403(b) Fix-It Guide

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
1) Your organization isn't eligible to sponsor a 403(b) plan. (More)	Determine if your organization fits one of the eligible employer groups - a public educational institution or an IRC Section 501(c)(3) charitable organization.	Stop all contributions. Make a submission under the Voluntary Correction Program.	Understand what makes an organization eligible to sponsor a 403(b) plan and know if your organization meets one of the requirements.
2) You didn't adopt a written plan intended to satisfy the law by December 31, 2009. (More)	Check your records to see if your organization adopted a written plan intended to satisfy the final 403(b) regulations by December 31, 2009.	Put the plan's operations into a written plan that complies with the final 403(b) regulations and adopt it. Make a submission under the Voluntary Correction Program.	Make sure that everyone in the organization understands that a 403(b) plan is subject to a written plan requirement.
3) You didn't follow the terms of your 403(b) written plan. (More)	Compare your written plan to its operation.	You may retroactively adopt plan amendments that conforms the 403(b) plan to its prior operation. Alternatively, you may retroactively correct plan operation to conform to the terms of the 403(b) written plan.	Convey any changes made to your written plan or to the operation of your 403(b) plan to your plan service providers.
4) You didn't give all of the employees of the organization the opportunity to make a salary deferral. (More)	Perform a review of the plan and its operation. Review employees who received a W-2 but didn't participate. Determine if you excluded any class of employees such as janitors, cafeteria workers, bus drivers or union employees.	Provide improperly excluded employees the opportunity to participate in the plan in current and future years. Make a corrective contribution to the plan for the employees that compensates for their missed deferral opportunity.	Understand which employees you may exclude from the 403(b) plan. Provide proper notification to employees of their eligibility to participate in the 403(b) plan at least yearly.
5) Your 403(b) plan doesn't limit the total employer and employee contributions to not exceed the IRC Section 415(c) limits. (More)	Determine types of contributions allowed in the plan and total employee and employer contributions per participant. Compare with the current year's dollar limit.	Transfer excess to a separate 403(c) account or distribute to participant.	Understand that it's the employer's responsibility to limit contributions and issue correct W-2s. With vendors, establish procedures to limit contributions. Educate employees. Conduct year-end review of employer and employee contributions and compare with current legal limits.

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
6) For plans that offer “15-years of service catch-up” contributions, an employee making these contributions doesn’t have the required 15 years of full-time service with the same employer. (More)	Review total deferrals for each participant. If over the basic 402(g) limit, determine if it’s because of a catch-up. If it’s a 15-year catch-up, determine if the employer employed the employee for 15 years. Determine the level of the participant’s 15-year catch-up.	Refund excess deferrals plus earnings. Report corrections on Form 1099-R.	Verify employees are eligible for the catch-up by ensuring that they have 15-years of service with the 403(b) plan sponsor, have unused amounts available for catch-up and have not exceeded the $15,000 lifetime limit. Before allowing participants to make 15-years of service catch-up contributions, ensure that the written program contains the proper language.
7) Your 403(b) plan didn’t limit elective deferrals, including catch-up and designated Roth contributions, to the amounts specified under the law in a calendar year. (More)	Track deferrals for each employee. Conduct a year-end review of deferrals for each participant and compare to 402(g) limits for that year. If over the basic 402(g) limit, determine if the excess is based on a properly administered 15-years of service or on an age 50 catch-up program.	Refund excess deferrals plus earnings. Report corrections on Form 1099-R.	Understand that it’s the employer’s responsibility to limit deferrals and issue correct W-2s. With vendors, establish procedures to limit deferrals. Educate employees. Conduct year-end review of deferrals and refund any excesses prior to April 15.
8) For a 403(b) plan offering a 5-year post severance provision, elective deferrals are permitted under the provision. (More)	Understand how this feature works and seek the help of a retirement plan professional, if needed.	Distribute excess 415(c) contributions. Report corrections on Form 1099-R.	Consider using the services of a retirement plan professional. Know how the feature works and keep good records.
9) You haven’t limited loan amounts and enforced repayments as required under IRC section 72(p). (More)	Review the plan and all outstanding loans to ensure that the loans comply with the plan’s terms and the employees are repaying their loans timely.	You may correct some failures by corrective repayment and/or modification of loan terms, if you make a submission under the Voluntary Correction Program.	Review and follow the plan provisions relating to making loans, including the amount of loan, terms of the loan and repayment terms. Make sure that there are loan procedures in place.
10) You don’t have documentation ensuring that hardship distributions meet the definitions and requirements for hardship distributions. (More)	Review all in-service distributions and determine that hardship distributions met the plan requirements.	Amend your plan retroactively to allow for hardship distributions.	Be familiar with your plan’s hardship provisions. Implement procedures to ensure that you follow the provisions in operation. Ensure that your plan administrators and payroll offices share the plan’s hardship distribution information.

403(b) Plan - Overview

A 403(b) tax-sheltered annuity plan is a type of qualified retirement plan offered by public schools and certain organizations exempt from tax under Internal Revenue Code Section 501(c)(3). Individuals generally may obtain a 403(b) annuity or account only under an employer's 403(b) plan. 403(b) plan Investments may fall into one or more of the following:

- An annuity contract - a contract provided through an insurance company;
- A custodial account - an account invested in mutual funds; or
- A retirement income account set up for church employees. Generally, retirement income accounts can invest in either annuities or mutual funds.

