NTSAA 403(b) Compliance Resolution Summit
Best Practices Manual
First Edition
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ISBN: 978-0-9795139-3-0 0-9795139-3-6
Publication Date: May, 2010
Printed in the United State of America.

Published by The National Tax Sheltered Accounts Association (NTSAA) and The American Society of Pension Professionals & Actuaries (ASPPA)
314/692-9861 • Fax: 479/439-8018
www.ntsaa.org

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While every effort has been made to ensure the accuracy of the content contained in this publication, it should be noted that there may be different interpretations of regulation(s) and/or guidance covered. These Best Practices represent the views of NTSAA only and are not intended as the sole or exclusive means of administering 403(b) plans.
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Introduction

In June of 2009, the National Tax Sheltered Accounts Association (NTSAA) organized and sponsored the NTSAA 403(b) Compliance Resolution Summit (Summit) to address the pervasive service issues in the 403(b) marketplace. Several 403(b) product providers (vendors), third party administrators (TPAs), distributors, consultants and technology firms along with invited guests from the Association of School Business Officials (ASBO), the American Society of Pension Professionals and Actuaries (ASPPA), the Internal Revenue Service (IRS) and the Investment Company Institute (ICI) participated in frank and open discussions on acknowledged marketplace problems. The goal of the Summit was to identify problems and suggest reasonable measures that the involved parties might be able to use to satisfy compliance requirements and solve systemic issues.

In the final Summit general session, it was resolved that the NTSAA would appoint work group task forces (Task Forces) to develop “best practices” transaction procedures, standardized plan document grids for information gathering, and develop standardized processing/transaction forms that should be acceptable to employers, product providers and TPAs.

This “Best Practices” manual is the product of the Summit and the efforts of the Task Force members that contributed their time and work toward the completion of the goals outlined at that Summit.

The Summit attendees agreed that if most employers, product providers and TPAs would adopt as many of the best practices outlined in this manual as possible, the entire 403(b) marketplace would benefit. It was hoped that employers (plan sponsors) would find administrative burdens significantly reduced and simplified; plan participants would benefit from more timely responses to transaction requests and product providers and TPAs would be able to substantially reduce the procedural and systemic burdens required to satisfy the compliance requirements inherent in the final 403(b) regulations. It was recommended that employers sponsoring 403(b) plans encourage product providers and service providers acting under their 403(b) plans to adapt to these recommendations and standardizations to the extent it is reasonable to do so.

Finally, understanding and communicating the role of each party involved is key to a successful marketplace synergy. Responsibilities must be acknowledged, redundancies must be eliminated and acceptable standardization of transactional instructions, data formats, procedures and timelines will ease the congestion in the marketplace and lead toward a more efficient plan support. The NTSAA hopes that the materials contained in this manual will further that effort. The NTSAA also acknowledges and thanks the Task Force Members that spent so much time in the preparation of this manual. Those members and other individuals that served as a resource to the Task Forces are listed on the inside front cover of this Manual.

Readers are invited to utilize the material in any way necessary to contribute to the final result – 403(b) plans that are both compliant and easier to manage.

NTSAA does not hold this manual out to be the only way in which 403(b) transactions can be processed or that it covers every possible situation. It recognizes that reasonable parties can disagree on how to handle some matters. This is the first edition of this manual. NTSAA encourages those in the 403(b) industry who may have comments on or even disagreements with some of the contents of manual to communicate with NTSAA and assist with possible future editions to improve upon this manual, make it more useful, and take into account new developments and issues.
Overall Objective

The intent of this manual is to suggest best practices for employers, product providers and TPAs that simplify processing of post-contributory transactions that occur in non-ERISA 403(b) plans, including distributions from 403(b) plans and rollovers, loans and hardship withdrawals, exchanges and plan-to-plan transfers and addressing issues related to deselected providers and “orphan accounts” held by those providers. Attendees at the Summit believed these goals would be best accomplished through education, communication and standardization.

It is hoped that this manual will provide clarity and guidance assisting employers, consultants, TPAs, distributors and product providers with the information necessary to properly understand the parties’ respective obligations so that communications can be clear and concise and required tasks can be focused toward a common goal. To assist with the communication effort, this manual includes a glossary of terms (see “Glossary” located in the back of this manual) as used throughout so that the marketplace terminology will have a consistent meaning for all users. To simplify administration of non-ERISA 403(b) plans, the Task Forces were tasked with the following:

For employers/plan sponsors:
- To help them understand their obligation to operate the plan in accordance with the terms of the written plan document
- To help them understand the importance of communicating their plan’s features to participants and product providers
- To help them identify what type of services are being provided by the TPA and what services are NOT being provided by the TPA
- If there is no TPA, to help employers/plan sponsors identify the entity or individual to which or whom transactional responsibilities have been assigned.
- To provide educational information, including definitions and explanation of the requirements for various types of transactions to help with an understanding of both the similarities and the differences between such transactions as rollovers, transfers and exchanges

For product providers and TPAs:
- To achieve consistency of procedures with respect to the processing of transactions for 403(b) plans
- To help communicate the plan and the benefits of participating in the plan to employees
- To use internal forms and procedures to help the employer operate the employer’s plan in accordance with the terms of the employer’s written plan document
- To standardize transaction forms to reduce the number of forms currently required to process transactions
- To provide educational information, including definitions and explanation of the requirements for various types of transactions to help with an understanding of both the similarities and the differences between such transactions as rollovers, transfers and exchanges
- To standardize the calculations necessary to determine the amount eligible for a loan
- To standardize, wherever possible, the operation of plans under the safe harbor rules for hardship withdrawals
- To recognize and develop alternative procedures for transactions that can be processed based on available information and do not require signature
- To achieve consistency of procedures with respect to the processing of transactions for 403(b) plans
- To help communicate the plan and the benefits of participating in the plan to employees

With these goals as directives, this manual is designed to provide the recommendations of the Task Forces by identifying and discussing marketplace issues, then offering best practices recommendations with specificity. To further assist readers, there are checklists, additional educational information and forms located in the “Best Practices Support Materials” in the back of this manual.
Communicating Plan Features

Marketplace Issues

While employers have adopted 403(b) plan documents, many have not shared those documents with the product providers, the financial representatives servicing the plan participants, the plan participants and in some cases, the plan administrator. This created problems because transactions often require information to be shared between authorized product providers as in loans or exchanges, or are based on plan features, such as catch up provisions or financial hardship distributions. In the absence of information on plan provisions, some employers have been overwhelmed with requests for information or authorization requests for transactions related to their plans. Many product providers, unable to provide services that had been previously provided based solely on participant information, have had to contact employers and/or plan administrators for information to complete transactions. Inundated by the quantity of requests and unprepared for the magnitude of processing routine transactions to support 403(b) plans, some employers failed to respond or provided incorrect information because they did not understand the purpose of the questions or did not have the information sought. Having executed a plan document, many employers then failed to communicate the terms of that document to the plan participants and to their compliance partners.

Best Practices Recommendations

It is important that the features of the employer’s written plan document be provided to the product providers. It would be useful if this, the first and most important element in resolving compliance issues, could be done in a standardized format acceptable to the industry. This should obviate the requests by providers for employers to complete each provider’s “plan feature” form or summary sheet.

- A sample Plan Features Grid is included in the “Best Practices Support Materials” section located in the back of this manual. It is recommended that employers complete this form or have their TPA complete this form and distribute it to all product providers authorized under the plan document. Of course, it will be essential to keep the form updated for changes made. Revised forms should be dated and distributed to all providers.
- Use of the Plan Features Grid will describe plan features on a consistent basis for all providers. It should also significantly reduce provider requests for complete plan documents and/or plan adoption agreements. Consistency within the marketplace would accelerate processing as each provider would be “working” from the same Plan Features Grid, the terminology would be consistent and each provider would not “interpret” the employer’s plan.
- Employers should require that the approved providers under the plan communicate the plan features to their financial advisors representing the provider(s) under the plan. This would also minimize improper transaction requests. For example, if loans are not included as a feature in the plan document, properly informed financial advisors would not advise participants to seek loans.
- When adopting the plan or amending the plan, plan language should be designed to limit features available under the plan to those that are available under the

1 Many product providers at the Summit indicated that they would accept the information provided on the Plan Features Grid as an adequate source of information on an employer’s plan. However, some providers indicated that their legal counsel may still require a complete copy of the plan for review if the employer is asking for indemnification or other legally binding acceptance of responsibility by the provider.

2 Some plan administrators have prepared a database of their employer clients’ plan features, which the providers may access to obtain the information. However, these databases vary throughout the marketplace.
annuity contract(s) or custodial account(s) in which each participant’s interest under the plan is held in order to prevent a de facto conflict between plan and contract or account terms. For example (and ONLY as a sample provision), a plan could provide “Unless required to satisfy the requirements of section 403(b) of the Internal Revenue Code and regulations issued thereunder, no provision or feature under this Plan shall be made available to a Participant unless the terms of the annuity contract(s) or custodial account(s) to which a Participant’s account is subject permit and can accommodate such provision or feature.” It should be understood that not all providers offer all options under their contracts or accounts and plan sponsors should work with their providers to be certain which options are available, that the options are consistent with the plan document and communicate any relevant limitations to plan participants. Use of the Plan Features Grid may help with that.
All 403(b) plans require some level of administrative support. Prior to the issuance of the final 403(b) regulations, most ERISA-exempt 403(b) plan sponsors performed some tasks required to establish and support their 403(b) programs and the product providers acted under their respective annuity contracts and custodial accounts to establish individual accounts, keep records, make distributions, withhold and report taxes for their 403(b) annuitants/custodial account holders. However, the final 403(b) regulations clearly indicated that plan sponsors had obligations and responsibilities not previously associated with sponsoring 403(b) plans. One consequence is that employers have had to recognize additional responsibility and (potential liability) for administrative functions of their 403(b) plans. This fact is a key factor in compliance as the information necessary to properly administer the plans often does not reside solely with the employer, but may be spread among several parties. Therefore, compliance may only be accomplished if the involved parties know how the plan is being administered and which parties have the information necessary to properly evaluate a transaction.

To further complicate this issue, providers of administrative services are not all providing the same services to the 403(b) plans that they administer. In general, an administrator or TPA is a person or organization that acts as a conduit for information between the plan sponsor and any vendors that may provide investment products under the 403(b) plan. The TPA then uses this information to perform the day-to-day administrative functions required under the plan document, such as monitoring contributions and investment allocations. Services may be provided based on optional plan features, such as certifying hardships or coordinating loans from different product providers. However, not all organizations identifying themselves as a TPA provide every administrative service required under the plan. Consequently, product providers often do not know, from plan to plan, which services are being provided by an administrator, by the employer or are expected to be provided by the product provider. As a consequence, there is little consistency in the marketplace and product providers often duplicate services being provided by administrators, sometimes with conflicting results. This lack of communication can cause delays, errors, and inconsistent results for participants.

Best Practices Recommendations

Plan sponsors must understand the different types of administrators, so that they can select TPAs or single providers that provide the services necessary to support their 403(b) plan or understand that the employer will be responsible for any services not provided by the TPA or single provider. (Some product providers may provide services equivalent to a TPA where they are the sole provider or operate under agreements with certain other providers. In that case, references to the TPA below would include such providers acting as administrators.)

Further, it is essential that the TPA for each 403(b) plan be identified and communicated to the authorized product providers. Finally, it is essential to know which party is responsible for administering the specific features of the employer’s 403(b) plan. This should be done on a standardized form acceptable to the industry. This should eliminate repetitive and conflicting requests for transaction authorizations.

- Employers should review the Checklist for Third Party Administrator (TPA) Selection form (see “Best Practices Support Materials” section) which describes the different types of TPAs and the differences in the services that each type of organization is providing in the 403(b) marketplace. Employers should determine which type of TPA is desired and then find a TPA that provides the appropriate level of service. This checklist will also provide helpful information when comparing the services and fees of TPAs.
- Employers should use the TPA Services Grid (see “Best Practices Support Materials” section) when evaluating the bids or proposals of multiple 403(b) administrators. This grid identifies important services that TPAs
Communicating Plan Administration

provide based on the features of the plan. The grid may be used as part of a bid or RFP by requiring bidding TPAs to complete the Grid, or employers may gather information provided by TPAs onto the Grid so that they can compare the services that are being offered in a standard, unbiased format.

- Once a TPA is selected, or if none is selected, employer (or preferably the TPA) should complete the Plan Features Grid (see “Best Practices Support Materials” section) For purposes of this section, the focus is on the columns under the heading “Party Responsible for Monitoring.” The party responsible for monitoring each identified feature on the Grid should be indicated by a mark. A copy of the completed Plan Features Grid should be provided to every product provider authorized under the plan document.
- If there is a change in the TPA or any change in administrative responsibilities, the change should be reflected on the Plan Features Grid and the revised Grid should be sent to all authorized product providers.
- Product providers should forward a copy of the Plan Features Grid to their financial representatives servicing the plan participants and make certain that any participant communications accurately reflect the information on the Grid. This information will help the participants know what features the plan includes and where to send plan transaction requests.
Distributions

Marketplace Issues

Coordinating information for proper distributions from 403(b) plans has been one of the most difficult issues for the ERISA exempt 403(b) marketplace. Historically, the product provider and participant (or beneficiary) were often the only two parties involved in any distribution transaction. Product providers generally held all participant account information under private contract with the plan participant and distributions were made in accordance with that contract. Generally, employers did not have access to the account information and neither did an employer’s representative. As a result, there was no structure in place to involve a third party to coordinate information from multiple sources prior to “authorizing” a distribution to ensure compliance.

The marketplace responded to this situation in many different ways creating great confusion in 2008 and 2009. Some providers insisted that, under state contract law, they were still responsible under their contracts with the individuals to review all distribution requests and authorize transactions. Some would not act on employer or TPA directions unless individuals also consented and waived their privacy rights under the contract. Other providers required employers to “sign off” on every transaction, while others required indemnification from the employer/TPA against any actions that participants might take against the provider for following the instructions of the employer/TPA.

Not to be outdone, TPAs and employers took equally diverse positions. Many employers refused to respond to any inquiries claiming no responsibilities under the plan (clearly a wish to follow history). Others hired TPAs to review and coordinate provider actions. But TPAs had inconsistent approaches to plan management. Some planned to be involved in each transaction; some were only involved in contributions and remitting to vendors; and some gave employers choices as to services to be provided based on fees charged. However, there was often little communication with the providers or participants about what role(s) the TPAs were performing. Accordingly, there was little consistency in approach or knowledge. Providers were trying to develop operational systems and processes that could work with thousands of employers and hundreds of TPAs.

There was no blueprint for coordination and the congestion that developed from the conflicting paths created a bottleneck that disrupted the marketplace in 2009.

Best Practices Recommendations

Since the Code only permits distributions to be made from 403(b) plans following the occurrence of at least one “distributable event” as listed in the Code, it should be necessary that the occurrence of a listed event be confirmed prior to a distribution to ensure compliance with the Code and regulations. All attendees at the Summit agreed with this conclusion.

Some providers requested the development of checklists that include required elements for forms so that TPAs could process distribution transactions properly using provider forms and paperwork. Providers could then compare their distribution forms against the checklists, correct for deficiencies and enable TPAs to complete distribution transactions without duplicative paperwork. The following are recommendations intended to coordinate practices of TPAs, employers and product providers for consistent processing of distribution transactions for each type of “distributable event.”

