltered
Annuity
for
Participants



Be Aware of Common Mistakes

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

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

With Highlights on the Final 403(b) Regulations

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

There are significant tax advantages for you, as a participant, in a 403(b) tax-sheltered annuity:

- your contributions to a 403(b) annuity are tax deferred,
- earnings on your retirement money are tax deferred, and
- you can carry your annuity with you when you change employers or retire.

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

Note: Underlined text identifies electronic links to detailed information on that topic. For those reading a print version of this product, you can access an electronic version online at www.irs.gov/ep.

PLAN PROVISIONS 403(b) REQUIREMENTS

Eligible Participants	common-law employees of public school systems and 501(c)(3) organizations
General Contribution Limits	<p>elective deferrals</p> <ul style="list-style-type: none"> ■ \$16,500 (2010); indexed thereafter (plus catch-ups) <p>employer and employee contributions:</p> <ul style="list-style-type: none"> ■ limited to the lesser of \$49,000 (2010) or 100% of includible compensation (elective deferrals and nonelective contributions)
Years of Service Catch-Up Contributions	<ul style="list-style-type: none"> ■ certain employers ■ employee must have 15 years of service ■ limited to least of: <ul style="list-style-type: none"> - \$3,000 - \$15,000 less previously excluded special catch-ups - \$5,000 multiplied by years of service minus previously excluded deferrals
Age-50 Catch-Up Contributions	additional \$5,500 (2010); indexed thereafter
Loans	<ul style="list-style-type: none"> ■ if the TSA permits ■ \$50,000 aggregate limit of all loans at any time ■ payments at least quarterly ■ term not to exceed 5 years (except for purchase of principal residence) ■ must bear reasonable rate of interest
Timing of Distributions	<p>generally,</p> <ul style="list-style-type: none"> ■ death ■ age 59½ ■ severance from employment ■ disability ■ later of age 70½ or retirement
Other Distributions	<ul style="list-style-type: none"> ■ hardship ■ domestic relations order
Rollovers	<ul style="list-style-type: none"> ■ to and from other retirement plans and to IRAs ■ must satisfy eligible distribution requirements
Trustee-to-Trustee Transfer	<ul style="list-style-type: none"> ■ while in service, employee can purchase certain permissive service credit in government defined benefit plans ■ 403(b) to another 403(b)— in-service



It is important to know the tax rules applicable to a 403(b) annuity to help you comply with the tax law and get the maximum 403(b) benefit.

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

Maximum Elective Deferrals. Your aggregate annual elective deferral limit includes contributions to your 403(b) annuities (even if held under different employers) and 401(k), SIMPLE IRA and SARSEP plans. Amounts contributed in excess of the limit may be subject to additional taxes and penalties that may affect both you and your plan sponsor/employer. See the Provisions and Requirements chart for a summary of the 403(b) rules to maximize your retirement contributions.

Catch-Up Contributions. Plans may permit one or both of the following catch-up provisions. *Note: Catch-up contributions must be applied first to the years-of-service catch-up limit (for employees with 15 years of service) before being applied to the age-50 catch-up.*

Years-of-service catch-up. This catch-up is available through certain employers. Refer to the Provisions and Requirements chart to determine if, and how much of, this catch-up is available to you. The \$15,000 overall limit may have been exhausted through general contributions made during your first 15 years of service.

Age-50 catch-up. This catch-up is available to you if you have attained age 50 or more by December 31. See the Provisions and Requirements chart for amounts. This catch-up cannot exceed your includible compensation.

Distributions and Rollovers. You are permitted to roll over (tax free) all or any part of your otherwise taxable eligible distribution from a 403(b) annuity into another 403(b) annuity, a 457(b) plan, a traditional IRA or other eligible retirement plan. Likewise, if permitted by the 403(b) annuity, you may roll over your otherwise taxable distributions from another retirement plan into this 403(b) annuity. Refer to the Provisions and Requirements chart for the specific times/occasions when annuity distributions may be available. You should check your 403(b) annuity or consult your employer for other distribution options available to you.

Loan Limitations. Earlier access to your contributions may be available through loans, if offered under the 403(b) annuity. See the Provisions and Requirements chart for conditions. If any of these provisions are not adhered to, there is a deemed distribution that is subject to federal income tax. Additional taxes may apply if these distributions occur before age 59½. Loan defaults may violate distribution requirements.

Hardship Requirements. Hardship distributions may be permitted under a 403(b) annuity. Hardships must be the result of an immediate and heavy financial need. Failure to meet these criteria can jeopardize the status of the TSA. Hardship distributions may not be rolled over into another retirement plan or IRA. Under the Regulations, hardship distributions will follow the provisions of the 401(k) regulations that include the suspension of deferrals for six months.

As a participant, you need to be aware of these common mistakes. Notify your sponsor/employer to correct mistakes timely to avoid additional taxes and penalties that may affect both you and your sponsor/employer.

IRS published 403(b) Regulations on July 26, 2007. These Regulations were generally effective on January 1, 2009, and cover the changes made by legislation from the past 43 years.

Participation. 403(b) plans that offer elective deferrals must operate under a concept called Universal Availability. If the plan allows one employee to make elective deferrals, it must allow all eligible employees to make elective deferrals. The Regulations provide two important parts to this concept. First, employers must provide meaningful notice to employees of their eligibility. Next, the plan sponsor needs to determine if any employees are excludable. For example, one group of excludable employees are classified as “generally working less than 20 hours-per-week” which allows the employer to use a 1,000-hour benchmark over a 12-month period for determining if an employee generally worked 20 hours-per-week.

Post-Severance Contributions. Plans may permit two separate and unrelated provisions for contributions to be made to 403(b) plans after an employee separates from service.

Elective deferrals: First, if the plan permits, employees may defer some (up to their annual deferral limits) of their regular, accrued vacation and sick pay into their 403(b) accounts if received by the later of 2½ months from the date of severance or the end of the limitation year (in most cases, calendar year) in which the severance occurred.

Employer non-elective post-severance contributions: Second, if the plan permits, the employer may make non-elective

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

Depositing Elective Deferrals. 403(b) elective deferral contributions must be handed over to the organization that offers the annuity or custodial account as soon as is reasonable for the proper administration of the plan. The plan may provide that a plan participant’s elective deferrals be transferred to the annuity contract within a set number of days after the date the amounts would have been paid to the participant. ERISA plans may be subject to stricter time frames.

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

In-service exchanges take place within the same plan. To be allowable, the 403(b) plan must permit the movement of the funds and the terms must be followed in operation. Benefits cannot be reduced and if the moved funds were subject to distribution restrictions, they must continue to be subject to the same restrictions. The employer and the contract issuer must agree to share certain required information so the employer can follow the rules of the Code and regulations, especially those concerning loan restrictions and hardship distributions.

Plan transfers are the plan-to-plan movement of funds. To be allowable, the transferor plan must permit the movement out and the receiving plan must permit and approve the acceptance of the funds. In addition, the participant must be an employee or former employee of the employer for the receiving plan. Benefits cannot be reduced and if the moved funds were subject to distribution restrictions, they must continue to be subject to the same restrictions.