Generally, elective deferrals made under salary reduction agreements (known as employee contributions, elective deferrals or salary reduction contributions) fund the benefits of a 403(b). Some employers may also provide matching contributions and nonelective employer contributions.

The benefits of contributing to a 403(b) plan:

- You don't pay income tax on allowable contributions in the year you make them.
    - You don't pay tax on allowable (non-Roth) contributions until you begin making withdrawals from the plan, usually after retirement.
    - Allowable contributions to a 403(b) plan are either excluded or deducted from income.
    - However, if you contribute to a Roth 403(b) program, you pay tax on plan contributions when you make them. Qualified plan distributions are tax-free, if you meet certain conditions at the time of the distributions.
- Earnings and gains on amounts in your 403(b) account aren't taxed until you withdraw them.
    - Earnings and gains on amounts in a Roth account aren't taxed if your withdrawals are qualified distributions.
- Some participants with adjusted gross incomes of $59,000 (for 2013, adjusted annually thereafter) or less may be eligible for a retirement savings contributions tax credit for elective deferrals made to a 403(b) plan. See Announcement 2001-106.

The terms of a 403(b) plan must be in the form of a written plan that:

- Complies in form and operation with all applicable 403(b) requirements under federal tax law and Income Tax Regulations; and
- Contains all material terms and conditions for eligibility, benefits, limitations, the contracts available under the plan, and time and form under which benefit distributions would be made.

Employee Plans Compliance Resolution System (EPCRS) – Overview

If you make mistakes with respect to your 403(b) plan, you can use the IRS Employee Plans Compliance Resolution System to remedy your mistakes and avoid the consequences of disqualification of the 403(b) annuity contracts/custodial accounts of employees. A correction for a mistake should be reasonable and appropriate. The correction method should resemble one already provided for in the Internal Revenue Code, and you should consider all applicable facts and circumstances. Revenue Procedure 2013-12, 2013-04 I.R.B. 313 (previously Revenue Procedure 2008-50, 2008-35 I.R.B 464) is the official guidance governing the EPCRS program.

There are three ways to correct mistakes under EPCRS:

1) **Self-Correction Program (SCP)** - permits a plan sponsor to correct certain plan failures without contacting the IRS or paying any fee.
2) **Voluntary Correction Program (VCP)** - permits a plan sponsor to, any time before audit, pay a limited fee and receive IRS approval for correction of plan failures.
3) **Audit Closing Agreement Program (Audit CAP)** - permits a plan sponsor to pay a sanction and correct a plan failure while the plan is under audit.

A general description of each component of EPCRS is provided below:

Self-Correction Program:

- To be eligible for SCP, the sponsor or administrator of a plan must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with the law. A written program alone does not constitute evidence of established procedures.
- SCP is generally available for correcting operational problems (arising in 2009 and later years) only – that is, the failure to follow the plan terms.
- Under limited circumstances, SCP may be available to correct operational problems by plan amendment to conform the terms of the written 403(b) plan to prior operation.
    - failure to limit compensation under IRC 401()(17),
    - to incorporate hardship or loan provisions, or
    - to address early participation.
    - See Rev. Proc. 2013-12, section 4.05(2) and Appendix B Section 2.07.

  SCP is not available for other problems with the plan document, such as the failure to update your document to reflect current law.
- For operational failures that occurred in 2008 and earlier years, you must follow the definition of an operational failure in Revenue Procedure 2008-50 Section 5.02. SCP is not available for other types of problems, such as the failure to adopt a written plan or to keep your written program current to reflect law changes. Nor is SCP available if you determined that your organization is ineligible to maintain a 403(b) plan.
- The plan sponsor should follow the general correction principles in Revenue Procedure 2013-12 for 2009 and subsequent years and 2008-50 for 2008 (and earlier) plan years.
- A plan sponsor that corrects a mistake listed in Appendix A or Appendix B of Revenue Procedure 2008-50 for 2008 (and earlier years) or Revenue Procedure 2013-12 for failures occurring in 2009 and subsequent years according to the correction methods listed may be certain that their correction is reasonable and appropriate for the failure.
- If needed, the plan sponsor should make changes to its administrative procedures to ensure that the failures do not recur.
- A plan sponsor may correct significant operational failures within two years of the end of the plan year in which the operational failures occurred.
- The Self-Correction Program may be used if, considering all the facts and circumstances, the mistakes, in the aggregate, are insignificant operational failures.

- When using SCP, the plan sponsor should maintain adequate records to demonstrate correction in the event of a plan audit.
- There is no fee for self-correction.