Age 59½

- Acceptable proof of age can be submitted to the product providers directly from the plan participants such as drivers license, passport, state photo ID or other acceptable identification with birth date.
- If providers have an acceptable record of participant’s date of birth in their records (as may have been required by FINRA or under the Patriot Act when establishing the account), the distribution request can be processed without any additional proof of age.

3 See IRC 403(b)(7) for restrictions on custodial accounts and 403(b)(11) for restrictions on annuity contracts. Amounts held in annuity contracts as of 12/31/88 are not subject to the distribution restrictions. The final 403(b) regulations do impose additional restrictions on distributions from annuity contracts issued on and after January 1, 2009. See Treas. Reg. 1.403(b)-6(b).
• Once provider has confirmed that plan permits distributions at age 59\(\frac{1}{2}\) (from Plan Features Grid), neither employer nor TPA authorization is necessary. Only proof of age is needed.

**Severance of Service with Employer**

• Employer is the best source for information on employment status. However, the only question that should be asked is whether or not the individual is still an employee of the employer. The name of the individual providing the information and the date of the contact should also be recorded. There is no need for additional authorizations, signatures, statements, disclaimers, etc. from the employer.

• If a TPA is acting on behalf of the employer, the provider may get the information on employment status from the TPA unless the provider has been notified that the TPA will not provide that information.

• Once the necessary confirmation is obtained, the provider should process the distribution request without requiring further proof or signature from the employer or TPA.

• If the employer (or TPA) cannot or will not provide confirmation of “no employee” status, recommended best practices are:
  - The provider should accept other reasonable proof, such as a letter from the retirement board to the participant, an income tax return showing no W-2 income from the employer, a COBRA notice or other documentation that demonstrates a lack of employment relationship between the parties.
  - The provider should maintain a written or electronic record of its best efforts to obtain confirmation from the employer or TPA or written proof of severance from the participant.
  - After reasonable efforts to obtain confirmation have failed, the provider may then process the distribution, though at that point the provider may make it clear to the participant that any tax consequences of an improper distribution will fall on the participant. Failure to timely process the distribution request unless there are extenuating circumstances is discouraged and in some cases may be a violation of state contract and/or federal securities laws.

**Death and Disability**

• Most providers have standard procedures for acceptance of proof of death or disability. However, if the employer has delegated this responsibility to a TPA and the TPA notifies the provider(s) in writing that the TPA has provided the necessary confirmation, the provider should process the death or disability distribution request without additional review (assuming it is reasonable on its face).

  - If the TPA has made the determination that the distribution satisfies the requirements for a disability distribution, the participant remains responsible for supporting the claim to the satisfaction of the IRS to avoid the IRC Section 72(t) penalty. The provider need not impose an additional level of review if the TPA’s determination is reasonable on its face.

**Hardship Withdrawals**

• If the plan permits hardship withdrawals, the employer should communicate the following information to all vendors:
  - which entity is responsible for determining eligibility for the hardship and processing the withdrawal (and, if the plan is intended to be exempt from ERISA under the “safe harbor” if limited employer involvement, how it is intended to comply with that exemption);
  - whether the plan is using the “safe harbor” hardship provisions or the facts and circumstances criteria for determining hardships; and
  - any other restrictions or conditions applicable to hardship withdrawals. (For example, some plans may limit the number of annual hardship withdrawals permitted from the plan.)

These best practices recommendations can be followed by completing and using the Plan Features Grid (see “Best Practices Support Materials” section).

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4 It is important to note that disability may have a different definition under an annuity contract than under a 403(b)(7) custodial account. Under a custodial account, an individual will be treated as disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. This is the standard required by the IRS to permit a hardship distribution under a 403(b) plan (though many disabled participants have also severed employment) and to avoid the 10% penalty under IRC Sec. 72(m)(7). Many 403(b) annuity contracts use a different definition for disability that conforms to their other annuity products. Providers must exercise caution when determining if a participant qualifies for disability. They should take care to ensure that their determinations are based on the requirements for “disability” from their contract/account as well as for tax purposes. Individual taxpayers are required by the IRS to document and support their “disability” claims for purposes of IRC Sec. 72(m)(7).
• If the employer is planning to use an IRS approved 403(b) prototype plan document sometime in the future, those documents will only permit the “safe harbor” hardship definition. This fact should be a current consideration for employers. The six qualifying events under the “safe harbor definition” are generally:
   a. Medical expenses for the participant, dependents, and primary beneficiary not reimbursed by insurance.
   b. The purchase of the participant’s principal residence.
   c. Tuition and related fees for the next 12 months for post-secondary education for the participant, spouse, children, dependents or primary beneficiary.
   d. Payment to prevent eviction or foreclosure on the participant’s primary residence.
   e. Funeral expenses of parents, spouse, children or primary beneficiary.
   f. To repair damage to the participant’s primary residence caused by any of the events that would qualify for the casualty deduction, such as hurricane, flood, fire etc.
• Providers should retain information in the Plan Features Grid, notify the employer following a hardship withdrawal and advise the employer of the requirement that elective deferrals be suspended for six (6) months following the hardship withdrawal.
• Employers, upon receiving notice from providers that an employee has received a hardship withdrawal, must modify the payroll withholding system to stop all elective deferral contributions for that employee for six (6) months. Employees should also be advised that their deferrals will stop.
• Employers should determine if they will automatically “restart” employee deferrals after the six (6) month suspension or if they will require employees to complete new enrollment forms. Employees should then be advised of the procedures to follow.
• Providers should alert employers when the six (6) month suspension period is about to expire to advise employers when they may again permit salary deferrals.
• Providers (or TPAs if they are responsible for record-keeping account information) must track sources of participant account contributions and balances to properly identify which portion of a participant’s account is available for hardship withdrawals. Under the regulations, only salary reduction contributions, not earnings, or employer contributions were available for hardship withdrawals from 403(b) plans. If sources are not properly segregated or tracked, hardship withdrawals may not be available.
• If the “safe harbor” hardship provision is used, providers (or TPAs if they are responsible for record-keeping account information) should require evidence that all available loans under plans sponsored by the employer (including the 403(b) plan) have been taken prior to authorizing a hardship. This requirement includes a review of the provider’s internal records to determine if the participant has loan availability from the provider prior to authorizing the hardship.

Qualified Domestic Relations Orders (QDROs)
• Since providers have historically processed QDROs for 403(b) accounts based on standardized procedures and made distributions based on those terms, it is recommended that providers continue this practice. A QDRO checklist has been developed that providers can use for this purpose (see “Best Practices Support Materials” section).
• If the employer has engaged a TPA and wants the TPA to evaluate the status of a QDRO, the TPA can determine the status and then direct the provider to make distributions in accordance with the QDRO. For consistency within the marketplace, a QDRO checklist has been developed that TPAs can use for this purpose (see “Best Practices Support Materials” section). (Note that, if the plan is intended to be exempt from ERISA under the “safe harbor” for plans with limited employer involvement, QDROs are considered a discretionary decision for that purpose.)

Required Minimum Distributions (RMDs)
• Product providers should give written notice to every participant who has an account with that provider that the participant may be subject to RMDs at age 70½ unless he or she is still working. This notice may be provided by the TPA if the employer has delegated the notice requirements to the TPA.
  ■ Option 1: Provide regular notices to all plan participants and beneficiaries
  ■ Option 2: Provide annual notice to all account/contract holders that are aged 70 or older
• Providers should verify with the employer or its TPA the employment status of participants who defer RMDs beyond age 70½.
Employers should require from providers (in Service Provider Agreements) that participants will be informed, in writing, of the participants’ required beginning dates and the impact related to not taking RMDs when required.

Custodians and/or insurers should be responsible for making the RMD payments to participants and beneficiaries in accordance with current regulations and IRS audit guidelines. The payer of the RMD is also responsible for the tax withholding and reporting.

Distributions of Employer Contributions
(if included in Plan)

- As permitted by law, the employer’s plan may specify different restrictions on distributions of employer contributions from annuity contracts:
  - Severance of employment or other specified events
    - Attainment of a specified age and/or number of years of service (no less than 2).
    - Differentiate, if applicable, between pre-09 contracts and contracts issued after 12/31/08. (PERMISSIBLE BUT NOT RECOMMENDED DUE TO COMPLEXITY)
- Or the employer’s plan can apply the same restrictions on distributions that apply to elective deferral withdrawal restrictions. This would make administration easier because the rules would be consistent for both types of contributions. (RECOMMENDED)
- If employer contributions cannot be differentiated from the pre-tax elective deferrals in a participant’s account, then the participant’s entire account should be treated as if it is subject to the restrictions on elective pre-tax deferrals
- Employer contributions should be separately tracked from pre-tax elective deferrals as of 1/1/09, even if the restrictions on distributions under the plan are no different.
- As long as the features on the employer’s plan (see Plan Features Grid located in “Best Practices Support Materials” section) have been shared with the providers, then:
  - Proof of an eligible event will follow the same guidelines that apply to elective deferrals.
  - If applicable, the employer or TPA must confirm facts of eligible event based on unique features of plan (such as service requirements or “formula” based criteria) to the provider.

If the TPA informs the provider, in writing, that the eligible distribution event has been confirmed, the provider should process the distribution request without requiring further proof or employer authorization if it is reasonable on its face.

To accommodate plan requirements, providers should separately account for employer contributions. If any provider cannot separately account for employer contributions, the provider should notify the employer (or, if applicable, its TPA) and accept the written instructions from the employer or its TPA with respect to the distribution of employer contributions.

Excess employer contributions should not be corrected by returning the excess to employees. Excess contributions must be returned to the employer.

Distributions of Roth 403(b) Contributions

- If the plan permits Roth 403(b) contributions, then the employer or its TPA should confirm that each provider accepting such contributions can separately track and report Roth contributions.
- If any of the plan providers cannot track Roth 403(b) contributions, the employer’s plan should restrict providers for Roth 403(b) contribution purposes to only those approved providers with the ability to track Roth 403(b) contributions. Providers that cannot separately track Roth 403(b) contributions should be permitted to accept only pre-tax deferrals and/or employer contributions.
- The earnings on Roth 403(b) contributions are distributed tax-free only if the distributions from such contributions are made after both the 5-year holding period and a qualifying event occur.
The 5-year holding period is measured from the first year a contribution is made to any Roth 403(b) account. The provider must obtain information from the employer or its TPA to determine the date the first Roth contribution was made to any account for a participant. This information may be obtained at the time of the distribution or at any time prior to the distribution.

A qualifying event for Roth 403(b) distribution purposes is:
- Attainment of age 59½ (the provider should have this information from the account establishment process)
- Death (see “death distributions above”) or
- Disability (see “disability distributions above”)

Approvals and Authorizations (for ERISA Exempt Plans)
- If not otherwise addressed in these best practices guidelines and a product provider needs approval for a distribution, whose approval is appropriate?
- For Governmental Plans and Church Plans that have not elected to be covered by ERISA
  - If the employer has hired a TPA, the TPA’s written approval is sufficient as the TPA represents the plan.
  - If there is no TPA, the employer can approve on the provider’s forms. However, for marketplace consistency, if requested by the employer, the providers should accept the use of standard certification forms or letters of direction prepared for this purpose by the NTSAA.
- In plans sponsored by 501(c)(3) organizations that are exempt from ERISA under the “limited involvement” safe harbor under DOL Reg. 2510.3-2

The employer should represent to the TPA and provider that the “safe harbor” has been met; generally the TPA and provider will not have the information to make that determination.

For transactions involving factual information, the employer or a representative of the employer (such as a hired information aggregator or coordinator) may provide or confirm the information.

For transactions involving discretion, neither the employer nor a representative may sign. The product provider must execute the request under the terms of the contract with the participant or refuse to execute the request based on the information provided.

Reporting and Withholding
- The payer of any distribution must provide reporting and proper withholding on distributions. Product providers that make distributions from participant accounts are required to issue a Form 1099R to the participant or account owner with a copy to the IRS when a distribution is made.
- If income tax is withheld under §1441 (the non-resident alien section), report the distribution and withholding on Forms 1042S and 1042, not on Form 1099R. The Form 1042S is used to report distributions from 403(b) plans for expatriates and certain citizens that renounced their citizenship after June 16, 2008. See the instructions to the Forms 1042 and 1042S for more information.
- Employers must provide the proper reporting and withholding of state and federal income taxes and payroll taxes for contributions made to the plan.
Rollovers

Marketplace Issues

The regulations effectively repealed Rev. Rul. 90-24 and significantly changed how and when 403(b) plan participants could change the investment of their 403(b) contracts/accounts. There has been much confusion as the marketplace has had to distinguish between “in-service” exchange requirements and rollover requirements. There remains confusion about when a rollover out of the plan may take place and whether rollovers are mandatory plan features.

Accounting of rollovers has become a significant issue for 403(b) plans. Grandfathered (“unrestricted”) amounts may be lost if rollovers from one 403(b) plan to another are not separately tracked; that is, the rollover amounts will be subject to the withdrawal restrictions of the receiving plan unless there is separate accounting of the rollover amount in the receiving plan. Similarly, rollovers from another plan may become subject to the age distribution restrictions of the 403(b) plan, unless there is separate accounting of the rollover amount in the 403(b) plan and the plan document permits the segregated rollover amount to retain its unrestricted status and be eligible for unrestricted withdrawals at any time. While the ability to segregate and separately track rollovers is a good feature, not all product providers are capable of providing this service in all instances. Thus employers may have plans under which some providers may be able to segregate rollovers and others may not.

Best Practices Recommendations

403(b) plan documents must permit eligible distributions from 403(b) plans to be directly rolled over into other eligible retirement plans. The Internal Revenue Code defines the types of plans that are eligible to accept direct rollovers from 403(b) plans. Participants may also choose to make indirect rollovers. Product providers, as payers of assets from 403(b) plans, should accommodate these requirements. It was recommended that plan documents also provide for rollovers into the 403(b) plan so long as the provider accepting the rollover could track the rollover contributions separately from other types of contributions, but this is a design decision of the plan sponsor.

Rollovers Into The Plan

• Accepting rollovers into the plan is an optional feature which the employer may or may not include in its plan document. Employers are encouraged to include this feature in their plans, as it is a “low risk” feature and it gives participants a means to consolidate amounts from other plans, such as other 403(b) plans, governmental 457(b) plans and IRAs into their 403(b) plan account.

• If the plan permits rollovers into the plan, the document should specify that only providers that can accommodate separate accounting of amounts rolled into the plan should be permitted to accept rollover contributions under the plan.

• The employer or its TPA must identify which product providers which are permitted to accept rollovers under the plan and which are not. If the plan has any

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5 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 his account deposited. In this case, the participant does not receive the distribution and the amount is directly deposited into his or her new account under the new plan as a “direct rollover” contribution.

6 An indirect rollover occurs when a participant receives the distribution of his or her interest under the plan. The participant then has 60 days to redeposit all or any portion of the amount of the distribution into an eligible retirement plan. However, the participant will only receive 80% of the amount of the distribution because the law requires that 20% of any amount of an eligible rollover distribution that is not directly rolled into another plan must be withheld for federal income tax purposes. However, the participant may rollover up to 100% of the amount of the distribution (the 80% received plus the 20% withheld) into an eligible retirement plan within 60 days of receiving the distribution and qualify for indirect rollover status. Any amount treated as a direct rollover or as an indirect rollover defers federal income taxation until withdrawn.
The payer of a distribution must provide written notice to the participant prior to a distribution that is eligible to be rolled over that the rollover may be made directly to another provider, another type of plan or to an IRA. For 403(b) purposes, this means that the product provider must provide this notice. The IRS has provided a sample notice for this purpose.

