

403(b) Plan Sponsor Guide



NTSA

National Tax-Deferred
Savings Association

**A Comprehensive Guide for Public Education
403(b) Retirement Plans**

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A Comprehensive Guide for Public Education 403(b) Retirement Plans

403(b) plans provide school district employees with an important way to save for retirement. These plans allow employees to make independent decisions about how much they want withheld from each paycheck to be contributed to the plan. Many educators do not have access to Social Security, and reforms in state retirement systems are reducing retirement benefits. Therefore, for school district employees, the importance of personal savings in 403(b) plans is more critical to their retirement security than ever.

This guide is intended to provide public education Plan Sponsors with information and resources to effectively administer a non-ERISA 403(b) plan and promote participation. Included in this guide:

- Research conducted by the National Tax-Deferred Savings Association (NTSA) and the Plan Sponsor
- Council of America (PSCA) regarding participation and savings rates in 403(b) K-12 plans nationally
- Resources for improving participation in 403(b) plans
- Clarification of roles and responsibilities
 - Plan Sponsor
 - Financial Advisors
 - Plan Administrators
- Best practices for plan administration
- Checklist for establishing, amending, and restating a 403(b) plan

This guide is being made available to school districts nationally to assist them in understanding how to improve

403(b) plan participation and savings rates to help employees achieve a comfortable and timely retirement.

Table of Contents

Forward	4
The National Tax-Deferred Savings Association (NTSA)	4
History of 403(b) Plans	4
The Importance of 403(b) Savings	5
2018 NTSA Public Education Survey	5
National 403(b) Savings Rates	5
The Benefits of Choice	6
The Impact of Reducing Choice	7
Participant Education	8
Employees Need the Right Information to Make the Best Choice	8
NTSA Retirement Education Services for Public Education Employees	9
NTSA Retirement Education for Public Employees	9
Roles & Responsibilities	10
The Role of the Plan Sponsor	10
The Role of a Financial Advisor	11
The Role of a Third-Party Administrator (TPA)	13
Plan Administration	14
Establishing a Plan	14
Amending a Plan	14
Restating a Plan	14
Best Practices for Plan Administration	15
Glossary	16

Checklists

Administration Basics Non-ERISA 403(b) for Public Schools	A1
Checklist for Establishing a 403(b) Plan for a Public Educational Institution	B1
Checklist for Amending a 403(b) Plan for a Public Educational Institution	C1

Forward

The National Tax-Deferred Savings Association (NTSA)

NTSA is a national organization of retirement plan professionals who provide consulting and administrative services for 403(b) plans (as well as 457(b) and other non-profit plans), covering millions of American workers. Members of NTSA are retirement professionals of all disciplines, including financial advisors, consultants, administrators, actuaries, accountants, attorneys and more. NTSA is part of the American Retirement Association (ARA), with a total membership of more than 26,000 retirement plan professionals that is diverse but united by a common dedication to the employer-based retirement plan system.

The History of 403(b) Plans

403(b) plans were first made available to public education employers in 1961, with investments limited to annuities. Mutual funds held in custodial accounts were added in 1974. The program was intended to be a relatively simple way for employees to supplement retirement savings by using their own voluntary pre-tax dollars. Supplementing retirement savings has become increasingly important with widespread reductions in benefits being made to the state retirement system plans for those employees.

Employees were generally permitted to select their own advisor and investments, and the history of multiple investment providers began. The vast majority of the roughly \$1 trillion in 403(b) assets is held in individual accounts—either in annuities or in mutual funds.

Through the years, employers began to need more and more compliance support from the investment product providers as new legislation dictated new requirements for 403(b) plans. These employers wanted the product providers to give them agreements that outline the support necessary to operate their 403(b) plan.

The requirement for employers to adopt a written 403(b) plan document, even if it was not subject to ERISA, was effective on December 31, 2009, in the final IRS 403(b) regulations.

Thus, for the first time in the history of 403(b) plans, K-12 employers were required to adopt and follow the terms of a plan document. This created some confusion regarding fiduciary exposure for those employers—something that is untrue. There is no fiduciary obligation language contained in the final 403(b) regulations. Employers should, however, check under their individual state law to see if there are any other obligations. In addition, K-12 employers were being incorrectly advised that they needed to eliminate their multiple investment providers and settle on only one provider to reduce that fiduciary exposure. In fact, a move from multiple providers to a single provider is likely to increase fiduciary responsibility. (See “Fiduciary Issues and the Final 403(b) Regulations,” at <https://asbointl.org/asbo/media/documents/Resources/ERISA-Fiduciary-Q-A.pdf>.)

Our research finds that limiting the choice of investment options and their providers is directly correlated to decreased plan participation.

The Importance of 403(b) Savings

Increases in longevity, coupled with the increasing cost of health care in retirement, are making living in retirement substantially more expensive today than for prior generations. Due to stressed state budgets, many state retirement system plans are providing reduced benefits with lower formulas and without cost of living adjustments. Additionally, in 15 states, teachers do not participate in Social Security.

403(b) savings plans permit employees to bridge the retirement income gap created by reduced pensions and no Social Security benefits. Individuals who save in 403(b) plans are prepared to retire at normal retirement ages, instead of remaining in the workforce long past those ages.

NTSA Public Education Survey

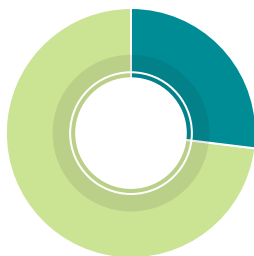
National 403(b) Participant Savings Rates

Research conducted by the National Tax-Deferred Savings Association (NTSA) in partnership with the Plan Sponsor Council of America (PSCA) examined the participation and savings rates of public education employees in more than 4,400 school districts across the country.*

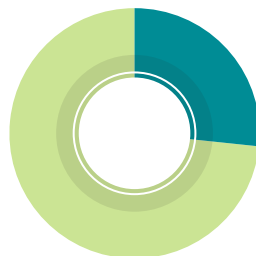
Participation rates in 403(b) plans nationally average 27.13% with an average district participation of 26.79% and are low relative to corporate 401(k) plans for four main reasons: (1) in the corporate market, 401(k) plans are the primary retirement savings plan with no accompanying defined benefit savings program; (2) only 6% of school districts match participant contributions versus roughly 50% of corporate 401(k) plans; (3) very few school districts autoenroll employees into 403(b) programs; and (4) two-thirds (66%) of school districts also offer employees a 457(b) savings plan alternative.

Monthly participant contributions into 403(b) plans average \$322, or \$3,864 per year (assuming that participants contribute throughout the summer months) with an average account of \$42,885.56. Using the average teacher salary of \$55,919, the contributions to 403(b) plans are roughly 6.9% of salary on average. As with corporate programs, the research did reveal that participation and contribution rates are positively correlated with salaries. States that have the highest average teacher salaries, such as New York, New Jersey and Connecticut, also have the highest participation and contribution rates.

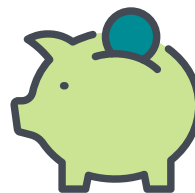
Summary Statistics



Average Participation Rate



Average District Participation



Average Monthly



Average Account

*Data from PSCA's 2018 403(b) Plan Survey. (https://www.psc.org/2018_403b_report)

The range of 403(b) plan participation rates in America’s public school districts is dramatic, suggesting that the investment and provider choices that each school district makes available to their employees, as well as the resources that they provide to help employees understand the benefits of participation, are key differences in driving participation rates. The survey revealed that participation rates for the 4,473 school districts in the survey range from less than 7.53% to more than 75.69%.