Voluntary Correction Program:

- The plan sponsor makes a submission to the IRS that:
  1) includes completed Forms 8950 and 8951.
  2) identifies the mistakes.
  3) proposes correction using the general correction principles in Revenue Procedure 2008-50, section 6 for failures occurring in 2008 (or earlier) years, and in Revenue Procedure 2013-12, section 6 for failures occurring in 2009 and subsequent years.
  4) proposes changes to its administrative procedures to ensure that the failures do not recur.
  5) may include electronic pre-formatted model documents (Appendix C - Part 1 Model VCP Submission Compliance Statement and Appendix C - Part II Schedules) and Acknowledgement Letter (Appendix D) (to assist applicants making a VCP submission).
  6) pays a compliance fee generally based on the number of plan participants as of the most recent plan year end, according to the following chart:

Number of Plan Participants	Compliance Fee
○ 20 or fewer	○ $ 750
○ 21 to 50	○ $ 1,000
○ 51 to 100	○ $ 2,500
○ 101 to 500	○ $ 5,000
○ 501 to 1,000	○ $ 8,000
○ 1,001 to 5,000	○ $15,000
○ 5,001 to 10,000	○ $20,000
○ Over 10,000	○ $25,000

  Note: If the failure to timely adopt a written 403(b) plan is the only failure in a VCP submission, the general compliance fee is reduced by 50% if the submission is mailed to the IRS by December 31, 2013. See Revenue Procedure 2013-12 Section 12.02(5).

  Generally, in a 403(b) plan with employee elective deferrals, plan participants include all active employees who are eligible to make elective deferrals, retired or separated participants receiving benefits, terminated participants with deferred vested benefits that have not been paid out by the plan and deceased participants whose beneficiaries are receiving or are entitled to receive benefits from the plan. If you don't file a Form 5500 for your 403(b) plan, you would normally make this determination as of the last day of the plan year immediately preceding the VCP submission. If this information is not available, you may use the most recent data available if you are making your submission within six months after the end of the most recent plan year. For 403(b) plans that file a Form 5500, the number of plan participants will be the number reported on line 6(f) of the most recently filed Form 5500.
- For operational failures occurring in 2009 and later plan years, VCP (and Audit CAP) can be used to retroactively amend the written 403(b) plan to conform to prior operation if the conditions in Revenue Procedure 2013-12 section 4.05(1) are met.
- The IRS issues a Compliance Statement detailing the mistakes identified by the plan sponsor and the correction methods approved by the IRS.

- The plan sponsor corrects the identified failures within 150 days of the issuance of the Compliance Statement.
- While the IRS is processing the submission, IRS will not examine the plan, except under unusual circumstances.

Audit Closing Agreement Program:

- The plan sponsor or plan is under examination.
- The plan sponsor:
  - enters into a Closing Agreement with the IRS.
  - makes correction prior to entering into the Closing Agreement.
  - pays a sanction negotiated with the IRS.
    - The sanction paid under Audit CAP should be greater than the fee paid under VCP.
- For plans intended to satisfy IRC Section 403(b), the sanction under Audit CAP is a negotiated percentage of the Maximum Payment Amount based on the sum for all open taxable years of the:
  1) Additional income tax resulting from income inclusion for participants in the plan (Form 1040), including the tax on plan distributions that have been rolled over to other qualified trusts (and any interest and penalties applicable to the participants' tax returns).
  2) Any other tax that results from a 403(b) failure that would apply except for correction under Revenue Procedure 2008-50 or 2013-12.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
Your organization isn't eligible to sponsor a 403(b) plan.	Determine if your organization fits one of the eligible employer groups - a public educational institution or an IRC Section 501(c)(3) charitable organization.	Stop all contributions. Make a submission under the Voluntary Correction Program.	Understand what makes an organization eligible to sponsor a 403(b) plan and know if your organization meets one of the requirements.

1) Your organization isn't eligible to sponsor a 403(b) plan.

Only certain tax-exempt employers are eligible to maintain a 403(b) plan for eligible employees. Following is a list of employees eligible to participate in a 403(b) plan:

- Employees of tax-exempt organizations established under IRC Section 501(c)(3)
- Employees of public school systems[1] involved in the daily operations of a school
- Employees of a cooperative hospital service organization
- Civilian faculty and staff of the Uniformed Services University of the Health Sciences
- Employees of public school systems organized by Indian tribal governments
- Certain ministers:
    - Employed by a 501(c)(3) organization
    - Self-employed
    - Ministers not employed by a 501(c)(3) organization, but functioning as a minister in their daily responsibilities with their employer, such as a hospital chaplain

Both faculty and non-academic staff (for example, custodial or maintenance staff) performing services for a public educational organization may be covered, but elected or appointed officials (holding positions in which persons that are not education professionals may serve) are not eligible. Members of the school board and university regents or trustees may not be eligible.

To be considered a tax-exempt organization established under 501(c)(3), the organization must apply to the IRS for a determination letter by filing Form 1023. There is an exception for filing for church and related organizations and other IRC Section 508 excepted organizations

How to find the mistake:

First, determine if your organization fits one of the groups of eligible employers. This may be simple if you're a public school. If not, then you may need to determine if it's a 501(c)(3) organization. This type of organization must have an IRS determination letter (unless organized before October 9, 1969). Some organizations may have a letter issued to a "parent" or as part of a group approval. If you have lost that determination letter or are not certain your organization ever received a 501(c)(3) determination letter, you can check Publication 78 for a list of

[1] IRC Section 170(b)(1)(A)(ii) defines a public school system as an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Included in this category are employees of:

- Public schools
- State colleges
- Universities

organizations with determination letters. If your organization is not tax-exempt under IRC Section 501(c)(3), then it may not be eligible to sponsor a 403(b) plan.

Many mistakes in this area originate with hospitals that were at one time qualifying organizations until a for-profit company purchased them. A medical school associated with a hospital may meet the eligibility requirements. However, if the hospital is a for-profit company, it will not be a qualifying organization just because it is associated with a medical school. Other mistakes may occur when organizations exempt from tax under a different 501(c) subsection adopt a 403(b) plan in error.