The IRS has issued sample rollover notices which may be used as a “safe harbor” notice to comply with the notice rules. (IRS Notice 2009-68 contains two notices, one which applies to distributions from designated Roth accounts and one which applies to distributions from non-Roth accounts.) Current copies of these notices may be downloaded from the IRS website at www.irs.gov.

The employer should confirm that its providers have procedures in place to issue these required written notices to the participants.

Rollovers Out of the Plan
- The plan must permit participants to make a direct rollover of an eligible distribution. It is NOT an optional feature. Once eligibility for a distribution is confirmed, the employer has no further involvement in the transaction. However, a rollover may not be made until an eligible event authorizing a distribution has occurred. Participants may also make indirect rollovers. (See “Distributions” above.)
- The direct rollover avoids the 20% federal income tax withholding which must otherwise be taken from the distribution and which then must be made up by the participant if s/he rolls the distribution within 60 days – an “indirect rollover.”
Loans in 403(b) Plans

Marketplace Issues

Loans are a particularly difficult issue in the 403(b) plans. Under the final 403(b) regulations, the IRS imposed plan level requirements on loans. However, 403(b) plans funded with individual annuity contracts and custodial accounts also have contract level requirements applicable to loans that must be addressed. While many of the requirements are identical, the contract rights attached to the individual annuities and custodial accounts inhibit certain plan level compliance initiatives. Additionally, the rules for loans under Code Section 72(p) apply a single loan limit to all plans of the employer. Thus, the monitoring of loan limits must be applied to all plans sponsored by the employer in which loans are permitted.

In addition, organizations in the marketplace have interpreted applicable laws and regulations and applied risk management strategies to their standard business practices as they operate in the 403(b) marketplace. Traditional practices in the financial services industry have carried over into the 403(b) marketplace as 403(b) products are often securities and companies treat 403(b) transactions as securities transactions. This proprietary approach to interpreting a complex set of applicable laws and regulations has led to some reluctance to modify internal customs and procedures to more standardized marketplace criteria. One of the areas most suffering from the lack of standardization is the general administration of 403(b) plan loans. For example, some product providers are still requiring “wet signatures” and “signature guarantees” for loan distribution authorizations. These practices result in a lack of standardization and inefficiencies in operations by product providers, TPAs and plan sponsors slowing down the proper and timely access of participants to their funds.

At the Summit, it was also discovered there is a lack of consistency in basic methodology for calculating loan limits. Because of differences in results from provider to provider and TPA to TPA, there was a request from the attendees at the Summit to develop a loan calculation worksheet that could be used in the marketplace as a standard for 403(b) loan calculation purposes. Accordingly, two worksheets have been developed; a 403(b) Plan Loan Limit Worksheet for Non-ERISA Plans and a 403(b) Plan Loan Limit Worksheet for ERISA Plans (see “Best Practices Support Materials” section). Also, an educational piece is included that addresses the differences in ERISA and non-ERISA loan requirements, the requirements for refinancing loans and the rules for the granting of new loans when there is an outstanding defaulted loan. (See Additional Educational Information on Loans located in “Best Practices Support Materials” section.)

Best Practices Recommendations

Because of the proprietary issues unique to loan processing, it may be difficult to establish “best practices” for loans in the marketplace. However, there was strong consensus that we should establish goals to which the marketplace should strive. That said…

Plans should allow loans only if there is sufficient administrative support the feature under the plan. The loan provisions in the plan document should defer to the contractual language of the loan provisions in each participant’s underlying annuity contract or custodial account to avoid conflict. Those provider differences in requirements for loans from custodial accounts and annuity contracts can be managed at the plan level where any other outstanding loans held by the participant are factored into the single loan limit. Providers and TPAs should also agree to conform to the standardized calculation methodology provided in the 403(b) Plan Loan Limit Worksheet (see “Best Practices Support Materials” section). While this manual is focused primarily on the K-14 non-ERISA 403(b) marketplace, we have included an analysis and worksheets on ERISA loans because so many TPAs and product providers have loan systems and operations that must serve both constituencies. (See “Best Practices Support Materials” section)

- The employer’s plan documents should permit loans if the employer has engaged a TPA to administer the loans under the plan and should defer to the loan provisions in the underlying annuity contracts and custodial accounts. For example, one provider’s loan provision might permit borrowing at 50% of the account
value, while loan language in a another provider’s contract may base available loan amounts on the greater of $10,000 or 50% of the account value, both of which are permitted under Code Section 72(p).

- If the employer’s plan permits loans, then the employer should consider product provider’s policies and procedures when selecting plan providers under their plan document and not permit providers that cannot or are unwilling to conform to standardized procedures and calculations.
- When in doubt as to which party must initiate or sign a form, refer to the Plan Features Grid (see “Best Practices Support Materials” section). For 501(c)(3) employers operating under the limited involvement exception to ERISA, the employer cannot authorize loans. The employer or a representative can provide factual information but may not exercise discretion over plan assets.

The Employer Should

- Notify providers whether loans are permitted in the plan (using the Plan Features Grid) and whether there are any specific requirements or whether the loan language defers to the contractual language of the annuity and custodial accounts. If certain providers are prohibited from making loans, that should also be noted on the Grid.
- Require providers to notify their financial representatives about the inclusion or exclusion of loans.
- Allow loans under their plan only from providers that agree to follow the administrative policies and procedures of the TPA authorized by the employer. Providers refusing to comply should NOT be permitted to grant loans under the plan. Additional signatures or authorizations beyond those required by the TPA should not be necessary.
- Review the information on refinancing loans (See Additional Educational Information on Loans located in “Best Practices Support Materials” section.) to determine how the plan will address refinancing and defaulted loans. If the employer wishes to prohibit refinancing and subsequent loans after a default, then the plan should reflect these restrictions and providers should be notified. Otherwise, employers must establish rules for the refinancing of loans, the granting of new loans when there is an outstanding defaulted loan and include those requirements in the agreements with the providers.
- Notify the administrator of any other plan (of the employer) that permits loans that information on outstanding loans must be shared with the party responsible for managing loan limits (either the employer or the employer’s TPA).

The Provider Should

- Examine the employer’s loan requirements and either agree to conform or agree not to permit loans from the provider’s accounts.
- Communicate those loan requirements to financial representatives that are contracted to work with the specific employer.
- Utilize the standardized calculation worksheets (see “Best Practices Support Materials” section) or agree to adhere to the result of those calculations if done by a TPA.
- Agree not to require employer signature on loan forms if properly notified that a TPA has been assigned this transactional responsibility.
- Re-evaluate historical practices (suggested securities practices for custodial accounts and internal contract support practices for insurers) for appropriateness in the 403(b) plan environment.
- Providers should also agree to continue to provide loan information on participants to the employer or TPA even if subsequently deselected as a provider.

In all instances, the adoption of best practices should help meet the goal which is to complete the loan request in a timely manner for the participant who will often have a need that can be met only with the receipt of the loan proceeds. Thus, it is recommended that all parties work in a timely manner to follow directions, obtain missing information, get necessary authorizations and cooperate with one another (TPA, product provider, employer, participant or financial representative) to communicate the problem and resolve any issues.
Deselected Product Providers, Orphan Accounts and Pre-Reg Accounts

Marketplace Issues

There is much confusion over the correct handling of transactions that occur under contracts of product providers that are no longer included under an employer’s 403(b) plan. As a result of the final 403(b) regulations and subsequent guidance issued by the IRS, employers, participants and product providers have different responsibilities based on when 403(b) contracts were issued and when contributions were made under those contracts. Plan sponsors and provider organizations are struggling to identify which contracts are connected to which plan and when contributions began or ended. However, participants are still requesting distributions and loans while the marketplace is seeking to determine who has responsibility for the requested transactions. These transaction requests are often delayed due to confusion over whether the product provider may act on the request of the participant or whether the employer must authorize the transaction. Providers are torn between the need to act promptly on transaction requests and the fear of jeopardizing their client’s accounts/contracts. In turn, employers are frustrated by complaints from participants whose distribution and loan requests are lingering while product providers and employers continue to work out these issues.

This problem cannot be resolved by product providers. Only employers know to which providers 403(b) contributions were sent during the periods specified by the IRS. To complete this task, employers will need help understanding which 403(b) contracts (and providers) are deemed to be “included” in their plan under IRS guidance and what kind of relationship exists between the employer and each provider. The relationship will determine what responsibilities the employer still has with respect to any contracts held by that provider and what level of administrative involvement the employer may be required of the employer or its TPA. To identify the different relationships and resulting responsibilities, this manual includes a glossary of terms that will be used consistently throughout this section for each type of relationship (as specified in IRS guidance). The Glossary is located in the back of this manual.

Best Practices Recommendations for Employers

Employers must understand their responsibility to identify which providers are “included” in their 403(b) plan. Employers must understand that current providers and some “legacy” providers may be considered to be included under their 403(b) plan under applicable IRS guidance. If an employer engages a TPA, the TPA should be responsible for monitoring the legacy providers or should clearly state in its agreement with the employer that it will not provide any services relative to providers prior to 1/1/09 so that employers understand the gap in administrative service.

Product providers must have clear communications from employers or TPAs, advising them when they can execute transactions with or without employer authorizations.

- Employers should notify all deselected providers that they are no longer treated as part of the employer’s plan.
- Employers should include information on providers that have been deselected from their plan on the Plan Features Grid, so the remaining product providers are aware of the change. Be sure to redistribute the revised Grid to all current product providers and participants. (See “Best Practices Support Materials” section for the Plan Features Grid.)
- Employers should clearly understand when they need to authorize transactions and when they do not. The 403(b) Contract Categories Grid (found in “Best Practices Support Materials” section) describes the various categories of contracts under the final 403(b) regulations.
- Employers or their TPA should conduct a provider inventory exercise to identify any providers to whom they have sent 403(b) contributions and categorize them based on the 403(b) Contract Categories Grid. The employer’s past payroll records should enable

7 See Rev. Proc. 2007-71
them to identify providers where 403(b) contributions were sent. If a common remitter was used, the common remitter should be able to provide a listing of the recipients of the employer’s 403(b) remittances. An effort should be made to identify the dates on which contributions stopped for providers that are no longer named as providers under the employer’s current 403(b) plan document.

- Employers or their TPA should document the list of providers and note the date deselected, identify whether they have an information sharing agreement (ISA) with the deselected provider and what transactions, if any, the provider is permitted to process. Employers or their TPA should capture this information by using the Provider Status Worksheet (see “Best Practices Support Materials” section).

- To reduce future communications from Pre-Reg. providers or their local servicing representatives, employers should send a letter to those providers whose contracts do not require employer authorization certifying that they do not have to seek employer authorization prior to issuing a distribution or loan. A sample Pre-Reg Notice is located in the “Best Practices Support Materials” section.

- For providers that fall into the Orphan category on the 403(b) Contract Categories Grid (see “Best Practices Support Materials” section), the employer should send a letter directing each such provider to follow the alternative transition relief in Rev. Proc. 2007 and notify the employer or its TPA prior to authorizing a distribution or loan to a participant. A sample Transition Relief Letter is located in the “Best Practices Support Materials” section.

- Employers should try to enter into an information sharing agreement with any deselected providers that were included in the plan on 1/1/09 or later since those accounts are included in the plan under IRS guidance. (See the sample 403(b) Information Sharing Agreement for Deselected Providers in the “Best Practices Support Materials” section.)

Best Practices Recommendations for Providers

While providers may not be able to identify which contracts under an employer’s plan are “included” in that employer’s 403(b) plan, once they are advised of the status of a contract, they can adjust their internal systems and modify their practices to simplify transactions for deselected contracts. Providers should also have reasonable administrative solutions for processing transaction requests under plans of non-responsive employers.

- Providers should establish internal systems to identify contracts that are not “included” under an employer’s plan so employer involvement is not sought as part of regular processing.

- Deselected providers that receive written notification from an employer certifying that no authorization is required should accept it and proceed with the transaction without further employer involvement.

- Providers should accept representations of the employer or the TPA and process participant transaction requests accordingly. Additional verification or authorization is not necessary.

- If provider policy requires employer authorization, product providers should be responsive to the information sharing requirements of employers. Providers working with 403(b) plan sponsors should be willing to engage in information sharing with all employers with whom they have participant accounts.

- Deselected providers should engage in information sharing with the employer to help facilitate compliance.

- If an employer does not respond to a provider’s request for authorization or its attempts to engage in information sharing, the provider may notify the non-responsive employer that a specific amount of time will be permitted prior to assuming that the employer has given consent to the transaction requested (“negative consent”). Providers should disclose to the participant on the transaction form that the transaction will be processed in the absence of authorization from the employer or TPA. The disclosure should explain the tax risk to the participant, who can then make an informed decision whether to proceed with the transaction.
Tax Free Transfers and Exchanges

Marketplace Issues

The biggest problem in the marketplace is the confusion in understanding the differences between exchanges, rollovers and transfers. All three terms describe the movement of 403(b) contract/account balances, but each has different requirements and different tax consequences for the employee. Because of this confusion, improper paperwork gets completed and processed. To try to reduce the confusion, this manual includes standardized descriptions of each term, whether the transaction is mandatory or optional and the tax reporting obligation that follows the transaction. You should refer to the “Glossary” in the back of this manual for clear definitions of the terms as used in this manual. The recommendations and discussions that follow use the terms as defined.

In addition, there are processing problems that are unrelated to the confusion in terminology and participant intent. Under prior rules, the movement of a participant’s 403(b) contract/account was a transaction between the employee/participant and the provider. The final 403(b) regulations have now inserted the employer (and its TPA) into the transaction without guidance on how to handle the logistics of problems, errors, data failures, processing inconsistencies, etc. For example, a participant may request an exchange, but the paperwork to establish a new contract with the new provider may have an error or may not be properly completed. The sending vendor issues an “exchange” check, but the receiving vendor does not have an account into which it can deposit the proceeds. In the absence of direction, providers have developed their own strategies for addressing these issues which result in inconsistent marketplace transactions.

Best Practices Recommendations

It is essential that providers, their financial representatives, employers, TPAs, consultants and any other professional working the 403(b) marketplace understand the difference between rollovers, plan to plan transfers and exchanges. They should also understand the differences between these terms and 90-24 transfers, which are no longer available (but are still referenced on forms, marketing materials, and in some plan documents).

Providers should strive to minimize unnecessary requirements so that processing exchanges, rollovers and transfers can become standardized throughout the industry and participants can expect consistent results from provider to provider.

Providers also requested the development of checklists that include required elements for exchange, transfer and rollover forms so that TPAs could process such transactions properly using provider forms and paperwork. Providers could then compare their internal forms against the checklists, correct for deficiencies and enable TPAs to complete exchange, transfer and rollover transactions without duplicative paperwork. The following are recommendations intended to coordinate practices of TPAs, employers and product providers for consistent processing of exchange and transfer transactions.

• Providers and employers should be able to distinguish between a transfer, exchange and rollover and know whether the employer’s plan includes these features. See the “Glossary” for an explanation of these terms and the differences between them.

• Employers should use the Plan Features Grid to advise all approved providers and employees whether their plan permits transfers and/or exchanges. All deselected providers holding non-grandfathered orphan accounts should also be provided with a copy of the Plan Features Grid.

