403(b)/401(k)

Comparison for 501(c)(3) Organizations

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403(b)/401(k) Comparison for 501(c)(3) Organizations

As a 501(c)(3) organization, you are able to sponsor 403(b) Tax-Deferred Annuity plans 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) plans (generally employee pre-tax contributions only, with limited employer involvement and with a reasonable choice of investment products), 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 nondiscrimination test, known as an Actual Deferral Percentage, or ADP, test must be performed on salary reduction contributions. 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, generally salary reduction contributions are nondiscriminatory if eligible employees are permitted to make salary reduction contributions of at least $200 per year and are provided with annual notice of their eligibility.
- 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) plan and are considering establishing an ERISA 403(b) or 401(k) plan, full fiduciary and reporting compliance is required for those plans subject to ERISA.
- Voluntary non-ERISA 403(b) plans sponsored by nonprofit organizations that are not church-affiliated are simple from an administrative perspective, since employer involvement is limited, whereas 401(k) and ERISA 403(b) plans are more complex. Plans of churches and church-affiliated entities generally are not subject to ERISA.

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.

	NON-ERISA 403(b)	ERISA 403(b)	401(k)
ERISA Requirements Form 5500 (Annual Return/ Report), Summary Plan Description, Minimum Vesting and Participation, Joint and Survivor Annuity Requirements, Spousal Consent, Fiduciary Rules, Fiduciary Bond, Fee Disclosure	None of these requirements are applicable	All of these requirements apply. Form 5500 requires an independent auditor statement for plans with 100 or more participants. DOL guidance permits the exclusion of certain 403(b) contracts that ceased accepting contributions prior to 2009 from the Form 5500 and from participant fee disclosure.	All of these requirements apply. Form 5550 requires an independent auditor statement for plans with 100 or more participants.
Written Plan	Required[1]	Required[1]	Required
Annual Deferral Limits 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.	Employees can make elective deferrals cumulatively, per tax year, up to $19,500 in 2020. This limit includes both traditional pre-tax 403(b) and Roth after-tax 403(b) contributions.	Employees can make elective deferrals cumulatively, per tax year, up to $19,500 in 2020. This limit includes both traditional pre-tax 403(b) and Roth after-tax 403(b) contributions.	Employees can make elective deferrals cumulatively, per tax year, up to $19,500 in 2020. This limit includes both traditional pre-tax 401(k) and Roth after-tax 401(k) contributions.
Catch-Up Contributions 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 in the same tax year.	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 up to a lifetime limit of $15,000. 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 $6,500 in 2020. The age 50+ catch-up may be used concurrently with the special 15-year catch-up for 403(b) plans. An employee who is eligible for both catch-ups in the same year must first contribute the full amount available under the 15 years of service catch-up for that year before contributing under that year's age 50+ catch-up.	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 up to a lifetime limit of $15,000. 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 $6,500 in 2020. The age 50 catch-up may be used concurrently with the special 15-year catch-up for 403(b) plans. An employee who is eligible for both catch-ups in the same year must first contribute the full amount available under the 15 years of service catch-up for that year before contributing under that year's age 50+ catch-up.	There is no comparable "catch-up" provision available under a 401(k) plan similar to the 403(b) 15-year catch-up. 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 pretax contribution of up to $6,500 in 2020. The age 50 catch-up is not subject to non -discrimination testing.

[1] The 403(b) regulations exempt certain church organizations from the written plan requirement unless the 403(b) plan invests in 403(b)(9) retirement income accounts.

	NON-ERISA 403(b)	ERISA 403(b)	401(k)
Annual Contribution Limits	Total of all contributions to the plan (excluding age 50+ catch-up) cannot exceed annually the lesser of $57,000 or 100% of compensation in 2020.	Total of all contributions to the plan (excluding age 50+ catch-up), and any forfeitures allocated to a participant's account cannot exceed annually the lesser of $57,000 or 100% of compensation in 2020.	Total of all contributions to the plan (excluding age 50+ catch-up), and any forfeitures allocated to a participant's account cannot exceed annually the lesser of $57,000 or 100% of compensation in 2020.
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 on both salary reduction contributions and employer contributions.
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 with respect to general nondiscrimination requirements. Employee deferrals are nondiscriminatory generally if any eligible employee can contribute at least $200 annually and the employer provides notice annually to all eligible employees of the opportunity to contribute.	General nondiscrimination (if employer nonelective contributions are made), minimum coverage (for any nonsalary reduction contributions), and ACP (if employer matching or non-Roth employee aftertax contributions are made). No ADP testing. Safe harbor formulas are available to eliminate ACP and other nondiscrimination testing. Employee deferrals are nondiscriminatory generally if any eligible employee can contribute at least $200 annually and the employer provides notice annually to all eligible employees of the opportunity to contribute.	General nondiscrimination (if employer nonelective contributions are made), minimum coverage, ACP (if employer match or non-Roth 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 non-Roth after-tax employee contributions are made).
Employer Contributions	Not Applicable[2]	Permitted	Permitted
$285,000 Limit on Compensation (2020)	Not Applicable[2]	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.[3]	Limited to annuity contracts and custodial accounts.	Full range of investment options permitted, as limited by terms of plan document.

