



403(b)/401(k)

Comparison for 501(c)(3) Organizations

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As a 501(c)(3) organization, you are able to sponsor 403(b) Tax-Deferred Annuity programs and 401(k) plans. How do you decide which plan type meets your organization's needs?

The following comparison chart gives 501(c)(3) employers a brief snapshot of the key points and legal rules involving these basic types of programs – voluntary Non-ERISA 403(b) programs (generally employee pre-tax contributions only), ERISA 403(b) plans, and 401(k) plans.

If you're a 501(c)(3) employer and are contemplating the benefits of a 403(b) plan vs. a 401(k) plan, here are a few items to consider:

- For 401(k) plans, an annual non-discrimination test, known as an Actual Deferral Percentage, or ADP, test must be performed. This test compares the average deferral percentage of non-highly compensated employees to the average deferral percentage for highly compensated employees. This test does not apply to 403(b) plans if employees who are willing to defer at least \$200 per year are permitted to make salary reduction contributions.
- Certain employees under a 403(b) plan can take advantage of a special 15-year catch-up provision which allows for additional salary reduction contributions of up to \$3,000 beyond the general deferral limit. This catch-up feature is not available under 401(k) plans.

- If you currently have a voluntary non-ERISA 403(b) program and are considering establishing an ERISA 403(b) or 401(k) plan, you will note that full ERISA fiduciary and reporting compliance is required. If you currently have an ERISA 403(b) plan and are only required to provide minimal non-financial related information on the Form 5500 through 2008, however, establishing a 401(k) plan will require full completion of the Form 5500, including applicable schedules. Effective in 2009, ERISA 403(b) plans also will be subject to full form 5500 reporting.
- Voluntary non-ERISA 403(b) programs are simple from an administrative perspective, whereas 401(k) and ERISA 403(b) plans are more complex.

These materials are not intended to be used to avoid tax penalties, and were prepared to support the promotion or marketing of the matter addressed in this document. The taxpayer should seek advice from an independent tax advisor.



403(b)/401(k) COMPARISON FOR 501(C)(3) ORGANIZATIONS

	NON-ERISA 403(b)	ERISA 403(b)	401(k)
<p>ERISA Requirements</p> <p>Form 5500 (Annual Return/ Report), Summary Plan Description, Minimum Vesting and Participation, Joint and Survivor Annuity Requirements, Spousal Consent, Fiduciary Rules, Fiduciary Bond</p>	None of these requirements are applicable.	All of these requirements apply. Limited completion of Form 5500 is permitted (no independent auditor statement is required) through 2008. However, expanded form 5500 reporting will be required beginning in the 2009 plan year.	All of these requirements apply. Exception may apply for joint and survivor annuity and spousal consent rules. Form 5500 requires an independent auditor statement for plans with 100 or more participants.
Written Plan Document	Required as of January 1, 2009 * <i>Warranty required</i>	Currently required	Currently required
<p>Annual Deferral Limits</p> <p>This limit applies to all elective deferrals made by an individual to a 401(k) [including Roth 401(k)], 403(b) [including Roth 403(b)], SIMPLE, and SARSEP plan in the same tax year.</p>	Employees can make elective deferrals cumulatively, per tax year, up to \$16,500 in 2009. This limit includes contributions to both a traditional pre-tax 403(b) and Roth after-tax 403(b).	Employees can make elective deferrals cumulatively, per tax year, up to: \$16,500 in 2009. This limit includes contributions to both a traditional pre-tax 403(b) and Roth after-tax 403(b).	Employees can make elective deferrals cumulatively, per tax year, up to: \$16,500 in 2009. This limit includes contributions to both a traditional pre-tax 401(k) and Roth after-tax 401(k).
<p>Catch-Up Contributions Available</p> <p>The total age 50+ catch-up contributions made to both 401(k) [including Roth 401(k)] and 403(b) [including Roth 403(b)] plans, cumulatively cannot exceed the referenced annual limits.</p>	<p>Eligible participants with at least 15 years of service with their current eligible employer may be able to elect a special catch-up deferral of up to an additional \$3,000 per year.</p> <p>The age 50+ catch-up permits employees participating in a 403(b) program (who are age 50 or older during the plan year) to make an additional pre-tax contribution of up to \$5,500 in 2009.</p> <p>The age 50+ catch-up may be used concurrently with the special 15-year catch-up for 403(b) programs.</p>	<p>Eligible participants with at least 15 years of service with their current eligible employer may be able to elect a special catch-up deferral of up to an additional \$3,000 per year.</p> <p>The age 50+ catch-up permits employees participating in a 403(b) plan (who are age 50 or older during the plan year) to make an additional pre-tax contribution of up to \$5,500 in 2009.</p> <p>The age 50 catch-up is not subject to nondiscrimination testing, and may be used concurrently with the special 15-year catch-up for 403(b) plans.</p>	<p>There is no comparable "catch-up" provision available under a 401(k) plan similar to the 403(b) 15-year catch-up.</p> <p>The age 50+ catch-up permits employees participating in a 401(k) plan (who are age 50 or older during the plan year) to make an additional pre-tax contribution of up to \$5,500 in 2009.</p> <p>The age 50 catch-up is not subject to non-discrimination testing.</p>
Annual Contribution Limits	Total of all contributions to the plan (excluding age 50+ catch-up) cannot exceed annually the lesser of \$49,000 or 100% of compensation.	Total of all employee, employer, and forfeiture contributions to the plan (excluding age 50+ catch-up) cannot exceed annually the lesser of \$49,000 or 100% of compensation.	Total of all employee, employer, and forfeiture contributions to the plan (excluding age 50+ catch-up) cannot exceed annually the lesser of \$49,000 or 100% of compensation.