How to fix the mistake:

Corrective action:
This mistake is an employer eligibility failure. The Voluntary Correction Program is the only IRS correction program that allows you to fix the mistake voluntarily. If you determine the employer isn't eligible to sponsor a 403(b) plan, take the following steps to preserve the tax-deferred status of the contributions:

- Stop all contributions (including salary reductions) beginning no later than the date you file the Voluntary Correction Program submission.
- The assets must remain in the 403(b) plan and not distributed prior to the occurrence of a distributable event listed in the plan (for example, retirement or separation from service).
- File a Voluntary Correction Program submission with the IRS.

Example 1:
MRC Hospital maintains a 403(b) plan for its 700 employees, all of whom were eligible to participate in the plan. MRC Hospital determined it doesn't qualify as a public educational institution and it isn't an IRC Section 501(c)(3) tax-exempt organization. Therefore, it is not eligible to sponsor a 403(b) plan.

Example 2:
Organization ABC is a union organization that adopted a 403(b) plan in 2007 for its employees. At the end of 2009, it had 79 employees, all of whom were eligible to participate in the plan. Union organizations are generally tax-exempt under IRC Section 501(c)(5). Organization ABC is an ineligible employer because it isn't normally considered a public school nor is it tax-exempt under IRC Section 501(c)(3).

Correction programs available:

Self-Correction Program:
Plan sponsors may not correct this type of mistake under SCP.

Voluntary Correction Program:
MRC Hospital and Organization ABC may make VCP submissions to the IRS according to Revenue Procedure 2013-12 to resolve this failure. VCP fees vary based on the number of plan participants. The fee for MRC's VCP submission is $8,000 (per the table in the EPCRS Revenue Procedure). ABC's VCP fee is $2,500.

Under the Voluntary Correction Program, MRC and ABC must:

- Stop all contributions (including salary deferrals) to the plan beginning no later than the date the VCP submission is filed, and
- Retain assets in the plan and not distribute them prior to the occurrence of a distributable event.

Plan sponsors are encouraged to make their VCP submission using the model documents in Appendix C, including Schedule 6 when preparing the submission. Don't forget to include Forms 8950 and 8951.

Audit Closing Agreement Program:
If this mistake is discovered on audit, you may correct it under Audit CAP, where correction of this mistake is the same as described under VCP. The plan sponsor and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

You can avoid this mistake by having a better understanding of what makes an organization eligible to sponsor a 403(b) plan and knowing if your organization meets one of the requirements. After you make this determination, pay attention to any changes in your organizational structure that may make the sponsor ineligible.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You didn't adopt a written plan intended to satisfy the law by December 31, 2009.	Check your records to see if your organization adopted a written plan intended to satisfy the final 403(b) regulations by December 31, 2009.	Put the plan's operations into a written plan that complies with the final 403(b) regulations and adopt it. Make a submission under the Voluntary Correction Program.	Make sure that everyone in the organization understands that a 403(b) plan is subject to a written plan requirement.

2) You didn't adopt a written plan intended to satisfy the law by December 31, 2009.

A 403(b) plan must have had a written plan in place by January 1, 2009. The written plan doesn't need to be in a single plan document, but may bundle several documents that detail all the provisions of how the plan works. The 403(b) plan sponsor should ensure that there is no conflict among the documents. There must be a single plan document coordinating administration among the plan's 403(b) vendors. The plan should then operate according to the terms, conditions and provisions contained in the written plan or program, in addition to the rules and regulations of the Internal Revenue Code. For example, a 403(b) plan sponsor decides to offer participant loans and distributions because of financial hardship. The written plan or program must explain the participant's ability to take loans or hardship distributions, and how the plan will manage the loan program and determine financial hardships.

The IRS released Model Plan Language for Public Schools to use to adopt or amend their 403(b) plans to meet the requirements of the final 403(b) regulations. Other types of eligible employers may also tailor the model language to use for their 403(b) plans. IRS released draft Sample Plan Provisions to assist in the drafting of 403(b) prototype plans.

Notice 2009-3 extended the deadline for a written plan to December 31, 2009, if the plan sponsor:

- adopted a written plan intended to satisfy the requirements of Section 403(b) (including the final regulations) effective as of January 1, 2009;
- operated the plan according to a reasonable interpretation of Section 403(b), considering the final regulations during 2009; and
- corrected the plan operation to match the written program before the end of 2009, placing the participants in the same position they would have been if the program had been adopted on January 1. The correction should be based on the general principles in section 6 of Revenue Procedure 2008-50 and should have been completed by December 31, 2009.

A 403(b) written plan must contain mandatory provisions and may contain optional provisions.