• Employers that want to enhance portability and preserve participant contract benefits under their plans should permit plan to plan transfers and so indicate on the Plan Features Grid. A transfer must include proper disclosures about the assets being transferred (e.g., confirmation of no outstanding loans on the amount being transferred and confirmation that the transfers to a non-ERISA plan are not coming from an ERISA plan). The Exchange, Rollover or Plan to Plan Transfer Form for use by receiving providers appears in the “Best Practices Support Materials” section.

• Providers should educate their financial representatives on the differences between exchanges, transfers and rollovers and prepare educational materials for participants to help explain the differences so participants understand which transaction is appropriate for their needs.

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• Providers should educate their financial representatives on the differences between exchanges, transfers and rollovers and prepare educational materials for participants to help explain the differences so participants understand which transaction is appropriate for their needs.
Providers should maintain a database of each employer’s plan features, including exchanges and transfers and providers authorized to receive these transactions. The Plan Features Grid should be used for maintaining this information and other information pertaining to each employer’s plan. (See “Best Practices Support Materials” section.)

Providers should not impose additional conditions on transactions (such as requiring original signatures, original paperwork or original forms) that slow down processing in the absence of legal necessity or requirement. Copies, including facsimiles, electronic or scanned documents or e-mail signatures should all be acceptable.

Unless otherwise indicated on the Plan Features Grid, providers should act on transfer and exchange requests without employer or TPA authorization so long as the recipient provider is identified as an authorized provider to accept the transfer or exchange.

Providers and TPAs should not return checks received in a transfer or exchange without exhausting every effort to confirm the validity of the transaction. If checks must be returned, the procedures established by the employer/TPA should specify to whom those checks are to be returned.

If an employer receives a returned check from a failed transfer or exchange, the employer should establish records to provide evidence that the transfer or exchange did not occur and why.

Upon returning a check for a failed transfer or exchange, the provider returning the check must notify the employee that the transaction failed and no transfer or exchange occurred.

To ensure that the contractual qualifications for transfers and exchanges are satisfied by the recipient provider, the recipient provider should give employer assurances that the provider’s contract/custodial account satisfies the requirements. This can be done by including the assurances in the service provider agreement. See Hold Harmless/Vendor Agreements for 403(b) Plan in “Best Practices Support Materials” section.
Information Technology

Marketplace Issues

Under the final 403(b) regulations, information under a 403(b) plan must be shared between employers, product providers and, if so appointed, by third party administrators. However, there have been few systems in place that support this requirement. Historically, each product provider kept its own records and processed the transactions under its contracts or custodial accounts. There was no need to transmit large amounts of plan related data to another product provider, to the employer or to a third party administrator. However, to support the new compliance and information sharing requirements included under the final IRS regulations, it is imperative that the 403(b) industry develop and support a standardized data format and electronic information sharing platform. One platform has been under construction and has been offered to the marketplace since the issuance of the regulations (SPARK). This taskforce reviewed the current SPARK platform and evaluated methods for improving the flow of information between employers, third party administrators and product providers (version 1.04 at the time this was written).

Best Practices Recommendations

The SPARK format provides a sound platform for basic data transmission but cannot be used exclusively for plan administration and compliance data purposes. Providers and TPAs have different data requirements than that provided by SPARK. There also appear to be notable differences between data needed for processing under custodial accounts and processing under insurance products. Finally, SPARK does not provide enough data transaction detail for TPA processing purposes, requiring TPAs to condition transaction approval with caveats or make supplemental data requests to gather necessary information to make compliance determinations.

It was recognized that organizations have invested significant resources conforming to SPARK protocols in an effort to support a standardized electronic 403(b) data format. Thus it may make sense from a financial perspective to attempt to make modest recommendations to improve the SPARK data requirements. However, there was some concern that the SPARK data format was not structured to reflect all relevant 403(b) transactions and therefore may not be appropriate for plan administration. Thus, it appears, more study on this issue is needed. In the interim, it is suggested that the following steps be taken to supplement SPARK data:

• Providers should give a onetime “position” file that includes key fund source and balance information (as of a specified date (12/31/08)) to establish baseline data points for each custodial account/annuity contract. Current SPARK data requirements could be used as a starting point for this position file.
• On-going data exchange between TPAs and providers would be transaction details only – contributions, loans, distributions, etc. The transaction detail necessary would be similar to the transactional information provided to participants in their account statements.
Conclusion

It is hoped that the suggestions and materials presented in this manual will encourage employers, product providers and TPAs to adopt as many of the best practices outlined in this publication as possible and that as a consequence, the entire 403(b) marketplace will benefit. Employers should find that their administrative burdens are understood and simplified; participants should find that the turnaround time for processing and transaction requests is reduced and product providers and TPAs should find that the procedural and systemic burdens delegated to them have been eased. While some providers and TPAs will inevitably continue “on their own paths,” the cost of so doing will be its own burden. The need for marketplace consistency and standardization was made clear at the Summit meeting and in the subsequent task force meetings. We hope this manual can serve as a helpful tool toward the goal of standardization and consistency.
# Best Practices Support Materials

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# Plan Features Grid

**Employer Name** ________________________________________________________________________________

**Plan Name** ____________________________________________________________________________________

**Address** ______________________________________________________________________________________

**Plan Administrator/Designee** ____________________________________________________________________

## Plan Design Features

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<tr>
<th>New Contributions</th>
<th>Types (check if available under plan)</th>
<th>Party Responsible for Monitoring</th>
<th>Transmittal Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EE</td>
<td>ER TPA Provider Electronic Hardcopy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ER</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Roth</td>
<td></td>
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<tr>
<td></td>
<td>Other contributions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Post Employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Catch Up Limits   | Age 50                                  |                                  |                    |
|                   | 15 years of service                     |                                  |                    |

<table>
<thead>
<tr>
<th>Additional Account Services</th>
<th>Rollovers In</th>
<th>Plan-to-Plan Transfers In</th>
<th>Exchanges In</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Movement of Accounts In-Service</th>
<th>Exchanges Between Authorized Vendors</th>
<th>Exchanges to Non-Authorized Vendors</th>
<th>Exchanges from Non-Authorized Vendors</th>
</tr>
</thead>
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<table>
<thead>
<tr>
<th>Movement of Accounts (Post Employment)</th>
<th>Exchanges</th>
<th>Rollovers Out</th>
<th>Plan-to-Plan Transfers</th>
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</thead>
<tbody>
<tr>
<td>New Contributions</td>
<td>Types (check if available under plan)</td>
<td>Party Responsible for Monitoring</td>
<td>Transmittal Method</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------</td>
<td>---------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>In-Service Access Provisions</td>
<td>☐ Loans ☐ Payroll Deduction ☐ Restricted to: ☐ Hardships ☐ Safe Harbor ☐ Facts and Circumstance ☐ Withdrawals from Rollover Accounts</td>
<td>ER TPA Provider Electronic Hardcopy</td>
<td></td>
</tr>
<tr>
<td>Distributions</td>
<td>☐ Employer Contributions ☐ Same requirements as EE contributions ☐ Different requirements from EE contributions (Describe)</td>
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Dated______________________________

### Current Authorized Vendors

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Contact Person</th>
<th>Telephone</th>
<th>Email</th>
<th>As of Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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### Previous Vendors Deselected

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Contact Person</th>
<th>Telephone</th>
<th>Email</th>
<th>As of Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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</tbody>
</table>

Dated______________________________

Dated______________________________
Checklist for Third Party Administrator (TPA) Selection

The first step in selecting an administrator to assist in compliance efforts with an employer’s 403(b) plan is to determine what services the administrator will be providing for the plan. Not all administrators provide the same level of services to 403(b) plans. Unfortunately, employers may not be able to tell the differences in service levels when evaluating bids or proposals if employers do not understand the significance of the differences. The purpose of this checklist is to provide some basic information for employers to use to identify the different types of 403(b) plan administrators (TPAs) and determine what kind is best suited to provide the services needed for the employer’s plan.

Once the employer has made the decision to use the services of a TPA, the decision should be made whether to interview and select a one or to go through the Request for Proposal (RFP) process. In either case it is important to ask the right questions to assure that the selected designee for the employer is capable to complete the desired and required tasks needed for 403(b) compliance.

Step 1
Know the differences! Understand the differences among a common remitter, a recordkeeper, a quasi-TPA and a TPA.

Common Remitter is a type of TPA that:
- Captures data from the employer’s payroll
- Compares the amounts remitted with expected contributions
- Compiles and reconciles exceptions with the payroll department
- Identifies employees eligible for “catch-up” contributions and applies contributions in the proper order
- Distributes contributions to investment providers

Recordkeeper or Aggregator is a type of TPA that:
- Keeps records of plan and participant account information
- Maintains accounting of values attributable to each 403(b) plan participant
- Some recordkeepers track the sources of money (i.e. Roth, employee deferrals and employer contributions)
- Typically do not handle compliance features

Quasi TPA is a type of TPA that:
- Provides some, but not all TPA services
- Usually offers one or more of the following services:
  - Common remitter services
  - Consulting
  - Educational materials
  - Documents (specimen documents)

Full Service TPA is a type of TPA that:
- Provides common remitter services
- Provides recordkeeping services
- Provides 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, but do not take on fiduciary responsibility
- Coordinates various vendor activities
- May maintain an employer plan website
- Acts as the central point of contact for plan level information
- Drafts and maintains plan document
- Maintains administrative forms
• Provides employer manual or instructions to employer
• Assists and advises employers regarding eligibility and participation requirements, such as the universal availability rule
• If the Plan is subject to ERISA, the TPA also:
  ▪ Assists in the calculation of contributions
  ▪ Monitors eligibility
  ▪ Assists in plan design to eliminate compliance problems
  ▪ Maintains Plan and Specimen Plan Document (SPD)
  ▪ Prepares Form 5500
  ▪ Performs compliance testing – matching, definition of compensation, etc.

Step 2
Rate TPAs. Complete the following checklist based on the RFP responses or interview of the TPA. Where applicable provide a rating of 1-5 (1 indicating the most positive response).

Comparison Checklist for TPAs
Name of TPA

<table>
<thead>
<tr>
<th></th>
<th>Check one</th>
<th>Circle one</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assistance in event of IRS audit</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>2. Errors and omissions insurance and liability insurance</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>3. Privacy of plan participant information</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>4. Security:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Secure electronic data transmission</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Secure website for data uploads</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>5. Common remitting processing/services</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>6. Plan documentation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Employer’s plan implementation guide</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Initial 403(b) plan documents</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Maintains and amends all legal documents as required</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Customized plan documents, if necessary</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Administrative forms</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Information sharing agreements</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Provides and updates Employer Guide/Manual</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Provides and updates required “enforceable” loan policy</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
<tr>
<td>• Assures that plan and underlying contracts are consistent</td>
<td>Yes/No</td>
<td>1 2 3 4 5</td>
</tr>
</tbody>
</table>
7. Compliance review for loans, hardships, transfers, QDROs, disability distributions, required minimum distributions and other plan distributions.  
   • Compliance monitoring for “control” of other companies by employees

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

8. Monitors contribution limits including catch-up contributions and ordering rules, if applicable

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

9. Plan relationship manager assigned

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

10. Experience in the 403(b) market

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

11. Availability of website for Employees

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

12. Availability of website for Employer

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

13. Functionality of website

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

14. Enter the number of source accounts available (i.e., rollover, Roth deferrals, employer contributions, etc)

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

15. Does the website have all provider information

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>□ No</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

Comments

______________________________________________________________________________________________

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______________________________________________________________________________________________
# TPA Services Grid

This grid is designed to ascertain the types of services the TPA provides to their clients. Please complete each item as fully as possible. Ask each TPA under consideration to complete the grid in accordance with their responses or proposals as priced (not as available).

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Address</th>
<th>Contact Name</th>
<th>Phone</th>
<th>Email</th>
<th>Fax</th>
</tr>
</thead>
</table>

## Contributions

<table>
<thead>
<tr>
<th>Common Remitter</th>
<th>Processing</th>
<th>Monitor overall contribution limits</th>
<th>Age 50 catch-up monitor limits</th>
<th>15 year catch-up monitor limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes/No</td>
<td>Electronic/Manual</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Multiple contribution sources</th>
<th>By source types</th>
<th>Source data is</th>
<th>Source data is</th>
<th>Source data is</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes/No</td>
<td>Rollover/Employee/Roth/Restricted/Other</td>
<td>Separate accounting/Vendor info only</td>
<td>Separate accounting/Vendor info only</td>
<td>Separate accounting/Vendor info only</td>
</tr>
</tbody>
</table>

## Transactions

<table>
<thead>
<tr>
<th>Loans</th>
<th>Determine loan amounts</th>
<th>Review multiple providers</th>
<th>Use</th>
<th>Loan approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Certificate/Vendor form/Both</td>
<td>Full/Plan eligibility only/No approval</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hardships</th>
<th>Verify proof of hardship</th>
<th>Review multiple providers</th>
<th>Use</th>
<th>Hardship approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes/No</td>
<td>N/A</td>
<td>Yes/No</td>
<td>Certificate/Vendor form/Both</td>
<td>Full/Plan eligibility only/No approval</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transfers in/out</th>
<th>Use</th>
<th>Request source data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes/No</td>
<td>Certificate/Vendor Form/Both</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>

**Support Materials**: 29

---

**Table of Contents**
<table>
<thead>
<tr>
<th>Transactions continued</th>
<th>Exchanges</th>
<th>Use</th>
<th>Monitor</th>
<th>Request source data</th>
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<tr>
<td></td>
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<td></td>
<td>Other in-service withdrawals</td>
<td>Use</td>
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<td></td>
<td>QDRO</td>
<td>Determine if QDRO is qualified</td>
<td>Use</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Information Sharing</td>
<td>Accepts Spark formats</td>
<td></td>
<td>Build source data from 1/1/09</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td>Distributions that require TPA approval (list all that apply other than the above)</td>
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<td>5.</td>
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</tbody>
</table>

- Use Certificate
- Use Vendor form
- Use Both

- Monitor Validity
- Monitor Mini Common Remitter
- Monitor Exchanges

- Request source data Yes No

- Use Certificate
- Use Vendor form
- Use Both

- Produce Certificate
- Produce Vendor form
- Produce Both

- Accepts Spark formats
- Accepts Other:
  - in addition to SPARK
  - in lieu of SPARK

- Build source data from 1/1/09
  - Yes No
  - Only maintain sources from 1/1/09 rest is restricted
  - Does not maintain any source data
<table>
<thead>
<tr>
<th>Other Services</th>
<th>Website for employer</th>
<th>Yes</th>
<th>No</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Enrollment services</td>
<td></td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Consulting services</td>
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<td>Yes</td>
<td>No</td>
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<tr>
<td>Educational services</td>
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<td>No</td>
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</tr>
<tr>
<td>Monitoring investments</td>
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<td>Yes</td>
<td>No</td>
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</tr>
<tr>
<td>Check vendor forms and contracts for tax and other compliance</td>
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<td>Yes</td>
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</tr>
<tr>
<td>Type</td>
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<td>Types (list)</td>
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<tr>
<td>Types (list)</td>
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<td>3.</td>
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<td>Types and frequency (list)</td>
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<td>2.</td>
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<td>3.</td>
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<tr>
<td>Forms requested (list)</td>
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<td></td>
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<tr>
<td>1.</td>
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<td>2.</td>
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</tr>
</tbody>
</table>
Checklist for Financial Hardship Distribution from 403(b) Plan Form

(For Provider Use)

1. General Information for Plan Participant
   - Participant name, SSN#, address, phone, e-mail
   - Plan name
   - Employer name, phone, fax and e-mail for contact person

2. Establish the Reason for the Hardship (Safe Harbor Standards)
   - The payment of expenses for medical care previously incurred or necessary to obtain medical care for:
     - myself
     - my spouse
     - my child(ren) or
     - my other dependents
   - The purchase of a principal residence (excluding mortgage payments)
   - The payment of tuition and related education fees for the next 12 months of post secondary education for:
     - myself
     - my spouse
     - my child(ren) or
     - my other dependents
   - The prevention of foreclosure on or eviction from my principal residence.
   - The payment of funeral expenses of a family member.
   - To repair my primary residence due to a disaster.