403(b)/401(k) COMPARISON FOR 501(C)(3) ORGANIZATIONS

	NON-ERISA 403(b)	ERISA 403(b)	401(k)
Eligibility	In general, all employees willing to defer more than \$200 per year must be permitted to make salary reduction contributions.	In general, all employees willing to defer more than \$200 per year must be permitted to make salary reduction contributions. Plan may impose minimum age and service requirements for employer contributions.	Plan may impose minimum age and service requirements to be satisfied.
Nondiscrimination Requirements 401(a)(4), general nondiscrimination, 410(b) Minimum Coverage, 401(k) Actual Deferral Percentage Test (ADP), 401(m) Actual Contribution Percentage Test (ACP)	Not applicable	General nondiscrimination, minimum coverage, and ACP (if employer nonelective, employer matching or employee after-tax contributions are made). No ADP testing. Safe harbor formulas are available to eliminate ACP and other nondiscrimination testing.	General nondiscrimination, minimum coverage, ACP (if employer nonelective, employer match, or employee after-tax contributions are made), and ADP testing for traditional and Roth 401(k) Safe harbor formulas are available to eliminate ADP, ACP, and other nondiscrimination testing. (ACP still required if after-tax employee contributions are made).
Employer Contributions	Not Applicable*	Permitted	Permitted
\$245,000 Limit on Compensation (2009)	Not Applicable*	Compensation limit for determining non-elective and matching employer contributions.	Compensation limit for determining non-elective and matching employer contributions.
Top Heavy Rules	Not Applicable	Not Applicable	Applicable
Investment Options	Limited to annuity contracts and custodial accounts.	Limited to annuity contracts and custodial accounts.	Full range of investment options permitted, as limited by terms of plan document.

* May be applicable to certain non-electing Church plans.

403(b)/401(k) COMPARISON FOR 501(C)(3) ORGANIZATIONS

	NON-ERISA 403(b)	ERISA 403(b)	401(k)
<p>Portability</p>	<p>Rollover of traditional eligible amounts permitted to another 403(b) program, 401(a)/(k) plan, governmental 457(b) plan, traditional or Roth IRA, if eligible. Direct rollover of Roth 403(b) to Roth 403(b), Roth 401(k) or Roth IRA, if distribution is rollover eligible. Other rollover opportunities may be available.</p> <p>Plans may permit nonspouse beneficiaries of a qualified plan, 403(b), Roth 401(k) or governmental 457(b) plan to roll their distributions to an inherited IRA instead of taking a lump-sum payment. The inherited IRA must satisfy the required minimum distribution rules.</p> <p>The final 403(b) regulations permit contract exchanges between investment vehicles under the same plan and plan-to-plan transfers.</p>	<p>Rollover of traditional eligible amounts permitted to another 403(b) program, 401(a)/(k) plan, governmental 457(b) plan, traditional or Roth IRA, if eligible. Direct rollover of Roth 403(b) to Roth 403(b), Roth 401(k) or Roth IRA, if distribution is rollover eligible. Other rollover opportunities may be available.</p> <p>Plans may permit nonspouse beneficiaries of a qualified plan, 403(b) or governmental 457(b) plan to roll their distributions to an inherited IRA instead of taking a lump-sum payment. The inherited IRA must satisfy the required minimum distribution rules.</p> <p>The final 403(b) regulations permit contract exchanges between investment vehicles under the same plan and plan-to-plan transfers.</p>	<p>Rollover of traditional eligible amounts permitted to another 401(a)/(k) plan, 403(b) program, governmental 457(b) plan, traditional or Roth IRA, if eligible. Direct rollover of Roth 401(k) to Roth 401(k), Roth 403(b) or Roth IRA, if distribution is rollover eligible. Other rollover opportunities may be available.</p> <p>Plans may permit nonspouse beneficiaries of a qualified plan, 403(b) or governmental 457(b) plan to roll their distributions to an inherited IRA instead of taking a lump-sum payment. The inherited IRA must satisfy the required minimum distribution rules.</p> <p>Ability of in-service transfer prior to eligibility for distribution limited as permitted under plan document.</p>
<p>Withdrawal Restrictions</p> <p>Withdrawals are subject to Internal Revenue Code requirements. Early withdrawals may be subject to an IRS 10% premature distribution penalty tax, if taken prior to age 59½. For 403(b) and 401(k) plans, money taken from the plan will be taxed as ordinary income in the year the money is distributed.</p>	<p>For 403(b) variable annuity contracts – The value of post-12/31/88 employee salary deferrals and earnings are restricted, meaning that they may only be withdrawn upon age 59½, severance from employment, death, disability, hardship, or in certain instances plan termination.</p> <p>The 12/31/88 participant's account balance under a 403(b)(1) variable annuity contract may be distributed at any time for any reason.</p> <p>Employer contributions to annuity contracts issued after 12/31/08 are restricted by law.</p>	<p>For 403(b) variable annuity contracts – The value of post-12/31/88 employee salary deferrals and earnings are restricted, meaning that they may only be withdrawn upon age 59½, severance from employment, death, disability, hardship, or in certain instances plan termination.</p> <p>The value of employer contributions under a 403(b)(1) variable annuity contract are not restricted by law; however, the employer's plan document may provide restrictions. Employer contributions to annuity contracts issued after 12/31/08 are restricted by law.</p>	<p>All contributions are restricted, to a certain degree.</p> <p>The employer's plan document withdrawal (e.g., age 59½, death, disability, or hardship).</p> <p>Tax-free qualified distribution of Roth 401(k) if the following criteria are met:</p> <p>Five year hold period and:</p> <ul style="list-style-type: none"> • Attainment of age 59½ • Disability • Death <p>The IRC permits distribution of salary reduction contributions upon plan termination, if no successor plan is in existence.</p>