Mandatory Provisions - The following provisions must be in a 403(b) plan:

- Eligibility – The written program must explain who may participate.
  - Plans that allow elective deferrals must satisfy universal availability.
    - Universal availability means if the plan permits one employee to defer salary, it must extend the offer to all employees, with limited exceptions.
- Contributions and benefits – The written program must contain a description of the types of benefits available under the plan. Non-governmental employers may be required to meet more stringent nondiscrimination requirements.
- Limitations – Contributions and benefits under a 403(b) plan, including all aggregated plans, contracts or arrangements of the employer, must comply with the following limits:

    - IRC Section 402(g) limit on elective deferrals
    - IRC Section 415 limits on contributions
    - IRC Section 401(a)(17) limit on amount of employee compensation that can be considered for plan purposes
- Contracts under the plan – Plan investment types are limited to the following:
    - An annuity contract – a contract provided through an insurance company
        - Must contain non-transferability provisions, 402(g) limits and direct rollover provisions
    - A custodial account – an account invested in mutual funds
        - Must state the 402(g) limits and direct rollover provisions
    - A retirement income account – an account set up for church employees
    - 403(b) plans cannot be funded with life insurance (issued on or after September 24, 2007), endowment, accident or other types of insurance contracts
- Plan distributions – The written plan generally may not allow distributions of any amounts unless a participant:
    - Severs employment,
    - Has a financial hardship (limited to elective deferrals only),
    - Becomes disabled (within the meaning of IRC Section 72(m)(7)), or
    - Reaches age 59 ½

Optional Provisions – If a plan chooses to use an optional provision in operation, the written plan must contain that provision. The following are examples of optional provisions:

- Loans - Must limit the maximum amount that can be borrowed to the lesser of:
    - 50% of vested account balance or $10,000 (whichever is greater); or
    - $50,000

  If the plan allows loans, employers must provide adequate information to plan vendors to administer the loans properly.
- Hardship Distributions – Allows distribution of elective deferrals if stated criteria are met. Employers must provide adequate information to plan vendors to administer the distributions properly, including the criteria for making the hardship distributions.
- Automatic contribution arrangements (automatic enrollment) – Allows an employer to automatically enroll eligible employees in its plan unless an employee elects otherwise.
- Designated Roth accounts – Allows employees to designate elective deferrals as designated Roth contributions (which are included in gross income), rather than traditional, pre-tax elective contributions.
- In-service contract exchanges – The plan may limit contract exchanges to vendors approved under the plan. The plan can only permit contract exchanges from a plan vendor to non-plan vendor if the non-plan vendor enters into an information sharing agreement with the employer or its delegate.
- Plan-to-plan transfers - Allows current and former employees to make plan-to-plan transfers only under the following conditions:
    - the receiving plan permits transfers;
    - the participant's benefit after the transfer is at least equal to the prior benefit; and
    - the receiving plan's distribution restrictions are at least as stringent as those of the transferor plan.
- Elective deferral catch-up contributions:
    - 15 years of service
    - age 50 or older
- Five year employer contribution provision for retired/terminated employees – Nonelective employer contributions may be made for up to five years following an employee's severance of employment, but these contributions are subject to nondiscrimination testing (except for governmental plans) and annual contribution limits.
- Employer's right to terminate the plan – Must include provisions allowing the employer to eliminate future contributions for existing participants and to allow a distribution of

accumulated benefits with a right to roll over eligible rollover distributions to an eligible retirement plan or an IRA.

How to find the mistake:

Check your records to ensure that you have a written plan that was intended to comply with the 403(b) final regulations and it was adopted by your organization by December 31, 2009.

The plan sponsor/employer is responsible for keeping the plan in compliance with applicable tax laws; however, there may be vendors and tax professionals servicing your plan who may have a copy of your timely adopted written 403(b) plan.

How to fix the mistake:

Corrective action:
If you are not operating your 403(b) based on a written plan after December 31, 2009, there are several steps you may take to fix your plan. You can only resolve this failure if you apply for correction under Revenue Procedure 2013-12 and the correction only applies to 2009 and subsequent plan years. You can't use Revenue Procedure 2008-50 to resolve this failure.

Example:
T Public School has a 403(b) plan with 300 participants. After attending a presentation on the requirements of the 403(b) final regulations, TPS's financial officer noted that their 403(b) plan was not based on a written plan adopted by December 31, 2009.

Correction programs available:

Self-Correction Program:
Since TPS didn't adopt a written plan by December 31, 2009, it can't correct this mistake under SCP.

Voluntary Correction Program:
TPS must memorialize the plan's operations into a written plan. All mandatory provisions must be included in the program, together with any optional operational provisions. This written plan must be adopted by TPS and be effective January 1, 2009. In addition, TPS must file a VCP submission and pay the proper fee. The fee for the VCP submission (based on 350 employees) is $5,000 (per the table in Revenue Procedure 2013-12). However, if the mistake is the sole issue of the VCP submission and it's mailed to the IRS by December 31, 2013, the fee is reduced by 50% to $2,500. See Revenue Procedure 2013-12 Section 12.02(5). Plan sponsors are encouraged to make their VCP submission using the model documents in Appendix C, including Schedule 2 when preparing the submission. Don't forget to include Forms 8950 and 8951.This mistake can't be resolved using Revenue Procedure 2008-50.

Audit Closing Agreement Program:
Under Audit CAP, correction of this mistake is the same as described above. The plan sponsor and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:
Make sure that everyone in the organization understands that a 403(b) plan is subject to a written plan requirement.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You didn't follow the terms of your 403(b) written plan.	Compare your written plan to its operation.	You may retroactively adopt plan amendments that conforms the 403(b) plan to its prior operation. Alternatively, you may retroactively correct plan operation to conform to the terms of the 403(b) written plan.	Convey any changes made to your written plan or to the operation of your 403(b) plan to your plan service providers.