   (Optional if permitted by the Plan document)
   - This request is due to the hardship incurred by a Primary Designated Beneficiary (specify name) under the plan.

3. Establish the Need for the Hardship (Safe Harbor Standards)
   Participant must certify or must be independently verified. The following requirements must ALL be satisfied:
   - (1) The distribution will not be in excess of the immediate financial need as indicated below, plus the amount neces-
    sary to pay any related federal, state, or local taxes or penalties as indicated below;
   - (2) I have previously obtained all distributions and nontaxable loans available under all retirement plans maintained by
    the employer of this Plan.
   - (3) I will not be able to make any salary reduction contributions to any other qualified or nonqualified plan main-
    tained by the Employer of this Plan (other than a health or welfare benefit plan or defined benefit plan requiring
    mandatory employee contributions) for at least 6 months after I receive the hardship withdrawal.

4. Plan Loan Offset Requirement
   - Have all available loans been taken from employer’s plans?
   - If participant has outstanding plan loans, disclose amount of the loan $__________

5. Amount of the Request
   - Indicate total amount of hardship requested: $_______ (incl. taxes and withholding)
   - Include withholding language and notice on the form executed by the participant.

6. Need Participant Certification
   - Include participant certification (sample follows)
I certify that the amount requested as a hardship distribution cannot reasonably be relieved:
(1) Through reimbursement or compensation by insurance or otherwise;
(2) By liquidation of any of my assets;
(3) By cessation of elective deferrals or after-tax employee contributions under the Plan;
(4) By other currently available distributions (including distribution of ESOP dividends) and nontaxable loans under any plans maintained by my Employer or by any other employer; and
(5) By borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

7. Need Signatures
   ☐ Signature of Participant
   ☐ Employer/TPA Authorization of Transaction
     ☐ Need place for signature certification to approve a distribution signed by the TPA or other employer representative
     ☐ Certificate authorization. In lieu of a signature, accept TPA certification as approval of the transaction for specified dates.

8. Follow-up Activities
   ☐ Notify Employer of suspended deferral
   ☐ Set the date that the suspension is lifted
Checklist for Qualified Domestic Relations Order (QDRO) Form

(For Provider Use)

1. General Information on Plan Participant
   - Participant name, SSN, address, phone, e-mail
   - Plan name
   - Employer name, phone, fax and e-mail for contact person

2. Information on Alternate Payee
   - Alternate Payee name, SSN, address, phone (other contact information helpful)
   - Relationship to Participant
   - Certified Court Order or other document under state domestic relations law that satisfies §414(p) of Code (see Checklist below for summary of requirements)

3. Information on Holder of Assets
   - Identify holder of Assets (releasing Provider)
   - Information on distributing account

4. Provider/Employer/TPA Authorization of Transaction
   - Need place for signature by Provider, TPA or other employer representative (Depending on plan)
   - Certificate authorization. In lieu of a signature, accept TPA certification as approval of the transaction for specified dates.

§414(p) of Code Checklist

Note, if there are multiple alternate payees attach list.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
7. The order clearly indicates the number of payments or period to which such order applies.

8. The order clearly identifies each plan to which it applies.

9. The order does not assign benefits to the alternate payee that exceed the amount to which the participant is otherwise entitled.

10. The order does not require the payment of benefits to an alternate payee which were required to be paid to another alternate payee under a previous QDRO.

11. (Only one of the following need apply)

   Does the order require that the QDRO payment not be made until a time when the participant is entitled to a distribution?

   OR

   Does the order require that payment be made only after the participant attains or would have attained the earliest retirement age under the plan?

   OR

   Does the order require that payments be made before the earliest retirement age and require spousal consent if the benefit payable to the alternate payee exceeds $5,000?

**Additional QDRO Information**

- Receipt of DRO acknowledgement (sent to Participant and Alternate Payees)  
  Date: ______________  

- Initial Determination:  ❑ This is a QDRO  ❑ This is NOT a QDRO

- If not a QDRO initially, course of action taken.  
  ❑ Identify deficiencies  ❑ Other: ______________

- Date on which separate account established for Amounts that may be payable to Alternate Payee.  
  Date: ______________

- Date on which 18 month determination period expires.  
  Date: ______________

- Name of Plans affected.  
  Plan(s)______________

- Date order requires payment to Alternate Payee.  
  Date: ______________

- Indicate amt. to be paid or manner in which determined.  
  Amt. ______________

  Form ______________

  Period of # of payments:
Checklist for Universal Availability Notice

403(b) plans must satisfy “universal availability” requirements which define eligibility to participate in the plan. There are three components to universal availability that must be satisfied every 403(b) plan (except certain church plans) as follows:

- **Eligibility to make salary reduction contributions under the plan**
  
  If any employees are permitted to make salary reduction contributions into a 403(b) plan, then all employees, except those described below, must be permitted to make salary reduction contributions into the plan. No employees may be excluded based on classifications such as “part-time employees,” “substitute teachers,” “benefit eligible employees,” or seasonal, per diem or temporary employees. Only the following employees may be excluded from participation:
  
  a. employees who contribute less than $200/year
  b. employees who participate in another elective deferral plan, such as a 401(k) or 457(b) plan,
  c. students performing services described in IRC 3121(b)(10), or
  d. employees who work less than 20 hrs/week. Under the final regulations, this rule can be converted into an annual requirement based on a “look back” determination. Employees who are expected to work less than 1,000 hrs/year can be excluded from participating in the plan, but at the end of each 12 month period (measured from first date of hire), the employer (or TPA) must look back and count the hours actually worked by that employee in that 12 month period. If the employee was credited with at least 1,000 hours, he or she must be let into the plan. If the employee was not credited with at least 1,000 hours, then he or she may be kept out for the next 12 months. This interpretation effectively requires an employer to keep track of actual hours worked for ALL employees if the plan excludes any employees under the 20 hr/week exclusion.

- **Delivery of Meaningful Notice**
  
  Every employee must receive “meaningful” notice of the plan and their rights to participate in the plan at least annually. The notice must be provided in a manner designed to ensure delivery to each employee individually. For example, posting a notice in the employee lounge by itself is not an acceptable delivery method. However, a summary provided at a benefits fair followed up by quarterly payroll stuffers would probably suffice. There is no requirement for a written receipt from each employee that they have received the annual notice.

- **Opportunity for Enrollment**
  
  Every eligible employee must be given the right to enroll in the plan and change their elections at least once per year. It is strongly recommended that enrollments and election changes be available more frequently to accommodate unexpected situations and changes in circumstances.

*Note: If the plan offers Roth 403(b) contributions, the universal availability rules apply in the same manner to Roth contributions.*
Loans Educational Information for Non-ERISA and ERISA 403(b) Plans

There are limits on the amount of nontaxable loans that may be made to a participant under a 403(b) Plan. In general, loans cannot exceed the lesser of (1) $50,000 or (2) the greater of (a) 50% of the present value of the participant’s vested accrued benefit or (b) $10,000. (Code § 72(p)(2)). The $50,000 limit is further reduced by the excess of a participant’s highest outstanding loan balance from all plans held by the employer during the past 12-months minus the current loan balance, if any. For these purposes, all plans of the employer are aggregated. The “employer” includes partnerships and proprietorships under common control, controlled groups and affiliated service groups (Code §72(p)(2)(D)).

Non-ERISA versus ERISA 403(b) Plans

It is important to clarify that there are two sections of law dealing with participant loans:
• §72(p) which applies to Non-ERISA plans, and
• the DOL rules under ERISA §2550.408(b) which only apply to ERISA plans.

The DOL regulations are more restrictive than the Internal Revenue Code, but they must be used in the case of ERISA 403(b) plans. The differences between the two are outlined below:

<table>
<thead>
<tr>
<th>Loan Provision</th>
<th>Non-ERISA</th>
<th>ERISA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan amount</td>
<td>Greater of 50% the account balance or $10,000 with a maximum of $50,000</td>
<td>Lesser of 50% of account balance or $50,000</td>
</tr>
<tr>
<td>Security Amount</td>
<td>Minimum = amount of loan</td>
<td>No more than 50%</td>
</tr>
<tr>
<td></td>
<td>Maximum = no maximum</td>
<td>(Minimum = amount of loan)</td>
</tr>
<tr>
<td>Interest Rate</td>
<td>Reasonable</td>
<td>Must be determined on date of loan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Very specific guidelines</td>
</tr>
<tr>
<td>Written Procedures</td>
<td>Required (Electronic Permitted)</td>
<td>Required</td>
</tr>
</tbody>
</table>

The 403(b) Plan Loan Limit Worksheet provides calculations for both types of loans.

Non-ERISA vs ERISA 403(b) Participant Loans

<table>
<thead>
<tr>
<th>Provision</th>
<th>Non-ERISA 403(b)</th>
<th>ERISA 403(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible for making sure loan is technically correct</td>
<td>N/A. Participant self-certifies</td>
<td>Plan Administrator (Employer), but relies on Vendor for servicing and technical issues</td>
</tr>
<tr>
<td>Signatures</td>
<td>Participant</td>
<td>Employer and Participant</td>
</tr>
<tr>
<td>Responsible for loan procedures</td>
<td>Vendor</td>
<td>Employer, but Vendor usually provides</td>
</tr>
<tr>
<td>Services loan</td>
<td>Vendor</td>
<td>Employer, but Vendor usually provides</td>
</tr>
</tbody>
</table>
The final loan and 403(b) regulations require the employer take the responsibility for administering the plan. While employers may delegate this responsibility, they may not delegate to the participant since self-certification is no longer permitted under the final regulations. Additionally, the employer will be responsible to ensure all aggregation and limitations are in compliance.

**Refinancing Loans**

Refinancing is permitted as long as collectively the loan(s) satisfy the requirements under §72(p); however, as a practical matter, most providers do not permit the refinancing of a loan.

If a loan that satisfies the requirements under §72(p) is replaced by another loan (i.e.; a replacement loan) and the term of the replacement loan exceeds the maximum allowable term, both the replaced loan and the replacement loan are both treated as outstanding on the date of the transaction for the purpose of calculating the maximum amount of the new loan.

The maximum term permitted on the replacement loan may not exceed 5 years from the original date of the replaced loan. In other words the loan term may not be extended beyond 5 years by refinancing the loan. However, if the original loan term was for less than 5 years, the replacement loan is not required to end before the 5 year period ending after the original loan was taken. If an extension beyond the 5 years does occur, the refinanced loan is treated as a deemed distribution. If, in the alternative, the replacement loan is treated as two separate loans, meaning that the replaced loan continues to have a payment schedule within the new replacement loan that will assure that the replaced loan is paid off within the original term loan, then a deemed distribution does not occur.

**Refinanced Loan Example**

Janice is a participant in her employer’s 403(b) plan and has $120,000 in vested monies under the plan. Janice borrows $40,000 from the plan on January 1, 2009 to be repaid in 20 quarterly installments of $2,491 each. The loan term therefore ends on December 31, 2013.

On January 1, 2010, when the outstanding balance on the loan is $33,322 (replaced loan), the loan is refinanced and is replaced by a new $40,000 (replacement loan) loan from the plan to be repaid in quarterly installments of $2,491 each over the next 20 quarters. Therefore the new loan term ends December 31, 2014.

The amount of the new loan ($40,000) when added to the outstanding balance of all loans from the plan must not exceed $50,000 reduced by the excess of the highest outstanding loan balance from the plan on the date of the refinancing (January 1, 2010), determined immediately prior to the new loan.

Since the new loan period ends later than the term of the loan it replaces, both the replaced loan amount ($33,322) and the replacement loan amount ($40,000) must be taken into consideration when calculating the amount available for a new loan.

$30,000 would be a deemed distribution on 1/1/06 calculated as follows:

1. New Loan Amount ......................................................................................................................$40,000
2. Outstanding Balance ...............................................................................................................$33,322
3. Highest balance in last year ..................................................................................................$40,000
4. Subtract (line 3) – (line 2) ..................................................................................................$ 6,678
5. Maximum Loan Amount........................................................................................................$50,000
6. Subtract (line 5) – (line 4) ..................................................................................................$43,322
7. Add (line 1) + (line 2) .........................................................................................................$73,322
8. Subtract (line 6) – (line 7) ..................................................................................................$30,000

Therefore line 8 ($30,000) is the amount of the deemed distribution on 1/1/10 and should be reported by the provider on a Form 1099-R for tax year 2010 with a code L.
New Loans When There is an Outstanding Defaulted Loan

When payments are not timely made (no later than the end of the quarter following the quarter in which the payment was due), the regulations require that the providers default and report the remaining loan balance as a taxable deemed distribution with the issuance of IRS Form 1099-R. The defaulted loan must be held in the Provider’s records since the amount in default (plus any loan interest accruing after the default) must be counted in determining eligibility for new loans.

If a plan permits a new loan with an outstanding defaulted loan in any plan of the employer, the regulations require that payments on the new loan be made through payroll deduction. Employers not wishing to offer payroll deduction for new loan payments should specify in their provider service agreements that no new loans are permitted in the plan if the participant has an outstanding defaulted loan.
Standardized Loan Limit Worksheet for Non-ERISA and ERISA 403(b) Plans

This 403(b) Plan Loan Limit Worksheet is used to calculate the amount of non-taxable loans that may be made to a participant under an employer’s 403(b) Retirement Plan (403(b) Plan).

**Background**

There are limits on the amount of nontaxable loans that may be made to a participant under the 403(b) Plan. In general, loans cannot exceed the lesser of (1) $50,000 or (2) the greater of (a) 50% of the present value of the participant’s vested accrued benefit or (b) $10,000. Code §72(p)(2). The $50,000 limit is further reduced by the excess of a participant’s highest outstanding loan balance from all plans held by the employer during the past 12-months minus the current loan balance, if any. For these purposes, all plans of the employer are aggregated. The “employer” includes organizations under common control. Code §72(p)(2)(D).