The Benefits of Choice

The research revealed that the number one factor driving participation and savings rates in school districts is participant choice. An essential element in the broader array of provider choice is the breadth of education available through the expertise of financial advisors who educate, encourage and advise these workers on-site. Consider that:

- There is **25% greater participation** in plans with 15 or more investment providers compared to plans with only one provider.
- On average, account balances are **73% higher** among plans with 15 or more providers compared to single provider arrangements.
- There is a **203% increase in average contribution** rates among plans providing access to 15 or more providers compared to plans with only one provider.
- Single provider arrangements have the lowest participation rate: 8% below the national average.

Simply stated, the data reveals a positive and significant correlation between the number of choices/ advisors and employee plan participation. As access to these quality resources increases, participation and savings increase too.

Survey Results - Number of Providers

Response # of Investment Providers	Percentage of Respondents	Average Participation Rate	Average Monthly Contribution	Average Account Balance
15 or more	19%	33.43%	\$402	\$48,429
11-14	16%	29.57%	\$371	\$47,846
5-10	45%	28.22%	\$338	\$43,664
2-4	15%	25.55%	\$273	\$41,167
1	4%	24.99%	\$197	\$27,844

Additionally, recent research by AXA Equitable* regarding provider choice shows that, where districts offer a choice of providers, participants are significantly more satisfied and confident in their 403(b) plans than participants in single provider districts.

- Three in five participants with choice of provider are more satisfied with the performance of their 403(b) account.
- Where provider choice is offered, participants are more confident in the quality of their investment choices (61% vs. 43%) and in their ability to meet their retirement goals (66% vs. 55%).

The Impact of Reducing Choice

While further research would assist in validating the results, the data reveals a correlation between limiting advisors and investment providers and a decrease in the level of participation by employees in 403(b) plans. This does not appear to be caused by alternate factors. Thus, the data suggests that fewer employees participate in 403(b) plans when the number of available investment providers and access to trusted advisor resources is limited. The research shows that this is primarily due to the disruption of the advisor-client relationship. When public educators and staff no longer have access to the option(s) in which they chose to save and the professional assistance of their trusted advisor, they stop saving. For example:

- A Pennsylvania school district experienced a **40% drop** after reducing investment provider options.
- A Maryland school district went from 10 investment providers to one and saw the number of active participants drop from **1,000 to 775 participants**. In 2016, the district increased the choices to four investment providers and has since seen an increase in participation.
- A Florida school district went from 12 to 5 investment providers and **lost more than 1,000 active contributors**, all of whom have not resumed participation since the change.
- 262 school districts in Michigan went from 16 to 5 investment providers in 2009. Participation went from 23,000 to **fewer than 17,000 active contributors**. Today, after adding back several investment providers, they are finally back to 23,000 participants.
- In 2009, Iowa transitioned from a competitive, open 403(b) marketplace model to a narrow number of five options, only to see participation rates in the program plummet dramatically—with some counties showing **enrollment reductions of up to 50%**. The number of investment choices was recently expanded to 30 approved companies, with the hope that the workers will once again save for retirement in the 403(b) plan.

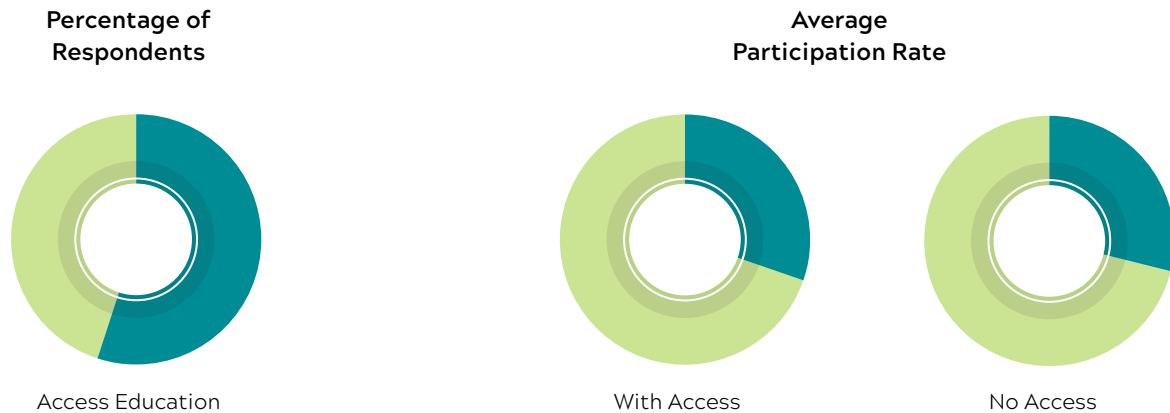
*AXA Equitable Enhancing Outcomes: <https://us.axa.com/news/403b-advisor-value/ssi/enhanced-outcomes-whitepaper.pdf>

Participant Education

Employees Need the Right Information to Make the Best Choice

School district employees need to be given adequate information to make informed decisions about their 403(b) plans. This information should include the services associated with the various offerings so participants can choose the option(s) that best suit their needs. For example, some participants want a very low-cost option with limited personal service, while others want to work closely with an advisor on a one-on-one basis and are willing to pay for that level of service.

Our research shows that there is a 5% increase in participation when employees have access to retirement education, often provided by financial advisors at their work place. However, less than half of responding school districts reported that they offer a retirement education program to employees at work.



Survey Results: Do Employees Have Access to Retirement Education at Work?



Furthermore, 7 out of 10 workers who have zero retirement savings do not have access to any retirement education through their employers.

Employers that do not provide access to retirement education have employees who report higher levels of anxiety and fear about retirement.

NTSA Retirement Education Services for Public Education Employees

In an effort to improve the understanding of retirement planning options and improve participation rates in 403(b) plans, NTSA created a comprehensive retirement educational program that is available to school districts and their employees across America.

The NTSA educational program is vendor neutral and does not include any specific investment product recommendations. Attendees of the program have a greater awareness of what they will need to save to supplement their pension plan and Social Security and how to take action.

NTSA Retirement Education for Public Employees

- What retirement will look like
- Today's Social Security
- Investing for retirement
- State pension review
- Filling the retirement income gap
- How to take action

The NTSA Certified Retirement Education Specialist (CRES) advisor is qualified and available to teach the Retirement Education program to the employees of your school district. The CRES has completed a certificate program through the American Retirement Association (ARA) Retirement Plan Academy, addressing the important retirement planning considerations of public employees. The NTSA CRES advisor has agreed to abide by the highest standards of professional conduct and to coordinate all educational activity in accordance with school district solicitation policies and guidelines.

A registry of Certified Retirement Education Specialist advisors can be accessed at www.NTSA-CRES.org.

Roles & Responsibilities

The Role of the Plan Sponsor

Technically, it is the Plan Sponsor (or Employer) who has the responsibility for the actual day-to-day administrative functions of the 403(b) Plan, or for choosing the Plan Administrator, called a TPA (Third Party Administrator). Even with a TPA, the Employer will always be the one that can be audited by the IRS; the legal responsibility for any administrative function still lies with the Plan Sponsor. Where there is a TPA, the Employer is responsible to make sure that the proper data is transmitted to the TPA for the accurate administration of the Plan.

Other Employer responsibilities are: payroll, communicating data on all participants (name, address, date of birth, hire and rehire dates, date of termination of employment), and any other information that the TPA needs to properly handle the administration of the Plan.

With the advent of the restatement of 403(b) plans (deadline March 31, 2020) effective retroactively to January 1, 2010, all employers will see another document, the “Administrative Appendix.” This document highlights the responsibilities of the plan vendors, TPA, consulting company and advisors. Note that whatever is not named becomes the responsibility of the Employer. NTSA strongly recommends that you ask for the Administrative Appendix.