[2] May be applicable to certain non-electing church plans.

[3] Certain church-related employers may offer additional investment options through a 403(b)(9) retirement income account.

	NON-ERISA 403(b)	ERISA 403(b)	401(k)
Portability	Rollover of traditional eligible amounts permitted to another 403(b) plan, 401(a)/(k) plan, governmental 457(b) plan or traditional or Roth IRA. Direct rollover of Roth 403(b) to Roth 403(b), Roth 401(k), governmental Roth 457(b) or Roth IRA, if distribution is rollover eligible. Spousal beneficiaries may roll eligible death benefits to a 403(b) plan, 401(a)/(k) plan, governmental 457(b) plan in which they participate or to their own traditional or Roth IRA. Nonspouse beneficiaries may roll eligible death benefits to an inherited IRA, which must satisfy the required minimum distribution rules. Contract exchanges between investment providers under the same 403(b) plan permitted. Plan-to-plan transfers among different 403(b) plans permitted.	Rollover of traditional eligible amounts permitted to another 403(b) plan, 401(a)/(k) plan, governmental 457(b) plan or traditional or Roth IRA. Direct rollover of Roth 403(b) to Roth 403(b), Roth 401(k), governmental Roth 457(b) or Roth IRA, if distribution is rollover eligible. Spousal beneficiaries may roll eligible death benefits to a 403(b) plan, 401(a)/(k) plan, governmental 457(b) plan in which they participate or to their own traditional or Roth IRA. Nonspouse beneficiaries may roll eligible death benefits to an inherited IRA, which must satisfy the required minimum distribution rules. Contract exchanges between investment providers under the same 403(b) plan permitted. Plan-to-plan transfers among different 403(b) plans permitted.	Rollover of traditional eligible amounts permitted to another 401(a)/(k) plan, 403(b) plan, governmental 457(b) plan or traditional or Roth IRA, if eligible. Direct rollover of Roth 401(k) to Roth 401(k), Roth 403(b), governmental Roth 457(b) or Roth IRA, if distribution is rollover eligible. Spousal beneficiaries may roll eligible death benefits to a 403(b) plan, 401(a)/(k) plan, governmental 457(b) plan in which they participate or to their own traditional or Roth IRA. Nonspouse beneficiaries may roll eligible death benefits to an inherited IRA, which must satisfy the required minimum distribution rules. Plan-to-plan transfers among different 401(a)/(k) plans permitted.
Withdrawal Restrictions Withdrawals are subject to Internal Revenue Code requirements. Early withdrawals will be subject to an IRS 10% premature distribution penalty tax, if taken prior to age 59½ unless another IRS exception applies. Withdrawals generally will be taxed as ordinary income in the year the money is distributed. Special rules apply to withdrawals of designated Roth contributions made to the plan.	For 403(b) 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 plan termination. The 12/31/88 participant's account balance under a 403(b) annuity contract may be distributed at any time for any reason if the vendor separately accounts for this value and as permitted by the employer's plan document..	For 403(b) 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 plan termination. The value of employer contributions under a 403(b) annuity contract issued prior to 2009 are not restricted by law; however, the employer's plan document may provide restrictions.	All contributions are restricted, to a certain degree. The employer's plan document determines withdrawal rules. IRS permits distributions upon age 59½, severance from employment, death, disability, hardship, or plan termination. The IRC permits distribution of salary reduction contributions upon plan termination.

	NON-ERISA 403(b)	ERISA 403(b)	401(k)
Withdrawal Restrictions (Continued)	Under a 403(b)(7) custodial account, the entire value of the participant's account is restricted. The 12/31/88 value is restricted; there is no grandfathering.	Employer contributions to 403(b) annuity contracts issued after 12/31/08 may be distributed upon death, severance from employment, or the occurrence of a prior event (as defined in the plan document). The 12/31/88 participant's account balance under a 403(b) annuity contract may be distributed at any time for any reason if the vendor separately accounts for this value and as permitted by the employer's plan document. 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.	
Trustee or Custodian	No trustee required. Custodian required for 403(b)(7) custodial account.	No trustee required. Custodian required for 403(b)(7) custodial account.	Trustee required for investments held outside annuity contracts.

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 (RMD), 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 Qualified Domestic Relations Order (QDRO) rules, and 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 please contact:
Voya Financial, Inc.
One Orange Way
Windsor, CT 06095-4774