**Verification Steps**

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Request employer to confirm whether the 403(b) plan provides any limits more restrictive than Internal Revenue Code requirements for a loan or a minimum loan amount. Note: one such limitation may be to restrict the number of loans permitted.</td>
<td>No plan limit Plan limit is: __________________ Minimum loan amount, if any, is: __________________</td>
</tr>
<tr>
<td>2.</td>
<td>Determine the participant’s vested account balance in the given 403(b) Plan (inclusive of existing loans for Non-ERISA plans only).</td>
<td>Value of 403(b) plan account: $ __________________</td>
</tr>
<tr>
<td>3.</td>
<td>Determine the highest outstanding loan balance in the given 403(b) Plan over the last 12-months.</td>
<td>Highest outstanding 403(b) loan balance: $ __________________</td>
</tr>
<tr>
<td>4.</td>
<td>Determine the outstanding loan balance in the in the given 403(b) Plan on the date of the loan.</td>
<td>403(b) plan loan balance on date of loan request: $ __________________</td>
</tr>
<tr>
<td>5.</td>
<td>Obtain from the employer a list of all other (1) 403(b) plans, (2) qualified plans (i.e., pension plans (defined contribution and defined benefit plans), profit sharing plans, money purchase plans), (3) governmental plans (i.e., state retirement systems and 457(b) plans), or church plans maintained by the employer. Note: For these purposes, all plans maintained by an employer and its related employers must be aggregated. Loan limitations are determined on a “Employer” basis not a “Plan” Basis. The “employer” includes controlled groups, partnerships and proprietorships under common control, and affiliated service groups. Code § 72(p)(2).</td>
<td>List of other plans: ____________________________________________________________</td>
</tr>
</tbody>
</table>

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8 In addition, for a limited time, Plans were permitted to increase the loan limits for individuals affected by (i) Hurricane Katrina, Rita, or Wilma; (ii) May 4, 2007 Kansas storms and tornados; or (iii) 2008 Midwestern storms, tornados, and flooding. See Code section 1400Q.
For purposes of school districts, this appears to include all plans of employers (county, state, other districts) using a common payroll with the district, but the IRS has not issued clear guidance.

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Amount:</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>Obtain the total vested account balance in all plans disclosed in Step 5 (inclusive of existing loans for Non-ERISA plans only).</td>
<td>$ __________</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Obtain the total highest outstanding loan balances for all plans disclosed in Step 5 over the last 12 months.</td>
<td>$ __________</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Obtain the outstanding loan balance for all plans disclosed in Step 5 on the date of the loan.</td>
<td>$ __________</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>A. Confirm with employer that it has attempted to obtain account and loan balance information from vendors who were discontinued after December 31, 2004 but prior to January 1, 2009 for whom the employer, as administrator, is obligated to request information pursuant to IRS Revenue Procedure 2007-71 OR, if the employer is using the alternative method, as to which the discontinued vendor has provided such information to the employer.</td>
<td>☑ Confirmed</td>
<td>Note: Prior provider contracts issued before 2005 which have received no contributions since 2004 are grandfathered. No action is necessary with respect to such contracts.</td>
</tr>
<tr>
<td></td>
<td>B. Ask participant to confirm whether they have any other outstanding loans attributable to participation in a plan sponsored by the employer.</td>
<td></td>
<td>If any additional loans are identified by the employer or participant, add them and account information to the information in Steps 6, 7 and 8.</td>
</tr>
<tr>
<td>10.</td>
<td>Add the total vested account balances provided in Step 2 and Step 6 (other employer plans or contracts).</td>
<td>Total vested plan account balance: $ __________</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Calculate the highest outstanding loan balance in the last 12 months by adding the balances provided in Step 3 and Step 7.</td>
<td>Highest outstanding loan balance: $ __________</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Calculate the amount of loans outstanding on the date of the loan by adding the balances provided in Step 4 and Step 8.</td>
<td>Loan balance on date of request: $ __________</td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>Take the highest outstanding loan balance in Step 11 and subtract the loan balance on the date of the loan request from Step 12. Enter this excess amount, if any, and go to Step 14.</td>
<td>Excess Amount (Highest outstanding loan balance minus loan balance on date of request): $ __________</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Reduce $50,000 by the excess amount determined in Step 13. Enter this amount and go to Step 15.</td>
<td>Amount ($50,000 – Excess Amount): $ __________</td>
<td></td>
</tr>
</tbody>
</table>
15. Reduce the amount calculated in Step 14 by the loan balance on the date of request from Step 12, if any. Enter this amount and go to Step 16.  

| Amount: $ ________________ |

16. Multiply the Total Vested Account Balance calculated in Step 10 by 50%. For Non-ERISA plans only - If this amount is less than $10,000, select the box marked “$10,000” and go to Step 17. If this amount is \( \geq \) $10,000, select “50% of total account balance” and enter this amount, then go to Step 18. 

| 50% of total vested account balance: $ ________________ |
| $10,000 |

17. If this is a non-ERISA Plan and if the “$10,000” box in Step 16 was checked, determine the lesser of (1) the amount calculated in Step 15 or (2) $10,000. Enter this amount and go to Step 19.  

| Amount: $ ________________ |

Note: Under an ERISA plan, a participant may borrow more than they have in assets however there must be additional collateral received and adequate security is required for all ERISA plans.  

18. If the $10,000 box in Step 16 was NOT checked, determine the lesser of (1) the amount in Step 15 or (2) 50% of the participant’s total vested account balance from Step 16. Enter this amount and go to Step 19.  

| Amount: $ ________________ |

19. Total Loan Amount Available – All Employer Plans in the Aggregate – Go to Step 20 for determining amount of loan from the given 403 (b) accounts where there are multiple vendors.  

| $ ________________ |

20. Loan limit applicable to the given 403 (b) accounts: if lesser than the overall loan limit in Step 19, loans from the given 403 (b) accounts may not exceed [optional: “50% of” in a Non-ERISA Plan] the vested account balance in Step 2 less the outstanding loan balance on the date of the loan in Step 4.  

| Amount: $ ________________ |

21. Determine if the participant has ever defaulted on a prior loan and not repaid the loan. If so, the loan must be by payroll deduction or additional security must be obtained.  

| Prior default: ☐ Yes ☐ No |
| Was prior default reported as a deemed distribution: ☐ Yes ☐ No |

22. If the Plan is subject to ERISA: Employer must have a loan policy in place with the requirements under ERISA Section 408(b)(1)(A); Section 2550.408b-1(b)(1)(i) DOL Regulations and DOL Advisory Opinion Letter 89-30A  

| ☐ Yes ☐ No |

23. Is refinancing permitted?  

| ☐ Yes ☐ No |

24. Are quarterly payments required and monitored?  

| ☐ Yes ☐ No |
## 403(b) Contract Categories Grid

<table>
<thead>
<tr>
<th>Type of Contract</th>
<th>Level of Employer Authorization</th>
<th>Employer Communication</th>
</tr>
</thead>
</table>
| Pre-Reg - an account/contract issued before 2005 into which no contributions were made after 12/31/2004. | • Not subject to employer “plan” oversight  
• Controlled by relationship between participant and provider | Employer letter to provider certifying that they have not contributed to that provider and notifying them that any contracts for their employees do not require employer authorization. (See Pre-Reg Notice in “Best Practices Support Materials” section.) |
| Grandfathered - an account/contract not connected to a plan holding the proceeds of a Rev. Rul. 90-24 transfer completed before September 25, 2007 | • Not subject to employer “plan” oversight  
• Controlled by relationship between participant and provider | To the extent the provider has the ability to identify and segregate these contracts, they should treat them as not subject to plan oversight. Providers that cannot identify these contracts should assume they are subject to plan rules unless the employer informs them otherwise. |
| Orphan – an account/contract held by a provider that accepted contributions for any employee of a plan sponsor after 12/31/04 but was not included under the sponsor’s plan document on 1/1/09. | • Subject to reasonable good faith compliance.  
• Employer must contact providers in writing by 12/31/08 to request info sharing, or  
• Providers should check with employer prior to making distributions or loans | Employers should identify this group of providers and request information sharing. Providers have not established information sharing with the employer will need to reach out to the employer before executing the transaction. (See Transition Relief Letter in “Best Practices Support Materials” section.) |
| Post Reg Active Provider - provider received contributions after 1/1/09 and remains an active provider under the written plan. | • Employer authorization required. | The employer and provider should enter into a service provider agreement under which the employer and provider agree to share information to facilitate plan compliance. |
| Post Reg De-Selected Provider - provider received contributions after 1/1/09 but were subsequently de-selected by the employer | • Employer authorization required. | Employer should attempt to establish information sharing with de-selected provider to facilitate compliance. Providers that have not established information sharing with the employer will need to reach out the employer before executing the transaction. |
## Provider Status Worksheet for Deselected Providers

<table>
<thead>
<tr>
<th>Deselected Provider Name</th>
<th>Date Deselected</th>
<th>ISA (Yes/No)</th>
<th>Contract Exchanges Permitted with Provider (Yes/No)</th>
<th>Loans Permitted with Provider (Yes/No)</th>
<th>Hardships Permitted with Provider (Yes/No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main St USA Annuity</td>
<td>1/1/09</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>Big Mutual Fund Company</td>
<td>5/1/09</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>403(b) Life Insurance Co.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Life Insurance Company</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Information on this worksheet should be transferred to the Plan Features Grid and distributed to all current Providers. As a lesser alternative, the TPA can share the information on this sheet with the currently authorized Providers to streamline transactions with legacy accounts.
Sample Notification Letter to Pre-Reg Providers

Providers whose 403(b) contracts are no longer subject to employer review or authorization.

Provider Name
Address
Address

Re: Contracts for (Identify by Employee Names or Account Numbers)

This letter confirms that the above referenced 403(b) contracts/accounts issued by your organization are not included under the 403(b) plan sponsored by this organization pursuant to Revenue Procedure 2007-71 since, according to our records, your company as issuer has not received a contribution after December 31, 2004. Accordingly, please do not seek authorization for any transactions related to these accounts from us or any or administrative organization that may be servicing our 403(b) plan. As directed in Rev. Proc. 2007-71, these contracts are governed by the terms of contracts between the issuer (your organization) and the contract holder. Because we have no authority over these agreements, we cannot and will not authorize any transaction request related to these contracts/accounts.

Thank you for your cooperation in this matter.

Signature
Sample Alternative Relief Employer Letter to “Orphan” Providers

Vendors who are no longer authorized to provider investment products under an employer’s 403(b) plan.

Provider Name
Address
Address

Re: Insert Name of Plan (the “Plan”)

Your company ________________________________ has been identified as a 403(b) investment provider under the Plan that received contributions to 403(b) contracts/accounts after December 31, 2004 under our Plan, but are no longer authorized to accept contributions under the Plan document. Pursuant to Revenue Procedure 2007-71, this letter advises you to follow the alternative relief offered under Section 8 of that revenue procedure with respect to the 403(b) accounts and/or contracts held by your company under the Plan (“Orphan Accounts”).

Accordingly, we are requesting that your organization use all reasonable good faith efforts to exchange information on Orphan Accounts under the Plan prior to making any loans or distributions from any Orphan Accounts to assist us in fulfilling our compliance oversight responsibilities as applicable to the Plan.

Choose One
We have contracted with ________________________________ (Administrator) to act as a third party administrator for the Plan. All communication about the Plan should be directed to the Administrator at:

[Insert Contact Person for Administrator and Mailing Address]
Phone___________________ Fax___________________
E-mail_______________________

Or

You should contact ______________________ [Insert name of individual at Employer who will be responsible for coordinating Plan information with Provider] at [Insert contact information for named individual] to coordinate information prior to making a loan or distribution from any Orphan Accounts.

Thank you for your cooperation.

Signature
Sample 403(b) Information Sharing Agreement for Deselected Providers

This Information Sharing Agreement ("Agreement") is entered into as of this ____ day of _____________, 20___, by and between _______________________________ ("Provider"); and _________________________ ("Employer"). The Agreement establishes the mutual understanding between Provider and Employer relating to the sharing of information for the purpose of compliance with final IRS regulations ("Regulations") issued under Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code"). Provider and Employer intend for the Agreement to describe the respective duties and obligations of the parties with respect to information sharing as set forth below.

Section I. Employer represents that:

a. it is eligible to establish, and has established and maintains a retirement plan for eligible employees intended to qualify under Section 403(b) of the Code ("Plan");

b. it will notify Provider promptly in writing in the event it ceases to be an eligible employer under Section 403(b) of the Code, ceases to exist, or terminates the Plan.

Section II. Both Parties agree:

a. to provide information necessary to comply with the Plan and Regulations, including information concerning the participant’s employment status and information that takes into account other annuity contracts or custodial accounts maintained under Section 403(b) of the Code, and any other information deemed necessary to ensure compliance, including but not limited to information required for distributions from the Plan, Plan loans, rollovers into the Plan, Plan-to-Plan transfers, and Plan exchanges. Such information shall be provided in a form and manner, and within time periods, as shall be agreed from time to time between Employer and Provider.

Section III. Term of the Agreement.

This Agreement shall continue from year to year unless terminated by either party, in writing, by no less than sixty (60) days written notice.

By executing this Agreement, dated ______________ both parties acknowledge that they have read this Agreement and agree to its terms.

AGREED TO:

Provider Name

____________________________________________

By __________________________________________

Authorized Provider Signatory

Name ________________________________________

Title _______________________________________

Dated ______________________________________

Employer Name

____________________________________________

By __________________________________________

Authorized Employer Signatory

Name ________________________________________

Title _______________________________________

Dated ______________________________________
Exchanges, Rollovers and Plan to Plan Transfers Transaction Definitions

Plan to Plan Transfer
This is a transfer of all or some portion of a participant’s 403(b) account from one employer’s 403(b) plan to a different employer’s 403(b) plan. Plan-to-plan transfers may only be made to a plan where the participant is a current or former employee. This is an optional plan feature, so both plan documents would have to allow for these types of transfers. Providers do not report these transactions to the IRS on Form 1099-R. The provider disbursing the account/contract proceeds must indicate (if possible) the type of funds (employee deferrals, employer contributions, earnings, rollovers, etc.) forwarded or the proceeds will be treated as a “restricted” source and the most restrictive distributable events will apply to the amounts received in transfer.

Exchange
This is a 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 employer’s 403(b) plan. The receiving provider must be an approved vendor under the employer’s current 403(b) plan or the receiving vendor must have an information sharing agreement on file with the employer sponsoring the plan. This is an optional plan feature, so the plan document would have to allow exchanges between the vendors. Exchanges are not reported to the IRS on Form 1099-R. The vendor sending the exchange must indicate (if possible) the type of funds (employee deferrals, employer contributions, earnings, rollovers, etc.) forwarded or the proceeds will be treated as a “restricted” source and the most restrictive distributable events will apply to the amounts received in the exchange.

Exchange from Deselected Vendor to Approved Vendor
This is a movement of all or some portion of an employee’s 403(b) account under an employer’s 403(b) plan from a deselected vendor (one that holds plan assets but is no longer accepting on-going contributions) to a currently approved vendor under the employer’s 403(b) plan. This is an optional plan feature, so the plan document would have to allow such exchanges. Exchanges are not reported to the IRS on Form 1099-R. The vendor sending the exchange must indicate (if possible) the type of funds (employee deferrals, employer contributions, earnings, rollovers, etc.) forwarded or the proceeds will be treated as a “restricted” source and the most restrictive distributable events will apply to the amounts received in the exchange.

Exchange from a Grandfathered Orphan 403(b) Account to an Approved Vendor
A grandfathered Orphan account is a 403(b) account held by a participant under which the issuer did not accept additional contributions after 12/31/2004. While these accounts are not currently part of the plan, they can become a part of a plan with an exchange to an approved provider (if the plan permits exchanges). Each vendor must do its own due diligence in proving a distribution, i.e. verify attainment of age 59½, verify separation from service, loan amounts, hardship etc. prior to authorizing the transaction without the employer’s involvement.