The Role of a Financial Advisor

There is no doubt that a successful retirement outcome requires a plan, discipline and the knowledge to make good choices that address each individual's long-term retirement goals. And, there is a growing amount of measurable data that supports having the guidance of a financial advisor to help deliver that successful outcome.

In recent studies by deKadt Market Research (2018, commissioned by AXA Equitable)* and The Planning & Progress Study (2018, commissioned by Northwest Mutual)**, there is evidence that the active assistance of a financial advisor has a major impact on not only the process of retirement planning, but also on the successful outcome.

The deKadt Study surveyed participants in 403(b) retirement plans regarding their feelings on the use of financial advisors, the process, and the expected outcomes of their planning processes.

Key findings included:

- Participants who use a qualified financial advisor have nearly **double** the median account balance than those who do not.
- Participants who work with an advisor have **15% greater** diversification of assets.
- More than half of participants in this study attribute an early start in saving to the **influence of a trusted advisor**.
- Participants who use an advisor **contribute 49% more** annually on average.
- Participants who work with an advisor are significantly more likely to have increased their contributions **24% more** often since opening their account.
- Participants report **higher satisfaction** (72% vs. 54%) with their 403(b) plan overall and **higher confidence** (64% vs. 56%) in meeting their retirement goals when working with a financial advisor than those who do not.



* The Value of the Advisor: https://us.axa.com/news/403b-advisor-value/ssi/Valueoftheadvisor_White%20Paper%202018.pdf

** Advisors: Key to Financial Clarity: https://filecache.mediaroom.com/mr5mr_nwmutual/178216/advisor%20deck%207.3.pdf

In a more general retirement plan market study, the Northwest Mutual Study surveyed 649 investors who had an advisor, and 1271 without an advisor. The focus of the study was more about investors' feelings regarding their retirement planning, and how the contributions of a financial advisor affected those feelings.

The key findings of this study included:

- 84% of those with financial advisors felt **confident** in their planning processes, where only 52% of those without advisors felt confident in their planning. Investors with an advisor also expressed **good clarity** regarding their savings versus spending habits, as opposed to 44% without an advisor.
- Interestingly, the lack of “clarity” may have contributed to the ranking of top financial priorities among those surveyed. **Reducing debt** was the top priority by a measure of 60% to 37%, between those without advisors, and those getting advice, respectively.
- Survey participants with an advisor, by a margin of 90% to 50%, expressed a sense of **financial security**, over those with no advisor.
- The same disparity was seen when asked about investor discipline. Those with advisors, by a margin of 75% to 37%, felt they were **disciplined investors**.
- Looking to the future, 41% of those surveyed with advisors felt they might have to work past age 65 by necessity, where a majority of 61% without advisors felt the same.
- When asked about the respondents' relationship with their advisor, and the key attribute that distinguished a “remarkable” advisor from an “acceptable” advisor, the top response (57%) noted that they trusted that their financial advisor had their **best interest at heart** and was not just selling product. The second highest response (36%) was that the advisor did not “judge” the investor regarding the size of the plan assets, or prior financial decisions that had been made.
- Finally, when asked about receiving investment planning advice, and the “human” interaction of the advisor versus a fully automated “robo-investing process,” 88% responded that the “human” interaction is critical. **The combination of a personal relationship and technology** was seen to be the ideal combination.

Financial advisors, because of their specialized expertise and licensing, are vital participants in the successful outcome of an individual's retirement planning. Evidenced by the studies referenced here, plan participants with advisors are starting earlier, saving more, making more diversified decisions and sticking to the plan more frequently than those without advisors. And, these plan participants express more confidence, clarity and financial security in working with “remarkable” advisors. The human interaction, as expressed by those using advisors, was the overwhelmingly best method for receiving investment and retirement planning advice.

Numerous studies have indicated that employees want help with their retirement plans. Using an advisor has measurable financial benefits to the 403(b) participant. Recent research conducted by AXA regarding the value of an advisor in K-12 participant preparedness and 403(b) account performance showed just that.

The Role of the Third Party Administrator (TPA)

Using a TPA assures the employer that procedures are in place to comply with the IRS regulations. Further, the TPA assists employers with the ability to comply with the universal availability requirements through educational programs for employees and periodic in-depth notices to employees about their right to participate in the plan.

The Internal Revenue Service (IRS) has made it clear in audits of 403(b) plans that opportunities to participate in the plan should be frequent and diverse. In public webcasts, the IRS has mentioned the need to provide multiple methods throughout the year, including written in-depth notices (must be a “meaningful notice”), employee education programs and face-to-face assistance from financial advisors, emails and information on the school’s intranet. Every employer is unique and will know the best way to communicate with their employees. The IRS will want to verify on audit that the plan provides an effective opportunity to participate for all non-excludable employees. Notably, the IRS also has verbally stated that it is selecting and auditing employers with low participation rates in the plan (i.e., participation rates of 18-20%).

With the various TPA options available, employers are encouraged to carefully screen available TPAs to ensure the TPA they select is experienced in providing administration services to K-12 non-ERISA 403(b) plans. Their level of administration services being offered is critical. As mentioned above, requesting a copy of the 403(b) Plan’s Administrative Appendix will inform the Employer what each party will be, or is, doing under the Plan.



Plan Administration

Establishing a Plan

All public educational institution employers that sponsor a 403(b) plan must have a written plan that must contain certain mandatory provisions and may contain other optional provisions. Employers must have adopted a valid 403(b) plan no later than December 31, 2009, which conformed to the operations of the plan for the 2009 plan year. If there was no plan adopted for that year, the employer can contact a TPA or consulting firm to put one in place for that year, referred to as the “paperclip rule.” The Employer also decides which financial advisors and vendors will be a part of the plan for purposes of the investments. Remember, only annuities and mutual funds are permitted as investment options in a public school 403(b) plan.

Amending a Plan

As the years proceed, the Employer may wish to amend the plan document to include or delete certain plan features or provisions. These are voluntary amendments. So, for example, the Employer may choose to add Roth Elective deferrals, or loan provisions, or delete one of these from the plan. The Board should adopt the amendment and the Employer must re-execute the plan’s documents or Adoption Agreement indicating the change and the effective date of the change. Caution should be taken to make sure that the adoption date of the amendment is before the effective date of such changes.

Additionally, law changes and/or IRS guidance may require the amendment of the 403(b) plan by certain deadlines so the plan may continue to meet tax qualification requirements. If an update is necessary, the 403(b) pre-approved plan document provider must amend the plan and notify the Employer/Plan Sponsor of the amendment, or updated plan document, and obtain required signature(s), if applicable.

Restating a Plan

Restating a plan is making amendments for a period of years based on IRS guidance. The IRS provided a period of time to totally replace 403(b) documents, which is called the “remedial amendment period.” Along with this new requirement, the IRS approved 403(b) plan documents that were submitted to them in 2014. 403(b) Employers may adopt pre-approved 403(b) retirement plans from March 2017 to March 31, 2020 (deadline). Since the effective date of this required restatement was January 1, 2010, Employers may adopt these plans as restatements to correct any form defects since January 1, 2010. If an Employer had a valid plan for 2009, and executed a restatement effective January 1, 2010, no later than March 30, 2020, then the Employer will have reliance on its plans. Reliance means that Employers generally have peace of mind that the form of the pre-approved plan meets the IRS and other legal requirements. This will become extremely important should the IRS audit the plan.

