



What is a 403(b) Plan?

Many tax-exempt organizations provide retirement benefits to their employees under 403(b) arrangements. Similar to the 401(k) plans of the corporate world, a 403(b) plan allows employees to make elective deferrals through payroll deductions on a pre-tax or post-tax (Roth) basis. The maximum amount allowed by law for calendar year 2022 is \$20,500, \$27,000 for individuals age 50 or older. Employers may match those contributions, or make additional discretionary contributions to employees. All employees, with limited exceptions, must be given the opportunity to defer.

New Requirements: After more than 40 years without any major modifications, the IRS issued new regulations effective January 1, 2009, which required plan sponsors to take actions they had not been accustomed to taking in the past. A plan document must be drawn, stating the terms of the program. Among other things, this includes the Eligibility requirements, including Universal Availability Rules; the Benefits provided; Contribution limits; Investments available and the Timing and form of distributions, including loans and hardships, if applicable; normal distributions; plan-to-plan transfers and the acceptance of rollovers. In addition, a plan deemed an ERISA 403(b) plan will be subject to the same Form 5500 filing requirements as 401(k) plans, including the independent audit requirements for plans with more than 100 participants.

Is the Plan subject to ERISA?

The first step in determining how these regulations affect a 403(b) plan is determining whether the plan is subject to ERISA. Non-ERISA plans generally must meet the following requirements for this status and receive certain exemptions:

- > **The plan must be 403(b) annuity contracts or custodial accounts funded solely through salary reduction arrangements.**
- > **Participation must be completely voluntary.**
- > **All rights under the annuity contract or custodial account are enforceable only by the employee or beneficiary of account.**
- > **The involvement of the employer is limited to certain optional specified duties.**
- > **The employer receives no direct or indirect consideration or compensation with regard to the 403(b) contracts.**

Generally, if the plan has any employer contributions, or if the employer has any amount of discretion pertaining to approval of distributions or loans, then the plan will be subject to ERISA.

Non-Discrimination Testing: The final regulations repealed the "good faith reasonable standard" regarding nondiscrimination requirements, now employer contributions must satisfy non-discrimination testing requirements in the same manner as any other qualified plan. This includes the ACP testing of employer matching contributions, and in the general testing of employer discretionary allocations.

Automatic Enrollment: An employer can opt to design their plan to include automatic enrollment. This type of provisions allows for the employer to automatically enroll those employees who have not formally made an election to participate/not participate in the plan, this typically leads to a higher participation rate within the plan which helps with passing the required nondiscrimination tests.

The Saver's Credit: If a participant makes contributions to the Plan, they may be eligible for a special tax credit, called the "saver's credit." This credit could reduce the federal income tax they pay dollar-for-dollar. The amount of the credit they can get is based on the contributions they make and their credit rate. The credit rate can be as high as 50%, or as low as 10% of their contributions, depending on their adjusted gross income (the lower their income, the higher the credit rate). The credit rate also depends on their filing status.