Exchange from an Orphan 403(b) Account (non-grandfathered) to an Approved Vendor
An Orphan account is a 403(b) account that is presently not associated with a specific employer’s plan. For example, it could exist solely due to a valid 90-24 transfer prior to 9/24/2007. A vendor disbursing an exchange must indicate (if possible) the type of funds (employee deferrals, employer contributions, earnings, rollovers, etc.) forwarded or the proceeds will be treated as a “restricted” source and the most restrictive distributable events will apply to the amounts received in the exchange. Exchanges from these types of accounts may only be made to vendors that are approved under the employer’s 403(b) plan.
**Rollovers from The 403(b)**
To qualify for a rollover, a participant must first receive an “eligible rollover distribution” of all or some portion of his or her 403(b) account from the employer’s 403(b) plan. It may only occur after the participant has experienced a “distributable event” (separated from service, attained 59½, died, qualified for disability). The amount distributed is reported to the IRS on Form 1099-R and the participant must report these amounts on their Form 1040. To defer immediate taxation, the participant may “rollover” the distribution into another “eligible retirement plan,” such as an IRA, another 403(b) plan, a SEP, a Roth IRA, a governmental 457(b) plan or other qualified retirement plan that accepts rollovers and where the individual is eligible to make a rollover into the plan. This may be done as a “direct rollover” or as a “60-day indirect rollover.”

**90-24 Transfers**
These were transfers or exchanges, plan to plan or within a plan, which were done in accordance with IRS Rev. Rul. 90-24. The final regulations effectively eliminated this type of transfer or exchange. Contracts which were transferred or exchanged under Rev. Rul. 90-24 on or before Sept. 24, 2007 are essentially grandfathered from the IRS final regulations, but any further transfers or exchanges must satisfy the final regulations.
Checklist for 403(b) Plan Exchanges, Rollovers or Plan to Plan Transfers

(To be used by Providers)

1. Identify Type of Transaction
   - Exchange: Movement of all of some portion of a participant’s 403(b) account under an employer’s plan from one provider to an approved provider under the current employer’s plan.
   - Direct Rollover: Upon having a qualifying distributable event, the movement of assets from the current employer’s 403(b) plan to another "eligible retirement plan" or from another "eligible retirement plan" (including another 403(b) plan) to an approved provider under the employer’s 403(b) plan.
   - Indirect Rollover: Upon having a qualifying distributable event, the distribution of assets from the current employer’s 403(b) plan to the Participant who may in turn roll those assets to another plan within 60 days.
   - Plan to Plan Transfer: Upon separation of service from an Employer, an employee who is now employed by a different 403(b) eligible employer may elect to move his or her 403(b) account(s) to an approved provider of the new employer’s plan. To complete this transaction, both the old and new employer’s plan documents must permit Plan to Plan transfers as optional features. If transfers are not permitted, the employee may use the rollover rules to move the account to the new employer’s plan, provided the plan accepts rollovers in.

2. General information on Employer/Plan Sponsor
   - Employer Name, Address, Contact Name and Phone. Note: If this is a Plan to Plan transfer, also need Prior Employer’s Name, Address, Contact Name and Phone
   - Name of sending plan (if applicable) __________________________________________________________
   - Name of receiving plan (if applicable)

3. General Information on Plan Participant
   - Name, SSN#, Resident address, Phone and E-mail

4. Delivery Instructions (Destination)
   - Must indicate where the proceeds are going with instructions for delivery.

5. Funding Source for Incoming Rollovers - Origination for Incoming Rollovers ONLY (Plan to Plan Transfers and Exchanges MUST by funded by 403(b) source.)
   - IRA, SEP IRA, SIMPLE IRA, SARSEP, 403(b), 457(b), Defined Contribution Qualified Plan (including 401(k)), Defined Benefit Plan, or other.

6. Information on Receiving Plan Account
   - Need to know account number under the 403(b) plan
   - Need to know if new account, so that an account application form can be attached
   - Need to know amount of the transaction requested
   - Need to have directions on expected activity. (For example: Liquidate all or some portion of the account. Transaction request is based on approximate value of $_________ being annuitized for a period of ________ years, move all shares in kind. Do not liquidate. Estimated Value: __________, or Exchange between accounts at the current custodian (Internal Transfer, also includes movement of monies between investments within a mini common remitter)

7. Timing of Transaction
   - Need to know when to execute request. (For example: Process immediately. Liquidate funds at maturity to avoid penalty. Liqueate on _________(specified date).
8. Information on Proceeds
- Is any part of the transaction composed of required minimum distribution proceeds? If yes, how much? Has the RMD for the year been satisfied prior to this transaction?
- Need to know information on proceeds by funding source including information on principle and earnings
  - Pre-Tax Elective Deferrals
    - Indicate 12/31/88 annuity contract values if available
  - Designated Post-Tax Roth Deferrals
    - Indicate Roth establishment date:
  - Employer Contributions
    - Indicate if different types of employer contributions (matching, post-employment, discretionary, etc.)
    - Indicate unrestricted annuity balance (if applicable) on 12/31/08
  - Rollovers Into the Plan
  - Other source (including corrective contributions under EPCRS)

9. Tax Reporting Requirements
- Need voluntary and mandatory withholding explanations and elections where required.
- Check resident address for possible requirement for W-8BEN and 1042-S reporting
- Participant signature and certifications (suggested and required)
  See suggested participant certifications for consideration at the end of this checklist

10. Employer/TPA Authorization of Transaction
- Need place for signature certification to approve a distribution signed by the TPA or other employer representative
- Certificate authorization. In lieu of a signature, accept TPA certification as approval of the transaction for specified dates.

Suggested Participant Certifications for Exchange, Plan to Plan Transfer and Rollover Transaction Forms

By executing this form, I the participant acknowledge the following:
(1) This tax free exchange, plan to plan transfer, or rollover is taking place directly from the current Custodian/Insurer to the successor Custodian/Insurer and I am not in actual or constructive receipt of all or any part of the liquidation proceeds;
(2) If I am executing a direct rollover of pre-tax assets to a 403(b) account, I attest that the rollover contains only deductible IRA or pre-tax qualified plan contributions and I acknowledge that all future distributions will be reported as taxable;
(3) If I am executing a direct rollover of post-tax "Roth" assets to a 403(b) account, I attest that the rollover contains only post-tax Roth amounts from another 403(b) or 401(k) account;
(4) I have received and read the prospectus for the fund(s) in which I am making my investment;
(5) If I am over age 70½ and requesting a direct rollover, I attest that none of the amount to be transferred will include the required minimum distribution for the current year pursuant to Section 401(a)(9) of the Internal Revenue Code;
(6) My distribution may be subject to taxes if my employer’s plan: a) does not include exchanges, transfers or direct rollovers or b) does not include the receiving vendor as an authorized or approved vendor under my employer’s plan;
(7) I am responsible for any tax consequences related to the movement of assets, which could include the imposition of penalties, additional taxes and interest. Vendor assumes no responsibility or liability for any adverse tax effects of this transaction;
(8) I am aware that information about me or my 403(b) account/contract may need to be provided to my employer or to an authorized representative of the employer to complete this transaction request and I hereby authorize the custodian/insurer to provide such information as may be necessary to complete this transaction or to otherwise satisfy the requirements of Section 403(b) of the Internal Revenue Code; and

Participant signs and dates
Sample Vendor Service Agreement for 403(b) Plan • Non-ERISA Public School or Nonelecting Church Organization Using Services of a TPA

(With TPA)

Vendor Agreement
This Agreement, effective as of the date hereof, by and between ___________________________________________ (the “Employer”) and ______________________________________________ (the “Vendor”) describes the terms and conditions of the agreement between Employer and Vendor related to the 403(b) plan established and maintained by Employer (the “Plan”).

Duties and Responsibilities of Vendor
Vendor shall:
1. Adhere to the terms of the written Plan document and any policies and procedures (if any) relating to the Plan.
2. Offer only investment products (“Investments”) that fully qualify under §403(b) of the Internal Revenue Code of 1986 (the “Code”), any regulations issued thereunder and any other applicable state or federal law.
3. Update and modify its documentation and procedures as needed to maintain qualification of its Investments offered under the Plan, and take such reasonable action as necessary to correct any deficiencies in its documents and practices.
4. Make available to the Employer or its representative, copies of master custodial accounts and/or annuity contracts, account and/or annuity contract endorsements or amendments, or other written materials sent or received by Plan participants pertaining to the Plan as requested by Employer or its representative.
5. Share information on participant Investments under the Plan with Employer and/or its representative as necessary for compliance with the Plan and applicable law and regulations. For this purpose, information includes, but is not limited to contributions, distributions, hardship withdrawals, loans, QDRO determinations, required minimum distributions, and other relevant account activities governed by the Plan.
6. Distribute to each participant and beneficiary, at its own expense, all prospectuses, proxy statements, annual reports, tax information and other written materials relating to the products offered under the Plan.
7. Comply with all written solicitation rules of employees of the Employer and exert its best efforts to cause any agents or financial representatives approved to distribute its products to similarly comply with such directives.
8. Properly administer all transactions in accordance with the written Plan and applicable policies and procedures, including if applicable, directions from a Plan administrator appointed by the Employer.
9. Provide proper tax reporting and required notices to Plan participants and withhold taxes as required by applicable law.
10. Permit corrective distributions of excess deferral contributions and cooperate in Employer efforts under any voluntary compliance program with the Internal Revenue Service or state regulating authority.
11. Provide notification of “required minimum distributions,” as applicable to Plan participants holding Investments with Vendor.
12. Provide Employer or its representative any information relating to Plan participant accounts and/or annuity contracts in the event of an audit by a taxing or regulatory authority.
13. Assert a diligent effort, except for casualties beyond the control of the Vendor, to maintain information relative to the Plan and Plan participants for a period of seven (7) years following the conclusion of this relationship, and during such time to afford the Employer or its representatives reasonable access to the information. For the purposes of this provision, “information” shall include, but may not be limited to payroll contribution data and transaction data maintained on behalf of Plan participants.
**Duties and Responsibilities of Employer**

Employer certifies that it is an employer eligible to sponsor a 403(b) plan, and has established and maintains a written 403(b) plan document that reflects its Plan and, subject to the execution of this Agreement by Vendor, Vendor shall be authorized as an approved vendor under the Plan. Employer and any representative appointed to act on its behalf further shall:

14. Determine which employees are eligible to participate in the Plan and certify that the 403(b) program will be made available to all eligible employees as required by law or applicable regulations.

15. At least once per year, provide written notice to employees of their right to participate in the Plan, including information on procedures to enroll in the Plan.

16. Make available to Vendor a copy of the Plan or a detailed summary of the Plan’s features and any written policies and procedures incident to the Plan.

17. Transmit contributions to Vendor in a time and manner acceptable to both parties and consistent with applicable income tax regulations. If Employer make nonelective employer contributions to the Plan, Employer shall provide information sufficient to allocate those contributions, including but not limited to names, personal identification numbers, account numbers, contract numbers, applicable investment direction and the dollar amount of the contribution to be allocated to each eligible employee.

18. Provide any information known by or available to the Employer which is necessary for the Vendor to perform its duties and responsibilities covered by this Agreement.

19. Provide changes or updates to the employment status of Plan participants in a time and manner acceptable to both parties.

20. Comply with Vendor’s requests for information concerning the Plan, including information on the plan document, all amendments, plan descriptions, and any other documents that have a bearing on the services covered by this Agreement.

21. Provide contact information to Vendor. If Employer uses an administrator, Vendor will be so advised and provided with contact information on the designated administrator. In such event, Vendor is authorized to share information necessary for Plan compliance directly with the designated administrator in a manner that is consistent with applicable privacy and confidentiality requirements.

**Duties and Responsibilities of Both Parties**

All parties agree to the following terms and conditions:

22. **Plan Conformity.** To act in accordance with the terms of the Employer’s 403(b) Plan document.

23. **Information Sharing.** Each party agrees to provide information necessary to comply with the regulations under Section 403(b) of the Code and the Plan, including information concerning participants’ employment status and information that takes into account Investments under the Plan and any other information deemed necessary to ensure compliance including but not limited to information required for distributions from the Plan, Plan loans, rollovers into and from the Plan, plan-to-plan transfers and Plan exchanges. Such information shall be provided in a form and manner, and within time periods, as shall be agreed from time to time between Employer (or its representative) and Vendor.

24. **Indemnification.** Each party agrees, to the extent permitted by applicable law, to indemnify and hold harmless the other, including any individual member of the governing boards, and their employees from every claim, demand or suit which may arise out of, be connected with, or be made by reason of the party’s failure to meet the requirements of this Agreement. However, this indemnification shall not cover any claim, demand, or suit based on the willful misconduct or fraud of either party or its employees. Either party shall, at its own expense and risk, defend, or at its option settle, any court proceeding that may be brought against it, members of the governing board, and employees on any claim, demand or suits covered by this indemnification, and shall satisfy any judgment that may be rendered against any of them with respect to any such claim or demand, provided that such party notifies the other party, in writing, within thirty (30) business days of receipt of such claim or demand. Each party’s liability hereunder shall be limited to actual damages, including, where applicable, income tax penalties (but not the taxes themselves) and out of pocket legal fees and expenses only.
25. **Confidentiality.** Any information provided under this Agreement shall be kept confidential ("Confidential Information") and shall be used only for Plan compliance purposes. Personal information on employees and Plan participants and their accounts under the Plan is considered to be Confidential Information and shall be protected by the parties and their respective delegates. Confidential Information shall not be disclosed for any purpose other than as required for 403(b) plan compliance. Both parties agree that the obligation to protect Confidential Information is satisfied if the party receiving such information utilizes the same degree of care as it employs to avoid disclosure of its own Confidential Information. Either party may disclose Confidential Information pursuant to a requirement of a governmental agency or pursuant to a valid court or administrative subpoena, order or other such legal process or requirement of law; provided that, prior to disclosing such Confidential Information, the other party will be informed of such order.

26. **Amendment and Termination.** This Agreement can be amended or modified at any time by mutual agreement and written consent by the parties. This Agreement shall remain in effect until terminated, in writing, by either party. Notwithstanding a termination of this Agreement, Vendor agrees that it shall have a continuing obligation to maintain and share information with Employer or its representative on any Investment held by Vendor under the Plan to the extent required for compliance with applicable laws and regulations. This obligation shall continue for so long as any participant Investment is held by the Vendor (or its successor) subject to the terms of the Plan. In the event this Agreement is terminated by either party and Vendor fails to maintain and/or share information as required hereunder, Employer and Vendor agree to cooperate and work in the best interest of Plan participants to accommodate a smooth transition of vendor services. Vendor agrees to pay for time expended and fees, charges and expenses incurred during the transition that are attributable to Vendor’s failure to maintain and/or share information as provided under this Agreement. Vendor shall be billed by Employer on the basis of actual costs incurred by the Employer or the administrator handling the transition.

27. **Limitations of Liability.** Neither party shall be held liable for its inability to perform its duties and responsibilities under this Agreement for any cause beyond its control including without limitation, interference by the other party, acts of God, strikes, labor troubles, government preemption, or national emergency, provided that the party who is unable to perform shall exercise reasonable diligence to effect performance as soon as possible.

28. **Severability.** If any term or provision of this Agreement is found unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

29. **Construction.** This Agreement shall be construed under the laws of the state in which the Employer maintains its primary address unless superseded by federal law.

30. **Fees of Plan Administrator.** If Employer uses an administrator to service the Plan, both parties recognize that there may be a cost for such service. If the administrator charges the Vendor for some or all of the costs related to administering Investments held by the Vendor, Vendor may terminate this Agreement upon notice of its allocated share of administrative costs, provided that the obligations and duty to share information on Investments held by the Vendor that is necessary for compliance shall continue.