Best Practices for Plan Administration

Plan administration can be overwhelming to an employer. As highlighted in the “Administration Basics” document, there are many moving parts to the day-to-day administration of a 403(b) plan. Here are some basic rules to follow:

1. **Follow the terms of the plan.** Employers must operate their 403(b) plans according to their written programs or the plans may be disqualified. This may lead to the loss of tax-deferred status for all plan contracts. Therefore, Employers should be familiar with the plan documents that they have put in place.
2. **Review the administrative appendix.** This document, that is required to be a part of the new IRS-approved 403(b) plan document, outlines the various required tasks that must be reviewed annually or periodically. Employers need to ask for a copy of this form from the plan document provider, TPA or vendor that is supplying it with such plan document.
3. **Deposit employees’ contributions timely.** Since an employee-contribution-only 403(b) plan is not subject to ERISA, generally, the timing for depositing the employee contributions will fall under the applicable state’s law. This can be even more restrictive than federal law, which specifies that the contributions must be remitted no later than the 15th business day of the month following the payroll reduction. Again, read the plan to see if the plan has adopted the federal law or if you need to look at the state’s requirements.
4. **Make a decision.** As an employer, you will need to decide if you will hire a TPA to assist in the administration of your plan.
5. **Conduct periodic reviews.** This can be handled with the TPA. The IRS provides checklists and tips to help conduct periodic reviews of 403(b) plans. See “Have you had your retirement plan check-up this year?” on the IRS website.



Glossary

This glossary offers consistency in terminology for purposes of this Plan Sponsor Guide. Throughout the marketplace, there is some confusion due to changes in meanings of terms, technical meanings given to common words and specific definitions provided by the IRS. Below are definitions of some of the terminology that the industry and the IRS use with respect to 403(b) plans.

90-24 Transfer	Changing 403(b) investment products prior to September 25, 2007, under the requirements of Rev. Proc. 90-24. Of course, these transactions were no longer permitted after September 24, 2007. However, some of these investments still exist outside of a plan. To move these back to an employer plan, the IRS refers to these as an "exchange from outside of the plan."
Abandoned Account	An account and/or contract that cannot be linked to an employer or that cannot be found.
Administrator	The entity that will perform the day-to-day administration of the plan. Since public schools' 403(b) plans with only employee contributions are considered non-ERISA plans, the term "plan administrator" is not frequently used. If there is no one named as the Administrator, then the typical default is the Employer.
Common Remitter	A type of TPA* Service that: <ul style="list-style-type: none">• Captures data from the employer's payroll• Compares the amounts remitted with expected employee contributions• Compiles and reconciles exceptions with the payroll department• Identifies employees eligible for "catch-up" contributions and applies contributions in the proper order, and• Distributes contributions to the properly chosen investment providers
Deselected Vendor/ Product Provider	A vendor/product provider that previously accepted contributions from an Employer, but is not included under the Employer's plan document. The deselected vendor must be listed in the Vendor Attachment to the Plan along with a note of any restrictions on such vendor.
Direct Rollover	A direct rollover is the direct movement of all or some portion of a participant's interest in a plan from the custodian, insurer or trustee holding the participant's account to the custodian, insurer or trustee of another eligible retirement plan into which the participant wishes to have their account deposited. The participant does not receive the distribution and the amount is directly deposited into their new account under the new plan as a "direct rollover" contribution.

*See definition of TPA

Excess 415 Contribution	Any amount contributed to a 403(b) account that exceeds the applicable IRS §415(c) limitation for the plan year. The limit in 2020 is \$57,000 (exclusive of an Employee's age 50+ catch-up contributions).
Excess Deferral	Any amount deferred by the Employee from their compensation (including Roth contributions) into a 403(b) account under the employer's plan that exceeds the annual IRS §402(g) deferral limit for the calendar year. The limit in 2020 is \$19,500 exclusive of an employee's aged 50+ catch-up contributions.
Exchange	An optional plan feature that permits the movement of all or some portion of an Employee's 403(b) account under an Employer's 403(b) plan from one provider to a different authorized provider under the same Employer's 403(b) plan.
Grandfathered Account	An account and/or contract not connected to a 403(b) plan holding the proceeds of a Rev. Rul. 90-24 transfer completed before September 25, 2007. <ul style="list-style-type: none">• Not subject to employer "plan" oversight• Controlled by relationship between participant and vendor
Indirect Rollover	An indirect rollover occurs when a participant receives the distribution of their interest under a retirement plan and then, within 60 days, redeposits all or some portion of the amount of the distribution into another eligible retirement plan. Because the amount was paid directly to the participant, the Provider must withhold 20% of the distribution amount for federal income tax purposes.
Orphan Account	Orphan Account A 403(b) account and/or contract held by a vendor that accepted contributions for any employee of an employer/plan sponsor after December 31, 2004, but was not included under the plan sponsor's 403(b) plan document on January 1, 2009.
Plan to Plan Transfer	The movement of all or some portion of a participant's 403(b) account and/or contract from one employer's 403(b) plan to another employer's 403(b) plan. The employee must be a former or current employee of the employer maintaining the accepting plan. No distributable event is required for this transaction, but both plans must permit the transfer of participant accounts. The assets will be record kept in the same source that they came from in the prior plan.

Pre-Reg. Account	<p>A 403(b) account and/or contract issued before 2005 into which no contributions were made after 2004.</p> <ul style="list-style-type: none">• Not subject to Employer “plan” oversight• Controlled by the relationship between participant and vendor
Recordkeeper/ Aggregator	<p>An entity that provides these plan services:</p> <ul style="list-style-type: none">• Keeps records of plan and participant account information• Maintains accounting of values attributable to each 403(b) plan participant• Tracks the sources of money sometimes (e.g., Roth, employee deferrals and employer contributions)• Does not typically handle compliance transactions
Rollover	<p>The movement of all or some portion of a 403(b) account and/or contract, as part of an “eligible rollover distribution,” to an “eligible rollover plan.” A rollover may be a direct rollover or an indirect rollover. Rollovers may not be made in a 403(b) plan until a participant has experienced a “distributable event” under the plan and IRS §403(b).</p>
TPA (Quasi)	<p>A type of TPA that:</p> <ul style="list-style-type: none">• Provides some, but not all, TPA services based on the terms of the agreement between the TPA and Employer• Usually offers one or more of the following services:<ul style="list-style-type: none">◦ Common remitter services◦ Consulting◦ Educational materials◦ Documents (specimen)

TPA (Full Service)	A type of TPA that provides comprehensive plan administration services for 403(b) plans including: <ul style="list-style-type: none">• Common remitter services• Recordkeeping services• Overall compliance at the plan level with respect to loans, hardship withdrawals, tracking suspensions and reinstatement, exchanges and transfers, distributions and monitors required minimum distributions• No fiduciary responsibility• Coordination of various vendor activities• Maintenance of Employer plan website (optional)• Central point of contact for plan level information• Drafting and maintaining plan document (optional)• Administrative forms maintenance• Employer manual or instructions to Employer• Eligibility and participation requirements• Employer support, such as the universal availability rule
Vendor/Provider	The entity that provides the annuity contract or the mutual fund custodial agreement.

Administration Basics Non-ERISA 403(b) for Public Schools

Employer Name: _____

Responsibilities

The following checklist outlines responsibilities associated with the Plan and the entity obligated to each item. If there is an item without an assignment of responsibility, such item becomes the duty of the Employer as the sponsor of the plan. Following each section is a general description/commentary of the requirement. All references to "IRC" are references to the Internal Revenue Code unless otherwise noted.

I. Plan Financial Reporting

Review and verify accuracy of SPARK File or other Data Sharing Information and notify Vendor of errors. (This includes an annual audit to make sure that all amounts and sourcing did get credited to the proper participant in the Plan.)