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	NON-ERISA 403(b)	ERISA 403(b)	401(k)
Withdrawal Restrictions (Continued)	<p>Under a 403(b)(7) custodial account, the entire value of the participant's account is restricted (employee deferrals and employer contributions). The 12/31/88 value is restricted; there is no grandfathering.</p> <p>Tax-free qualified distribution of Roth 403(b) if the following criteria are met:</p> <p>Five year hold period and distribution due to:</p> <ul style="list-style-type: none"> • Attainment of age 59½ • Disability • Death 	<p>The 12/31/88 participant's account balance under a 403(b)(1) variable annuity contract may be distributed at any time for any reason.</p> <p>Under a 403(b)(7) custodial account, the entire value of the participant's account is restricted (employee deferrals and employer contributions). The 12/31/88 value is restricted; there is no grandfathering.</p> <p>Tax-free qualified distribution of Roth 403(b) if the following criteria are met:</p> <p>Five year hold period and distribution due to:</p> <ul style="list-style-type: none"> • Attainment of age 59½ • Disability • Death 	
Financial Hardship	<p>Limited to post-12/31/88 salary deferrals, no earnings.</p> <p>For 403(b)(1) variable annuity contracts, 12/31/88 value can be distributed for any reason.</p> <p>For 403(b)(7) custodial accounts, 12/31/88 value can be distributed upon hardship.</p>	<p>Limited to post-12/31/88 salary deferrals, no earnings.</p> <p>For 403(b)(1) variable annuity contracts, 12/31/88 value can be distributed for any reason.</p> <p>For 403(b)(7) custodial accounts, 12/31/88 value can be distributed upon hardship.</p> <p>The plan document may permit distributions of employer contributions</p> <p>May follow 401(k) safe-harbor hardship withdrawal guidelines or other guidelines established by the plan sponsor.</p>	<p>Limited to salary deferrals, no earnings on those amounts. The plan document may permit distributions of employer contributions. Regulations provide safe harbors, which would impose suspension of elective deferrals and employee contributions in all employer plans for six consecutive months.</p>
Trustee or Custodian	<p>No trustee required. Custodian required for 403(b)(7).</p>	<p>No trustee required. Custodian required for 403(b)(7).</p>	<p>Trustee required for investments held outside annuity contracts.</p>

Notes

- 501(c)(3) (non-governmental) employers are permitted to maintain both 403(b) and 401(k) plans.
- This comparison does not cover the grandfathering of 403(b) 12/31/86 value (MDR), and only briefly mentions the 12/31/88 value (withdrawal restrictions). For more information go to www.irs.gov/retirement.
- Requirements that apply similarly to all plan types are Minimum Distribution Requirements; Qualified Domestic Relations Order (QDRO) rules; timing and frequency of salary reduction agreements.
- Loans are available under both 403(b) and 401(k) plans according to the guidelines under Code Section 72(p) (and ERISA rules, if applicable).



**For more information
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