3) You didn't follow the terms of your 403(b) written plan.

Plan sponsors/employers are responsible for keeping their plan in compliance with the tax laws; however, there may be many employees, vendors and tax professionals servicing your plan.

You should convey any changes made to your plan document or to your plan's operation to everyone providing service to your plan. For example, if you amend your plan document to change the definition of compensation, you should communicate that change to all persons involved in determining deferral amounts withheld from the participant's pay, performing your plan's nondiscrimination tests or allocating employer contributions. Also, if you decide to use a different definition of compensation in operation, make sure you amend the plan timely to reflect that change.

How to find the mistake:

This mistake only applies beginning in 2009. For 2008 and all other prior years, there was no IRS requirement that a 403(b) plan be operated in accordance with a written plan. Beginning with 2009, compare the plan's operation to the written 403(b) plan your organization has adopted. You should conduct a review annually to ensure that the written 403(b) plan is consistent with the 403(b) plan's operation.

Does the operation of your 403(b) plan conform to its written plan?

- If your plan or plan vendors allow for loans or hardships, the written 403(b) plan must provide for those programs in addition to explaining their administration.
- If your plan or plan vendors allow for any catch-up contributions, the written 403(b) plan must allow for these.
- Any other optional provisions that your plan is using must be included in the written 403(b) plan.
- Plan benefits must be computed properly and provided to plan participants as specified by the terms of the written 403(b) plan.

How to fix the mistake:

Beginning in 2009, if you aren't operating your 403(b) plan consistently with its written plan there are several steps you may take to fix it. You can only resolve this failure under Revenue Procedure 2013-12 and the correction only applies to 2009 and subsequent plan years. You can't use Revenue Procedure 2008-50 to resolve this mistake.

Corrective action:

Example 1:
Public School Y adopted a written plan by December 31, 2009, with 300 participants. In 2011, Y's 403(b) administrator realized that it had made participant loans and hardship distributions

during 2011 even though loans and hardship distributions weren't included in Y's written 403(b) plan.

Example 2:
Organization X, a 501(c)(3) organization, has a written 403(b) plan with 98 participants. The written plan, which X adopted by December 31, 2009, stated it would provide matching contributions to all participants who made employee elective deferrals. In 2011, Organization X's 403(b) plan administrator realized that six eligible plan participants hadn't received any matching contributions in the 2010 plan year and in the first half of 2011.

Correction programs available:

Self-Correction Program:
Example 1:
If Y determines that it has proper practices and procedures in place, it may correct using SCP, by retroactively adopting plan amendments that conforms the written 403(b) plan to the plan's prior operation. This SCP correction through plan amendment is one of the few plan amendment corrections permitted through SCP (per Revenue Procedure 2013-12 section 4.05 and Appendix B section 2.07).

Example 2:
If Organization X determines that it had proper practices and procedures in place, it may correct using SCP. Correction would involve Organization X making a corrective contribution equal to the matching contributions that Organization X should have provided to the six participants for 2010 and part of 2011, adjusted for earnings through the date of correction. Correction by retroactive plan amendment to conform the written plan to the plan's operation wouldn't be allowed under SCP, although VCP or Audit CAP may provide more flexible options.

In both examples 1 and 2, there may be a time limit as to when correction has to occur if the qualification failure is deemed to be significant. See sections 8 and 9 of Revenue Procedure 2013-12. This qualification failure couldn't exist under EPCRS prior to 2009 since the written plan requirement and the failure to follow its terms didn't apply in pre-2009 years. However, certain nongovernmental 403(b) plan sponsors may have an obligation under other federal laws, such as ERISA. This failure cannot be resolved using Revenue Procedure 2008-50.

Voluntary Correction Program:
Example 1:
Y may correct using VCP. Correction would be identical to correction under SCP. Y is encouraged to make its VCP submission using the model documents in Appendix C, including Schedule 9 when preparing the submission. The fee for the VCP submission (based on 300 participants) is $5,000 (per the table in Revenue Procedure 2013-12). Don't forget to include Forms 8950 and 8951. This failure can't be resolved using Revenue Procedure 2008-50.

Example 2:
Organization X may correct using VCP. Correction would be identical to correction under SCP. Organization X should make its VCP submission using the Appendix C - Part 1 model document. The fee for the VCP submission (based on 98 participants) is $2,500 (per the table in Revenue Procedure 2013-12) Don't forget to include Forms 8950 and 8951. This failure can't be resolved using Revenue Procedure 2008-50.

Audit Closing Agreement Program:
Under Audit CAP, correction of this mistake is the same as described above. The plan sponsor and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

Convey any changes made to your written plan or its operation to everyone providing service to it. For example, if you want your 403(b) plan to allow for hardship distributions, you must revise the written 403(b) plan to allow for them prior to making one. You should communicate the change to all persons involved in making a hardship determination. Communication among the people who service your plan is essential for a compliant plan. Below are some common changes that may lead to potential mistakes:

- If you made any changes to your written program, you should inform all persons who service your plan of those changes and what they mean to the plan operation.
- If you amend your written program, you should summarize and communicate those changes to the plan participants.
- If you've changed the way you operate the 403(b) plan, you should communicate those changes to the persons providing service to it. You may also need to reflect those changes in your written program.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You didn't give all of the employees of the organization the opportunity to make a salary deferral.	Perform a review of the plan and its operation. Review employees who received a W-2 but didn't participate. Determine if you excluded any class of employees, such as janitors, cafeteria workers, bus drivers or union employees.	Provide improperly excluded employees the opportunity to participate in the plan in current and future years. Make a corrective contribution to the plan for the employees that compensates for their missed deferral opportunity.	Understand which employees you may exclude from the 403(b) plan. Provide proper notification to employees of their eligibility to participate in the 403(b) plan at least yearly.