Commentary: A SPARK file is the generally accepted method of sharing data between vendors, TPAs and the Employer. Your vendor(s) or TPA can explain this to you. If the Vendor is not utilizing SPARK then another method of sharing data must be used.

Responsible Parties: TPA Vendor(s) Employer
 Other (specify): _____ N/A

ii. Enrollment of Participants

If applicable, provide Employee census information prior to each entry date to determine eligibility.

Evaluate eligibility to determine who enters the plan on each entry date.

Commentary: Employees that may be excluded from participating are: a) employees who normally work less than 20 hours a week; (b) non-resident aliens with no U.S. income; (c) student workers (including student teachers); (d) employees who contribute to another voluntary salary reduction plan (i.e. through collective bargaining); and (e) employees who will not contribute at least \$200.00 annually.

Excluding any employees will greatly increase the risk of violating the "universal availability" requirements of Section 403(b)(A)(ii) of the Code which may result in complete Plan failure and loss of its tax preferred status.

- ✓ Provide enrollment forms to eligible employee (for deferral elections, investment elections, and beneficiary designations).

Commentary: The enrollment package should include information about the employers 403(b) plan and the information to either enroll online or paper.

- ✓ Provide mandatory notices at enrollment for Universal Availability.

Commentary: Universal Availability: All 403(b) public education employers must follow the rules outlined in IRC §403(b)(12)(A)(ii) which are applicable to voluntary employee contributions to your 403(b) Plan. Essentially, if any employee is given the opportunity to participate in making voluntary salary reduction contributions, then almost all employees must be given the same opportunity. Employees must be eligible to make voluntary contributions no later than 60 days after they are hired or sooner depending on your 403(b) Plan document. The only employees that can be excluded from the opportunity to make voluntary contributions are those described above. In order to satisfy this requirement a "meaningful" notice must be provided to employees regarding their availability of deferring into the Plan at least annually. A model written notice should include: (a) Identification of the eligibility requirements; (b) the enrollment procedures; (c) the types of employee contributions available; (d) how and when contribution amounts can be changed; and (e) information on approved investment providers. It is also recommended that you keep a record of the notice and a documented procedure for providing the notice. Employers should also consider implementing multiple methods to provide notice; examples include: employee education sessions on 403(b) plans, bulletin board flyers, payroll stuffers, new employee orientation materials and employee handbooks. Signatures are not required but keep in mind that the IRS on audit is looking for proof of receipt; therefore a best practice may be some kind of employee sign off of receipt or possibility at any educational event.

- ✓ Provide other required notices at enrollment, such as “deemed” control group (owning outside business).

Commentary: 415 Notice: This requirement is not new but became the responsibility of the employer (or the TPA) beginning in 2009. This is a required notice describing the effect on an employee if they also “control” another business and have a retirement plan for that business in addition to participating in the 403(b) plan. The notice should explain the effect on the employee and describe the correction if too much is contributed between the 403(b) and the other Plan. The excess must be corrected from the 403(b) plan. For example a school teacher is self-employed as a tutor during their summers and also during the year. The teacher establishes a SEP plan for their tutoring business income. Between the contributions made to the SEP and the 403(b), the total contributed cannot generally exceed \$56,000 (limit in 2019). Most 403(b) TPAs include this information on the salary deferral form or in the enrollment materials.

Important Note: For years beginning after the year that the Employer restates their 403(b) Plan, this 415 Notice requirement becomes an “annual” requirement. Thought should be given by the Employer/TPA to determine what this notice will become a part of, since this will be an annual requirement. Some TPAs have now included this information in the Universal Availability notice as a part of their updates.

- ✓ Verify deferral percentage for new participants.
- ✓ Analyze eligibility service and vesting service to be credited to rehired employees, if applicable.

Commentary: As of the time of this publication, IRS has not released their guidance on how to treat rehired employees for eligibility under the 403(b) Plan. Once this is received your TPA and/or document provider should be sending all Plan Sponsors the new information.

- ✓ If Plan does not provide for full and immediate vesting, determine forfeitures that must be restored for rehired participants.

Commentary: Forfeitures are amounts that are not “vested” when the employee has a distributable event. This will only apply to Employer contributions since employee deferrals are always 100% vested. For example, the 403(b) plan permits employer contributions that are subject to a 6 year graded vesting schedule (0%-1 year; 20% -2 years; 40% - 3 years; 60% - 4 years; 80% - 5 years; and 100% - 6 years) employee has worked for the Employer for 3 years and therefore is 40% vested. The remaining 60% goes into a forfeiture account under the plan and may be used according to the Plan document for: expenses; reducing the next employer contributions; or reallocating the amount to all remaining participants in the Plan. If an employee is rehired and they pay back their portion of the distribution then the Employer MUST put back into their account the amount of the forfeiture. There is generally a 5 year period from date of termination for this to happen.

- ✓ If certain types of compensation are excluded, evaluate compensation types for participant and ensure that deferrals are being removed from all relevant compensation types (check exclusions, e.g., stipends, coaching bonuses, club sponsorships).

Commentary: This area has been a major problem under IRS audits even for school districts. The payroll provider should make sure that the compensation being used for elective deferrals as well as Employer Contributions is the compensation as defined in the Plan document. For example if the plan excludes bonuses or stipends from compensation then deferrals/employer contributions cannot be based on that portion of the compensation.

- ✓ Confirm that proposed deferrals do not exceed plan defined limits or legal maximums.

Commentary: Ideally this should be reviewed at each payroll period, so that an “excess” never really gets into the plan.

- ✓ Verify entry and commencement of deferrals for new participants.

- ✓ Provide completed enrollment forms to Vendor (Advisors).

- ✓ Maintain copies of deferral and investment elections and all changes made.

Commentary: This may be done electronically or on paper. Many TPAs have a system where this information is captured per payroll so that it is easily maintained in the event of an IRS audit.

- ✓ Collect and maintain copies of beneficiary designations and changes to same.

Commentary: Many Vendors/TPAs handle this function as well as putting the named beneficiary(ies) on the participants account and remind the participants periodically that they should review who they have named. The TPA would also maintain the actual paper copies with wet signatures, should the State where the Employer resides have the “best evidence rule”, which requires the original signed forms to be maintained. Also if the State is a community property state there will be a requirement for spouses to sign off on the naming of beneficiaries other than the spouse.

- ✓ If Plan does not provide for full and immediate vesting, determine initial vesting computation period.

Commentary: Vesting computation periods are generally 12-month periods that count the years of service to determine vesting. Choices typically are: (a) the plan year; (b) the 12 months measured from the date of hire and anniversaries thereof, or (c) the 12 months measure from the date of hire and then subsequently measured on the plan year beginning on the January 1st that occurred before the end of the initial 12 month period.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

II. Contribution Determination

- ✓ Identify census parameters.
- ✓ Provide census information to determine contribution limits, vesting.
- ✓ If Employees are not immediately eligible, determine employees eligible to participate in each type of contribution allocation.
- ✓ Verify type of contributions made (pre-tax deferral, Roth, employer, rollovers, etc.).
- ✓ If compensation is excluded, determine includible compensation for participant for each type of contribution, if different.
- ✓ Determine amount of each type of employer contribution (discretionary or matching) for each participant.
- ✓ If Plan accepts Employer contributions, determine amount of true-up matching contribution at year end (if any).
- ✓ If Plan accepts Employer contributions, verify that matching contributions do not exceed plan defined limits.
- ✓ If Plan accepts Employer contributions, determine maximum contribution under IRC §415 and verify that contributions do not exceed that limit.
- ✓ Determine and maintain records of separate accounting for all types of contributions.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

III. Vesting and Forfeitures (Employer Contributions)

- ✓ Determine and maintain records of vesting service.
- ✓ Determine and maintain records of vested percent.
- ✓ Determine timing of forfeiture from a participant's account.
- ✓ Determine use of forfeiture.
- ✓ Determine amount to be contributed based on use of forfeitures to reduce employer contribution (if applicable).