The persons executing this Agreement warrant covenant and represent that they are authorized to execute this Agreement on behalf of such companies and corporations pursuant to their respective bylaws or a resolution of their governing board.

By executing this Agreement, dated _________________ each party acknowledges that it has read this Agreement and agrees to its terms.

For Employer ____________________________________
By ____________________________________________
Print Name _____________________________________
Title ___________________________________________
Dated_________________________________________

For Vendor ______________________________________
By ____________________________________________
Print Name _____________________________________
Title ___________________________________________
Dated_________________________________________
Sample Vendor Service Agreement for 403(b) Plan • Non-ERISA Public School or Nonelecting Church Organization Self Administering Its 403(b) Plan

(Without TPA)

Vendor Agreement
This Agreement, effective as of the date hereof, by and between______________________________(the “Employer”) and______________________________(the “Vendor”) describes the terms and conditions of the agreement between Employer and Vendor related to the 403(b) plan of established and maintained by Employer (the “Plan”). The parties intend that Vendor will provide certain services to the Employer, as needed, to support the Employer’s Plan. In furtherance of this intention, the parties agree as follows:

Duties and Responsibilities of Vendor
Vendor shall:

1) **Plan Conformity.** Provide services under this Agreement in a manner consistent with the terms of the written 403(b) Plan document provided by Employer to Vendor.

2) **Qualified 403(b) Accounts.** Offer only investment products (“Accounts”) that meet the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), any regulations issued thereunder and any other applicable state or federal law.

3) **Communications.** Assist in communicating the Plan to employees, including but not limited to, presenting information about the available investment options at group meetings, responding to individual inquiries from employees, and providing the Employer with informational material describing the Plan.

4) **Informational Materials.** Provide Employer with sample written notice of eligibility/availability for distribution to employees, prepare and distribute materials that describe materials that describe the Plan, including investment options, enrollment procedures, and other information necessary for participating in the Plan.

5) **Participant Access.** Provide employees reasonable access to their Plan Accounts.

6) **Forms.** Prepare forms for Employer’s consideration to facilitate enrollment and investment selection for Plan Accounts, including salary reduction agreements, Account applications and beneficiary designation forms.

7) **Participant Statements.** Send Account statements to participants’ address of record no later than 15 business days after the end of each calendar quarter. If supported by Vendor, participants may also obtain statements via the secure Vendor web site.

8) **Information Sharing Agreement.** If requested by Employer, agree to execute an information sharing agreement. If Vendor fails to execute an information sharing agreement, Vendor agrees to maintain and exchange information with Employer, or Employer’s designated representative, as may be necessary to enable the Plan to comply with the requirements of Section 403(b) of the Code.

9) **Roth Contributions.** If the Plan permits Roth 403(b) Contributions and such contributions are accepted by Vendor, Vendor will be responsible for tracking the 5-year period in which the participant must maintain the Roth 403(b) account in order to take a qualifying distribution. Any improper distribution, including those occurring prior to the distributable event as defined by the Plan prior to the participant satisfying the 5-year period is the responsibility of the Vendor.

10) **Plan Exchanges and Transfers.** Ensure that when receiving assets in an exchange or transfer under the Plan, distribution restrictions are not less stringent than those imposed under the transferor contract and that the accumulated benefit (as defined in applicable income tax regulations governing 403(b) plans) under the receiving contract immediately after the exchange or transfer is at least equal to the accumulated benefit under the transferor contract immediately prior to the exchange or transfer.
11) **Confidentiality.** Maintain the confidentiality and/or privacy of all information about participants and employees provided by the Employer and to provide Employer with documentation of Vendor’s relevant privacy policies. All information relating to providing services hereunder shall only be communicated to Vendor representatives, the Employer or its designated representative.

12) **Solicitation.** Vendor and its representatives shall comply with all pertinent written directives regarding the solicitation of employees of the Employer.

13) **403(b) Provisions.** Vendor agrees to perform the following services as may be required under the terms of the Plan:
   a) Advise employees of the annual deferral limits under Section 402(g) of the Code and, if the Plan accepts Employer contributions, of the annual limitations applicable under Section 415(c) of the Code and to provide calculations to determine eligible contribution limits upon request of any employee. Vendor shall certify the accuracy of any such calculations, based upon information provided by Employer and each participant.
   b) If catch up provisions are permitted under the Plan, provide available historical data for calculating maximum allowable contributions for employees utilizing the “catch-up” provisions of Sections 402(g)(7) and/or 414(v) of the Code in accordance with the information provided to the Vendor by the Employer and the participant.
   c) If permitted under the Plan, properly administer loans in accordance with applicable federal and state rules and regulations;
   d) Provide proper rollover notices to participants and beneficiaries as may be required under applicable law, including the right to directly roll over eligible distributions to eligible retirement plans in accordance with the Code.
   e) Provide tax reporting and required notices to participants requesting distributions;
   f) Permit and process corrective distributions of excess deferral contributions and properly track and report and/or distribute excess 415(c) contributions in accordance with applicable IRS regulations where such excess deferrals or excess contributions have been identified by the Vendor, the Employer or Employer’s designated representative;
   g) Determine status of court orders as qualified domestic relations orders under Section 414(p) of the Code.
   h) Withhold and report any federal and state taxes on any distributions made directly to any employee and/or their beneficiaries as appropriate;
   i) Notify participants who are aged 70½ or older that they may be required to take Required Minimum Distributions and, upon the direction of the participant or beneficiary, calculate and distribute such amounts as may be required under the Plan and the Code;
   j) If permitted under the Plan, administer hardship distributions including (if applicable) notifying Employer of the hardship distribution with instructions for Employer to suspend all elective deferrals by participant to all plans sponsored by Employer for 6 months;
   k) Enforce distribution restrictions under Section 403(b) of the Code;
   l) Administer plan to plan transfers and exchanges to the extent permitted under the Plan subject to Employer designation of authorized providers and products;
   m) In the event of a tax audit, provide information to the Employer relating to 403(b) accounts held by Vendor for participants, subject to written authorization by Employer and/or participants (as applicable). For example:
      i) Annual listing of total contributions, by investment provider, for each year under audit;
      ii) Annual listing of all participant distributions for each year under audit;
      iii) Annual listing of outstanding participant loans for each year under audit;
      iv) Annual listing of any participant defaulted loans for each year under audit;
      v) Annual listing of exchanges and transfers processed for each year under audit;
      vi) Copies of IRS tax reporting information (Forms 1099-R) for all distributions and defaulted loans for each year under audit.

Any information required hereunder shall be provided electronically, in hard copy, or in a manner otherwise mutually agreed upon by Employer and Vendor.
Duties and Responsibilities of the Employer. The Employer shall:

1) **Determine Eligible Employees.** Determine which employees of the Employer are eligible to participate in the Plan and certify that the 403(b) program will be made available to all eligible employees as required under the terms of Section 403(b)(12)(A)(ii) of the Code.

2) **Provide Annual Notice.** At least once per year, Employer shall provide written notice to Employees of their right to participate in the Plan, including information on procedures to enroll in the Plan.

3) **Primary Contact Person.** Appoint a primary contact person for purposes of implementing, administering and coordinating any issues that may arise with respect to the Plan and provide such information to Vendor in a timely fashion.

4) **Transmit Contributions.** Transmit all contributions to Vendor in a time and manner acceptable to both parties and consistent with applicable income tax regulations.

5) **Identify Investment Providers.** Make available to all employees and Vendors a current list of authorized vendors and investment providers available under the Plan and contact information for each listed provider.

6) **Provide Information.** Agree to furnish Vendor, as soon as practicable, any and all information required by Vendor to fulfill its duties under this Agreement, including but not limited to information on employment status, any exchanges and transfers authorized by Employer or its representative and information on any participant hardship withdrawals from other Accounts under the Plan.

7) **Eligible Employer.** Certify that it qualifies under Section 403(b) of the Code as an organization eligible to offer this 403(b) plan to its employees and accepts all liability for this determination. Employer agrees to notify Vendor if it becomes an ineligible organization.

8) **Plan Document.** Certify that it has adopted and maintains a written 403(b) plan document in accordance with applicable IRS regulations and will provide a copy of the Plan document or detailed summary of the Plan’s features to the Vendor.

9) **Plan Exchanges.** Agree that Vendor may accept an exchange of assets from another 403(b) account under the Plan to the extent that exchanges are permitted under the Plan.

10) **Third Party Administrator.** Agree to notify Vendor if Employer has delegated certain specified administrative responsibilities to a third party and, by so notifying Vendor, authorize Vendor to share necessary Plan information with the third party administrator in a manner which is consistent with applicable privacy requirements under this Agreement and under applicable law.

11) **Employee Contributions.** Supply Vendor with a monthly total of all contributions for each employee in a format that is acceptable to both parties and notify Vendor of any change in the salary reduction agreements.

12) **Employer Contributions.** If the Employer makes non-elective contributions to Accounts, to provide Vendor with information sufficient to allocate those contributions, including, but not limited to, the names, personal identification numbers, Account numbers, applicable investment direction, and the dollar amount of the non-elective contribution to be allocated to each eligible Employee.

13) **Roth Contributions.** If the Plan includes Roth 403(b) contributions, agree to provide to Vendor with sufficient information to identify the Roth 403(b) contributions separately from the pre-tax 403(b) deferral contributions for each employee, including the dollar amount of the Roth portion and the pre-tax deferral portion, the relevant Account numbers and applicable investment direction.

**BOTH PARTIES AGREE** that the following terms and conditions are included as part of this Agreement:

1) **Plan Conformity.** Each party agrees to adhere to the terms of the Employer’s 403(b) Plan document, as made available by Employer.

2) **Information Sharing.** Each party agrees to provide information necessary to comply with the regulations under Section 403(b) of the Code and the Plan, including information concerning the participants’ employment status and information that takes into account other Code section 403(b) contracts/custodial accounts and any other information deemed necessary to ensure compliance including but not limited to information required for distributions from the plan, plan loans, rollovers into the plan, plan-to-plan transfers and plan exchanges. Such information shall be provided in a form and manner, and within time periods, as shall be agreed from time to time between Employer and Vendor.
3) **Indemnification.** Each party agrees, to the extent permitted by applicable law, to indemnify and hold harmless the other party, including any individual member of the governing boards, and their employees from every claim, demand or suit which may arise out of, be connected with, or be made by reason of the party’s failure to meet the requirements of this Agreement. However, this indemnification shall not cover any claim, demand, or suit based on the willful misconduct or fraud of either party or its employees. Either party shall, at its own expense and risk, defend, or at its option settle, any court proceeding that may be brought against it, members of the governing board, and employees on any claim, demand or suits covered by this indemnification, and shall satisfy any judgment that may be rendered against any of them with respect to any such claim or demand, provided that such party notifies the other party, in writing, within twenty (20) business days of receipt of such claim or demand. Each party’s liability hereunder shall be limited to actual damages, including, where applicable, income tax penalties (but not the taxes themselves) and out of pocket legal fees and expenses only.

4) **Exclusive Services.** Except as otherwise provided in this paragraph 4, this Agreement and the underlying contracts or accounts are the exclusive arrangement between the parties for services under the Plan and the terms of this Agreement do not extend beyond such program. Neither party shall have any other obligations or liabilities not specified herein unless both parties agree to such additional obligations or liabilities in writing.

5) **Confidentiality.** Any information provided under this Agreement shall be kept confidential (“Confidential Information”) and shall be used only for Plan compliance purposes. Personal information on Employees and their accounts under the Plan is considered to be Confidential Information and shall be protected by both parties and their respective delegates. Confidential Information shall not be disclosed for any purpose other than as required for 403(b) plan compliance. Either party may disclose Confidential Information pursuant to a requirement of a governmental agency or pursuant to a valid court or administrative subpoena, order or other such legal process or requirement of law; provided that, prior to disclosing such Confidential Information, the other party will be informed of such order.

6) **Not Legal Advice.** The parties agree that no service provided by the terms of this Agreement or under the Plan is to be construed as individual legal or tax advice to participants, nor to either party.

7) **Severability.** Each party agrees that it will perform its obligations in accordance with all applicable laws, rules, and regulations now or hereafter in effect. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

By executing this Agreement, each party acknowledges that it has read this Agreement and agrees to its terms.

AGREED TO:

Employer                                                                                  Vendor
By __________________________________________ By __________________________________________

*Authorized Representative*                                                                  *Authorized Representative*

Title ________________________________________ Title ________________________________________

Address ______________________________________ Address ______________________________________

_________________________________________________________________________________

Dated________________________________________ Dated ________________________________________
Glossary

This glossary offers consistency in terminology for purposes of the publication. Throughout the marketplace there is confusion due to changes in meaning of prior terms, technical meanings given to common words and specific definitions provided by the IRS. To ensure that we were all “speaking the same language” at the Summit, we agreed to this glossary of terms.

90-24 Transfer
Changing 403(b) investment products prior to 9/25/07 under the requirements of Rev. Proc. 90-24.

Common Remitter
A type of TPA that:
• Captures data from the employer’s payroll
• Compares the amounts remitted with expected contributions
• Compiles and reconciles exceptions with the payroll department
• Identifies employees eligible for “catch-up” contributions and applies contributions in the proper order
• Distributes contributions to 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.

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 his account deposited. The participant does not receive the distribution and the amount is directly deposited into his or her new account under the new plan as a “direct rollover” contribution.

Exchange
An 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.

Full Service TPA
A type of TPA that provides comprehensive plan administration services for 403(b) plans including:
• 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, but do not take on fiduciary responsibility
• Coordinating various vendor activities
• Maintaining employer plan website (optional)
• Acting as the central point of contact for plan level information
• Drafting and maintaining plan document (optional)
• Maintaining administrative forms
• Providing employer manual or instructions to employer
• Assisting and advising employers regarding eligibility and participation requirements, such as the universal availability rule
• If the Plan is subject to ERISA, the TPA also:
  • Assists in the calculation of contributions
  • Monitors eligibility
  • Assists in plan design to eliminate compliance problems
  • Maintains Plan and Specimen Plan Document (SPD)
  • Prepares Form 5500
  • Performs compliance testing – matching, definition of compensation, etc.

Grandfathered Account
An account/contract not connected to a 403(b) plan holding the proceeds of a Rev. Rul. 90-24 transfer completed before September 25, 2007.
• 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 his or her 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**
A 403(b) account/contract held by a vendor that accepted contributions for any employee of an employer/plan sponsor after 12/31/04 but was not included under the sponsor’s 403(b) plan document on 1/1/09.

**Plan to Plan Transfer**
The movement of all or some portion of a participant’s 403(b) account/contract from one employer’s 403(b) plan to another employer’s 403(b) plan following a separation from service.

**Pre-Reg. Account**
A 403(b) account/contract issued before 2005 into which no contributions were made after 2004.
- It is not subject to employer “plan” oversight
- It is controlled by the relationship between participant and vendor

**Quasi TPA**
A type of TPA that:
- 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:
  - Common remitter services
  - Consulting
  - Educational materials
  - Documents (specimen documents)

**Aggregator/Recordkeeper**
A type of TPA that:
- Keeps records of plan and participant account information
- Maintains accounting of values attributable to each 403(b) plan participant
- Some track the sources of money (i.e. Roth, employee deferrals and employer contributions)
- Typically do not handle compliance transactions

**Rollover**
The movement of all or some portion of a 403(b) account/contract following 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 §403(b) of the Code.

**Runaway Account**
An account/contract that cannot be linked to an employer or that cannot be found.