4. You didn't give all of the employees of the organization the opportunity to make a salary deferral.

This universal availability rule means that if the plan permits one employee to make 403(b) elective deferrals (including designated Roth contributions, if allowed by the plan), the employer must extend this offer to all its employees. However, an employer may exclude certain employees. Starting in 2009, an employer may choose to include a plan provision to exclude the following employees from participating in the plan:

- Employees who will contribute $200 annually or less
- Employees who are eligible to participate in a 401(k), 457(b) or other 403(b) plan of the same employer
- Non-resident aliens
- Employees who normally work less than 20 hours per week (meaning they don't accumulate at least 1,000 hours in at least one year)
- Students performing services described in IRC Section 3121(b)(10)

Note: Prior to 2009, a written plan provision was not necessary to exclude the above groups of employees. In addition, prior to 2009, Notice 89-23 allowed plan sponsors to exclude other groups of employees from the plan.

This condition requires extra care from the employer. It's easy to assume certain employees who only have a support role with the organization or work in what is typically considered part-time aren't eligible for the plan. However, under the universal availability rule, the plan may decline to cover only the employees who meet the above specific exclusions.

A mistake in this area can be disastrous. For instance, if a plan includes an employee it could have excluded, it may have to include all employees in that class, depending on the class. Another example is the failure to include an otherwise eligible employee in the plan. This may lead to the entire 403(b) plan losing its tax-deferred status.

The second part of universal availability is effective opportunity. This is a facts and circumstances test. A 403(b) plan satisfies the effective opportunity requirement if, at least once each plan year, the plan provides an employee with an effective opportunity to make or change a cash or deferred election.

How to find the mistake:

Employers should develop a strategy based on their organization's structure. For example, you could discover this potential mistake by making a list of employees who received a W-2 but did not participate in the 403(b) plan. For employees on that list, determine if you properly notified them of their eligibility to participate in the plan or if you improperly excluded them from

participation. For each employee you improperly excluded, you may have an issue that you need to correct.

Next, look at employees who received a W-2 and participated in the 403(b) plan. In this second sample, look for employees who should have been excluded from participation. If you improperly included an employee, you may have a universal availability issue to correct.

Although you can't base exclusions on job classifications or groups, you may also have an issue if you note that participation by certain groups of employees is significantly less than other groups. For example, if bus drivers, cafeteria workers or maintenance workers are participating significantly less than another group, it may signal a problem that you haven't properly notified those groups of their right to participate - or, at the very least, you may need to reach out to those employees to re-educate them on their plan rights.

In addition to the excludible employees described above, before 2009, the law allowed certain administrative exclusions, such as union employees, visiting professors and employees affiliated with a religious order who have taken a vow of poverty. Beginning in 2009, under transitional rules, those exclusions are no longer allowed. Ensure that your plan no longer excludes these types of employees.

How to fix the mistake:

Corrective action:
To correct a universal availability failure, you should provide each improperly excluded eligible employee with the opportunity to participate in the plan in current and future years. In addition, you may be required to make a contribution to the plan for each eligible employee for the time that the employee was improperly excluded from the 403(b) plan.

The amount necessary to correct mistakes involving the failure to allow plan participants to defer salary uses the concept of "lost opportunity cost," which generally represents the loss of the ability of the salary deferral to grow tax-free in the 403(b) plan. The IRS has determined that this lost opportunity cost is equal to 50% of the amount of the elective salary deferral the employee could have made to the 403(b) plan.

In accordance with the IRS safe harbor in Appendix A.05(6) of Revenue Procedure 2013-12, you may deem the lost salary deferral amount to be equal to the greater of:

- 3% of compensation, or
- the maximum deferral percentage for which the plan sponsor provides a matching contribution rate that is at least as favorable as100% of the elective deferral made by the employee.

Therefore, the corrective contribution you need to pay to the plan for the improperly excluded employees would generally be 1.5% of their compensation for each year you excluded them, adjusted for any lost earnings through the date of correction. If you provided matching contributions to the plan for the affected year, you would need to pay additional corrective contributions to the plan to restore matching contributions you would have provided on the missed deferral amounts for the improperly excluded employees.

Example:
DEF Independent School District maintains a 403(b) plan for its teachers and staff. At the end of 2010, 350 employees were eligible to participate in the plan. Three part-time teacher's aides worked more than 20 hours per week during 2007, 2008, 2009 and the first eight months in 2010; however, they were not included in the 403(b) plan. Assume each teacher's aide earned $20,000 annually during 2007-2010. The school district discovered the failure on September 1, 2010 and allowed each of the three teacher's aides to participate in the plan as of that date. Assume that the 403(b) plan provides for a 100% match up to 3% of participant compensation.