Commentary: Forfeitures are amounts that are not "vested" when the employee has a distributable event. This will only apply to Employer contributions since employee deferrals are always 100% vested. For example, the 403(b) plan permits employer contributions that are subject to a 6 year graded vesting schedule (0%-1 year; 20% -2 years; 40% - 3 years; 60% - 4 years; 80% - 5 years; and 100% - 6 years) employee has worked for the Employer for 3 years and therefore is 40% vested. The remaining 60% goes into a forfeiture account under the plan and may be used according to the Plan document for: expenses; reducing the next employer contributions; or reallocating the amount to all remaining participants in the Plan. If an employee is rehired and they pay back their portion of the distribution then the Employer MUST put back into their account the amount of the forfeiture. There is generally a 5 year period from date of termination for this to happen.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

IV. Annual Compliance Limitations/Notices

- ✓ Prepare and deliver annual Universal Availability Notice.

Commentary: See above for description of the Universal Availability Notice.

- ✓ Monitor statutory limits - Annual 415 limit, Compensation §401(a)(17), Elective Deferrals §402(g), Age 50 Catch-up §414(v), 15 year Catch-up.

Commentary: The Employer/TPA must monitor amounts that are contributed to the plan in order to prevent an excess contribution. Here are the current limits for 2018 and 2019:

	2018	2019	2020
415 Limits	\$55,000	\$56,000	\$57,000
Compensation Limit	\$275,000	\$280,000	\$285,000
Elective Deferrals - 402(g)	\$18,500	\$19,000	\$19,500
Age-50 Catch-Up	\$6,000	\$6,000	\$6,500
15-year catch-up	\$3,000*	\$3,000*	\$3,000*

Commentary: *This catch-up is used first, and then any remaining amounts can be used under the age 50 catch-up. Make sure that you have the data needed for the 15+ years of service.

- ✓ Determine if additional plans must be aggregated with this Plan for overall limits.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

V. Elective Deferrals

- ✓ Process and verify deferral elections each payroll period to ensure proper deferral by participant, including deferral changes.

- ✓ Reconcile deferral changes made between payrolls.

- ✓ Provide annual mandatory notices: (Universal Availability, Automatic Enrollment, 415 Notice, Other _____) (if applicable).

- ✓ If Universal Availability failed, determine amount to be contributed with lost earnings.

- ✓ Amounts are contributed as earmarked as a QNEC (employer contribution).

- ✓ Amend plan to accept QNECs if necessary.

- ✓ Ensure deposits of salary deferrals are made to Vendor within required timeframe.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

VI. Distributions of Benefits

- ✓ Prepare and maintain distribution notices and elections.

- ✓ Provide distribution forms to participant, including 402(f) notice for rollover information.

Commentary: IRS provides language periodically for a 402(f) notice, also referred to as the Special Tax Notice. This notice describes the advantages of rolling over money to an IRA or another plan as well as the effect if a rollover is not completed by the terminated participant. The TPA should check periodically, especially when the law changes to see if IRS has updated its sample notice. A new updated 402(f) notice was issued by the IRS in September of 2018.

- ✓ Review distribution forms to see if fully completed and signed by appropriate parties.

- ✓ Evaluate eligibility to receive a distribution.

Commentary: Generally a distributable event is required for a distribution to occur. For example a distributable event would include separation from service, or attainment of age 59 ½ (in some plans), etc.

- ✓ Authorize distributions and other transactions.
- ✓ Confirm vested interest on termination of employment.
- ✓ Determine amount to be distributed.
- ✓ If Plan permits Roth Deferrals, determine basis in Roth Distributions.
- ✓ If Plan permits Roth Deferrals, determine and maintain beginning date for Roth qualification period.
- ✓ If Plan permits Roth Deferrals, determine whether Roth distribution is qualified.
- ✓ Proper Income tax withholding deposit made and IRS reporting on Form 945.
- ✓ Form 1099-R provided to participant and IRS.
- ✓ Determine cash-out amounts for the year (e.g., accounts for terminated participants with less than \$1,000 value). Only available for Group Annuities or Group Custodial Agreements.
- ✓ If elected under the Plan, determine amounts to be moved to an automatic IRA rollover (e.g., amounts for terminated participants with \$1,000 to \$5,000 in value).
- ✓ If permitted under the Plan, evaluate eligibility for hardship distribution.
- ✓ If permitted under the Plan, notify of ceasing deferrals for 6 months, confirm that deferrals have ceased, solicit new deferral form after 6 months.

Commentary: Consider the elements of the hardship withdrawal requirements after January 1, 2019, keeping in mind that the new ability to take those withdrawals from earnings as well as actual deferrals, and from employer contributions would violate the terms of the 403(b) Code itself which limits hardship withdrawals to elective deferrals only. While it is permissible to eliminate the cessation of deferrals for six months, an amendment to the plan would be required. It is probable that plan amendments may not be made available until IRS guidance (expected by February of 2019) has been posted and evaluated.

- ✓ Evaluate proposed QDRO to determine if it qualifies as such.
- ✓ Communicate to participant/former spouse regarding QDRO receipt (and provide copy of QDRO Policy) and QDRO determination.
- ✓ Segregate account and initiate distribution to Alternate Payee.
- ✓ Authorize and verify requirements for Exchanges, 403(b) Transfers and Transfers to State DB Plan

Commentary: Refer to the Glossary for more information on Exchanges and Transfers. One note on plan-to-plan transfers - remember that this is a movement from one 403(b) plan directly to another where the participant is a current or former participant of the plan that the monies are moving into. When the transfer money come into the accepting plan remember that there must be an accounting of what monies the transfer represents since those dollars will be moved in the same "buckets" on the new recordkeeping system. For example, deferrals would be moved into the deferral bucket; rollovers would be moved to the rollover bucket, etc.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

VII. Participant Loan, if Available

Commentary: Loans may be available subject to rules stated in the plan and the applicable plan vendor(s) contracts/custodial agreements. IRS rules permit loans of 50% of a participant's account value (across all plans of the employer), or \$10,000 if greater, subject to the overall maximum of \$50,000 minus the highest balance of any outstanding loans during the prior 12 months. Loans generally must be paid back within 5 years, or longer if made to purchase a principal residence. Loan repayments to the participant's account include interest at the rate stated at the loan initiation. A loan default occurs if repayments are not made according to the loan terms; the outstanding unpaid amount is treated as a deemed distribution subject to taxation and potentially a 10% early withdrawal penalty. A loan offset occurs if repayments are not made but the participant is eligible for a plan distribution (e.g., attained age 59-1/2; retirement or plan termination); the outstanding unpaid amount is treated as an actual distribution subject to taxation. However, a loan offset distribution is eligible to be rolled over tax-free (e.g., to an IRA or other plan) by the participant, whereas a loan default deemed distribution is not.

- ✓ Aggregate loan data from all accounts under employer including 403(b) and 457.
- ✓ Provide copy of loan procedure/policies to participants.
- ✓ Prepare and retain loan documents (e.g., promissory note, etc.) for each participant loan.
- ✓ Determine maximum amount that may be borrowed.
- ✓ Provide Loan Request Forms to participants.
- ✓ Confirm proper completion of loan application.
- ✓ Approve loan.
- ✓ Verify that proper loan payment procedures are in place.
- ✓ Determine defaulted and offset loans.
- ✓ Prepare Form 1099-R on defaulted loan and for offset loans that are distributed.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

VIII. Miscellaneous

- ✓ Identify participants required to take a Required Minimum Distribution (RMD), including terminated employees, beneficiaries.
- ✓ Provide timely notice of RMD requirement.
- ✓ Determine minimum distribution amount.

Commentary: Determine based on the Plan language what the “required beginning date” (RBD) is for RMDs. Generally it is the later of the April 1st following the attainment of age 70 ½ or retirement, however a plan can define the RBD as the April 1st after attainment of 70 ½. There is also an aggregation rule for 403(b) RMDs: Under this alternative method, individuals (participants or beneficiaries) must still calculate the required minimum separately for each 403(b), however, such amounts may then be totaled and the total required distribution taken from any one or more of the individual’s 403(b) plans.

- ✓ Annually review of all Vendor documents including distribution forms, custodial agreements, annuity contracts, withholding notices and elections, etc.

Commentary: In order to make sure that all forms and documents being utilized satisfy the various requirements many TPAs review vendor’s documents on an annual basis. This is especially true for distribution forms and withholding notices. On audit the IRS will request copies of certain forms/notices to make sure that the current rules are being used. IRS has also begun to include the annuity contracts and custodial agreements in their review. In the same manner that the employer must restate their 403(b) Plan document by 3/31/2020, vendors’ contracts must also be updated by that same date and sent to participants.

- ✓ Review Employment Contracts, Union contracts to assure that they properly reflect contributions and the plans to which they relate. Also review any post-employment employer contribution procedures to make sure that there are no elections permitted by the employee/participant with respect to whether they will be treated as compensation or an employer contribution.

Commentary: It is very common that the language in the employment contracts or union contracts do not properly reflect the operation of the plan. TPAs typically review these where there are employer contributions.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

IX. Plan Qualification

Commentary: Written Plan Requirement Overview: Section 1.403(b)-3(b) of the Treasury Regulations introduced a new IRC based written plan requirement for IRC 403(b) plans beginning in 2009. It provides that a 403(b) program must be maintained pursuant to a written defined contribution plan document, and must satisfy all of the requirements of section 403(b) and the related Treasury Regulations in form and must operate in compliance with the form. In other words you must administer the Plan based on what your 403(b) plan document states! Here are the general rules:

1. The written plan requirement provides employers with a central location for determining benefits and administrative responsibilities under the IRC 403(b) program, and will improve the administration and coordination of the various legal requirements.
2. Originally the written plan was to be in place by January 1, 2009, the effective date of the IRC 403(b) Treasury Regulations. However, in Notice 2009-3 the IRS extended the deadline to December 31, 2009, as long as certain conditions were met.
3. A plan that did not adopt a written plan document by December 31, 2009, may still do so by complying with the procedures set forth in Rev. Proc. 2013-12. See sections 2.03, 5.02 and 6.10 of Rev. Proc. 2013-12. An alternative is the use of the “paperclip rule” - see #5 below.
4. An IRC 403(b) written plan may incorporate other documents by reference; however, in the event of a conflict with another document, the plan governs.
5. What happens if I do not have a plan for 2009? The regulations under 403(b) do not require that there must be a single plan document. Instead, the written plan may consist of multiple documents, including documents that are incorporated by reference. All of those documents, taken together, must satisfy the requirements of IRC 403(b). This is known as the “paperclip rule and can be used to create a valid plan for the 2009 plan year. Make sure all of the multiple documents that you are collecting reflect what the Employer actually did in operation in 2009 otherwise this will need to be submitted to IRS for a voluntary correction under VCP program.
6. By 3/31/2020, all 403(b) employers must have restated onto an IRS pre-approved plan which had a retroactive effective date of 1/1/2010. There are 2 important features of the new plan that you should ask your TPA for - (1) the Administrative Appendix (this section will tell you as the Employer who is doing and not doing certain items for you). Those items not checked will become the responsibility of the Employer; and (2) “Recap Sheet” for restated items. This will protect the employer and outline all changes that occurred in the plan from 1/1/2010 through the date of restatement. For example: if Roth deferrals were added in 2012, this page will note that date. If these appendices or pages are not present, ask your TPA or Plan Document provider to provide you with a copy.

- ✓ Prepare Plan document.
- ✓ Prepare Amendments, Required and optional.

Commentary: Required amendments are those that typically are based on an IRS notice and/or legislation which require an amendment be made to the plan by a certain deadline. For example: loans and hardship distributions for disasters may be added to the plan - deadline for 2016, 2017 and 2018 disasters was 12/31/2019. Optional amendments are all other amendments. For example: an employer wishes to add loans (or remove them as an option), this would be an optional amendment.

- ✓ Prepare Restated Plan Documents by 3/31/2020 (first restatement).

Commentary: As indicated above, by 3/31/2020, all 403(b) employers must have restated onto an IRS pre-approved plan which has a retroactive effective date to 1/1/2010. There are 2 important features of the new plan that you should ask your TPA for - (1) the Administrative Appendix (this section will tell you as the Employer who is doing and not doing certain items for you). Those items not checked will become the responsibility of the Employer; and (2) “Recap Sheet” for restated items. This will protect the employer and outline all changes that occurred in the plan from 1/1/2010 through the date of restatement. For example: if Roth deferrals were added in 2012, this page will note that date. If these appendices or pages are not present ask your TPA or Plan Document provider to provide you with a copy.

- ✓ Prepare written procedures/policies, where applicable.

Commentary: Written procedures should be available pertaining to distributions, processing contributions, QDROs (qualified domestic relation orders), universal availability rules, loans, missing participant, and the general day-to-day administrative items.

Responsible Parties: TPA Vendor(s) Employer

Other (specify): _____ N/A

Checklist for Establishing a 403(b) Plan for a Public Educational Institution

The general steps to establish a 403(b) plan are:

1. Adopt a written plan.

All 403(b) plans, except certain church plans that do not contain any retirement income accounts, must have a written program that must contain mandatory provisions and may contain other optional provisions.

All Employers must have a compliant plan in place by March 31, 2020. This is called a restatement and must be adopted by such date.

Commentary: If applicable, make sure that your school had a valid plan document adopted no later than 12/31/2009. The restatement will then be effective from 1/1/2010 through the date that the new plan is executed. This new Plan will cover any amendments/changes in operations that occurred from 1/1/2010 through the date of the restatement. This is critical since it is the only way that an Employer will have reliance from 1/1/2009 through the present day.

2. Has your governing Board (or party with delegated authority) formally adopted the restated 403(b) written plan document?

Yes No

Commentary: The IRS has indicated in public comments that the governing board should pass a resolution to adopt the 403(b) written plan unless the board has previously delegated that authority to a specific key position. Intention is also proven during an IRS audit regarding the intent to adopt a written plan document.

3. Administration - Decide Whether Your School will:

a. Self-administer

b. Retain a third party (TPA) to coordinate and perform Plan activities

c. Retain the plan's approved investment providers to coordinate and perform Plan activities

Commentary: If you retained a third party or used the plan's approved investment provider(s) to provide plan administration and record keeping services, you may have questions concerning the internal procedures and controls the third party utilizes to help keep your 403(b) plan in compliance once you complete this checklist.

There are different levels of 403(b) plan administration and record keeping services available to Plan Sponsors; but any reputable third party maintains documented procedures and report samples and will make them available to you upon request. In the event there are misunderstandings between you and the third party regarding the scope of the compliance services your Plan receives, consult your Administrative Service Agreement, Administrator Guide and/or vendor service agreements for clarification. Also refer to the section "Administration Basics", later to help determine what responsibilities your vendors and/or TPA will assume. What is not taken becomes the responsibility of the Plan Sponsor!

4. Establish annuity contracts or custodial accounts for plan participants - Pick your Vendors!

Individual accounts in a 403(b) plan can be any of the following:

- An annuity contract, which is a contract provided through an insurance company; or
- A custodial account, which is an account invested in mutual funds.

Commentary: Before selecting vendors, determine whether they will share the data needed to administer your 403(b) Plan either with your School and/or your TPA, if applicable and ascertain signed Information Sharing Agreements (ISAs) from those selected vendors.

403(b) plans cannot be funded with life insurance (issued after September 24, 2007), endowment, health, accident or other types of insurance contracts.

The employer, who is responsible for ensuring its plan complies with all legal requirements, should verify that there is no conflict between the terms of the 403(b) plan and the provisions of any annuity contract or custodial account agreement under the plan. The plan's terms will overrule any inconsistencies. If you hire a TPA they may also take on this responsibility.

5. ERISA Exempt

Public Schools are not subject to ERISA.

6. Provide required information to employees (universal availability rule).

The following public school employees are eligible to participate in a 403(b) plan:

- a. Employees of public school systems who are involved in the day-to-day operations of a school.
- b. All eligible employees then must receive an annual meaningful notice about their eligibility to defer under the 403(b) Plan.
- c. Determine and document the methods your school will use to satisfy the Universal Availability Rule.

Commentary: The “universal availability rule” means that if an employer permits one employee to defer salary into a 403(b) plan, the employer must extend this offer to all employees of the organization who do not meet the permitted exclusions listed under #7 below.

7. Permitted Exclusions from Elective Deferrals - You may only exclude certain employees from the plan including:

- Employees who will contribute \$200 or less annually
- Those employees who participate in a 401(k) or 457(b) plan or in another 403(b) plan of the employer
- Nonresident Aliens with no US source income
- Employees who normally work less than 20 hours per week (equates to 1000 hours per year)
- Students performing services described in IRC Section 3121(b)(10)

Commentary: Employers should not exclude any other employees, whether by class (i.e. bus drivers, substitute teachers, cafeteria staff, etc. Unless the employee is listed as an exclusion listed above the Employer may not exclude that employee from making elective deferral contributions. Exclusions will make the plan subject to additional compliance testing. Improper application of exclusions may have unintended negative monetary consequences.

8. Determine Types of Employee Contributions Permitted:

Exclusions will make the plan subject to additional compliance testing. Improper application of exclusions may have unintended negative monetary consequences.

- Pre-Tax Elective Deferrals Post-Tax Roth Elective Deferrals
- After-Tax Employee Contributions
- Age 50 Catch-Up Contributions 15 Year of Service Catch-up

Commentary: The requirements and internal procedures for properly determining 15 years of service catch-up eligibility are historically misunderstood and misapplied in 403(b) plan operations. First, an employee must have 15 or more years of full-time equivalent service in your employ to be eligible for this catch-up provision. In an IRS audit, the examiner will normally request documentation of an employee's eligibility to take advantage of the catch-up provision. Most TPAs and investment providers operating in the 403(b) market can provide you with a Maximum Allowable Contribution (MAC) worksheet. Be sure you have the complete historical data and documentation if this provision is allowable under your Plan. The lifetime maximum 15 year catch-up contribution is \$15,000 (maximum \$3,000 per year). There are also ordering rules to consider for those employees who are eligible for both the age 50 and the 15 years of service catch-up provision. Essentially, any contributions made over the annual elective deferral limit (\$18,500 for 2018) first apply to the 15 years of service catch-up. Consult your tax advisor for additional information.

9. Employer Contributions - Determine Types of Employer Contributions

Based on:

- Matching
 - Employment Contract
 - Collective Bargaining
- Discretionary (Non-Elective)
 - EE Contract
 - Collective Bargaining
 - Post-Severance Employer Contributions

10. Optional Provisions Permitted in Your Plan:

Determine what additional features to add to your Plan:

- Roth IRA
- Traditional IRA
- SIMPLE IRA
- SEP-IRA
- Governmental 457(b)
- Qualified Plan (Pre-Tax)
- 403(b) (Pre-Tax)
- Designated Roth Account (401(k), 403(b), or 457(b))

11. Additional Resources - These additional resources will provide you with more information on some of the information provided above.

- a. IRS Publication 570
- b. IRS Publication 4546, 403(b) Plan Checklist - <https://www.irs.gov/pub/irs-pdf/p4546.pdf>
- c. Operational Failures in 403(b) Plans - <https://www.irs.gov/retirement-plans/403b-plans-withoperational-failures>
- d. Establish a 403(b) Plan - <https://www.irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plansestablish-a-403b-plan>
- e. IRS Publication 4483 - Information on 403(b) Plans for Employers - <https://www.irs.gov/pub/irs-pdf/p4483.pdf>
- f. The Source
- g. ASBO International 403(b) Guidance - [https://asbointl.org/publications-resources/403\(b\)-guidance](https://asbointl.org/publications-resources/403(b)-guidance)
- h. 403(b) Pre-Approved Plan Program - Key Provisions (links to all supporting IRS docs) - <https://www.irs.gov/retirement-plans/403b-pre-approved-plan-program>
- i. Section 403(b) Pre-approved Plans Sample Plan Provisions and Information Package (PDF) - https://www.irs.gov/pub/irs-tege/403b_lrm0313.pdf

12. Next Steps

Congratulations, you have made the commitment to either establish a 403(b) Plan or are in the process of restating your plan effective with the 2010 year through the present day - remember this should not have been later than 3/31/2020. To prepare for the annual administration of your Plan, read through “Administration Basics” for a basic understanding of what is involved in the day-to-day administration of your Plan. NTSA offers a Best Practices Manual, as well as a textbook called “The Source” for a more detailed look at 403(b) Plans. You can get more information here: <https://www.nts-net.org/industry-training/source>.

Checklist for Amending a 403(b) Plan for a Public Educational Institution

The general steps to amend a 403(b) plan are:

1. Amend your written plan.

Once the decision is made for what features you wish to amend, prepare your Adoption Agreement with the amendments to be made making sure that the proper effective dates are indicated. Execute your amended Adoption Agreement prior to the effective date of the change.

Commentary: The date that the Adoption Agreement is executed should be prior to the effective date. For example if you are amending the plan to include Roth elective deferrals, the effective date should be no earlier than the signature date on the Adoption Agreement.

2. Board Resolution: Has your governing Board (or party with delegated authority) formally adopted the 403(b) amendment?

Yes No

Commentary: The IRS has indicated in public comments that the governing board should pass a resolution to adopt the amended 403(b) plan unless the board has previously delegated that authority to a specific key position. Intention is also proven during an IRS audit regarding the intent to amend a plan document. The Board resolution should always go hand in hand with a fully amended Adoption Agreement. An insert page or only a Board Resolution is not sufficient.

3. Are you amending your Plan to Add or Deselect Vendors?

Yes No

Commentary: Once this has taken place, ask each new vendor for an Information Sharing Agreement. Notify the Vendors that are being deselected. Remember they are still part of your Plan.

4. Amend the Vendor Attachment.

All 403(b) Plans must contain a Vendor Attachment that outlines all active Vendors as well as Deselected Vendors. Include an effective date on the new Attachment.

5. Provide Information to Employees.

Update any enrollment materials and other links to information for employees to reflect the new amended plan including the new and deselected vendors.



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