To correct this mistake, the school district should provide each eligible employee the opportunity to participate in the plan for the current and subsequent years. The plan sponsor must make a contribution to the plan for each of the three employees improperly excluded from participating in the plan in prior years. This contribution should be equal to 50% of the amount of elective deferral the employee could have made to the plan, adjusted for any lost earnings through the date of correction. The corrective contribution associated with the lost elective deferrals must be 100% vested and be subject to the distribution restrictions in IRC Section 403(b)(11). The corrective contribution for lost matching contributions, if applicable, can be subject to the plan's regular vesting schedule and distribution restrictions in effect during the years the employees were excluded.

The school district can determine the amount it must contribute for each teacher's aide that it improperly excluded in 2007, 2008, 2009 and part of 2010 as follows:

The school district can apply the IRS safe harbor correction method and deem the lost elective deferral amount to be 3% of compensation. In that case, the corrective contribution for each aide would be:

- The total corrective contribution owed to each aide for the lost deferrals is $1,100 (($20,000 x 3%) x 50%=$300, $300 x 3 years 8 months).
- Considering the lost deferral amount of $600 that the excluded employees could have made to the plan ($20,000 x 3%), the matching contribution owed per year is equal to $600. Total matching contributions owed to each teacher's aide is $2,200 ($600 x 3 years 8 months).
- Total corrective contribution owed to each teacher's aide is $3,300 ($1,100 + $2,200), adjusted for earnings through the date of correction.

Other correction methods may be acceptable to fix this mistake. Any correction method used that is not described in Appendix A or B would need to satisfy the correction principles of Revenue Procedure 2013-12, section 6 and would be outside of the IRS safe harbor. For example, a 403(b) plan sponsor might determine the missed deferral for an excluded employee using a percentage based on the average deferrals for all employees in the plan.

Correction programs available:

Self-Correction Program:
Operational mistakes may be corrected under the Self-Correction Program. Under SCP, there are no applications or reporting requirements. To use SCP to correct this universal availability issue, the school district needs to make two determinations:

- First, it must determine if it has sufficient compliance practices and procedures in place to correct under SCP.
  - If it's determined that sufficient compliance practices and procedures exist, it may correct under SCP.
  - If sufficient compliance practices don't exist, it must correct under the Voluntary Correction Program.
- Second, it must determine if this error is significant or insignificant.
  - If it's determined the error is insignificant,
    - It may fully correct the mistake for 2007, 2008, 2009 and 2010 under SCP at any time.
  - If it's determined the error is significant,
    - The school district wouldn't be able to correct this failure under SCP because it needed to correct the oldest affected plan years within 2 years of the error. In this example, the deadline for taking corrective action for 2007 would've been the last day of the 2009-plan year.

- The school district may not be able to use SCP to fix this error, however it could be resolved on a voluntary basis if it makes a submission to the IRS under VCP.

In our example, the school district determined the error was insignificant and it has sufficient practices and procedures in place to satisfy the requirements of operating a compliant plan. Therefore, it may correct 2007, 2008, 2009 and 2010 using SCP as follows:

- Determine the lost opportunity for each affected participant by assuming the lost deferral amount is equal to 3% of compensation.
- Multiply 50% of that percentage times each employee's compensation to determine the corrective contribution due the affected employees.
- Increase the corrective contribution to include matching contributions that would have been attributable to the lost employee elective deferrals.
- Adjust for lost earnings and contribute to the affected employee's account.

Voluntary Correction Program:
If the school district determined it didn't have the proper practices and procedures or that the error was significant, this mistake is correctible under VCP. Correction would be the same, except that the district must make a VCP submission according to Revenue Procedure 2013-12. The fee for the school district's VCP submission, if made in 2013, (based on 350 eligible participants) is $5,000 (per the table in Revenue Procedure 2013-12). The school district should make its VCP submission using the model document in Appendix C – Part 1, including Forms 8950 and 8951.

Audit Closing Agreement Program:
Under Audit CAP, correction of this mistake is the same as described under VCP. The school district and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

Universal availability mistakes can be very expensive to correct, so avoiding this mistake is important. You must have a good understanding of which employees you may exclude from your organization's 403(b) plan. Many organizations assume they can exclude part-time or certain classes of employees, but that's not how it works.

A common mistake is to improperly exclude employees who work more than 20 hours per week, or 1,000 hours per year, for example substitute teachers or adjunct professors. Many governmental plan sponsors avoid this mistake by making these types of employees eligible for a 457(b) plan. If each employee is either eligible for the 403(b) or 457(b) plan (or both), a governmental plan sponsor may be able to avoid the expensive fix associated with a universal availability failure.

Another important feature is to provide proper notification to employees of their right to participate in the 403(b) plan. You should provide proper notification to each employee of their eligibility to participate in the 403(b) plan at least annually.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
Your 403(b) plan doesn't limit the total employer and employee contributions to not exceed the IRC Section 415(c) limits.	Determine types of contributions allowed in the plan and total employee and employer contributions per participant. Compare with the current year's dollar limit.	Transfer excess to a separate 403(c) account or distribute to participant.	Understand that it's the employer's responsibility to limit contributions and issue correct W-2s. With vendors, establish procedures to limit contributions. Educate employees. Conduct year-end review of employer and employee contributions and compare with current legal limits.

5. Your 403(b) plan doesn't limit the total employer and employee contributions to not exceed the IRC Section 415(c) limits

403(b) plans are subject to several contribution limits. A plan that includes employer and employee after- tax contributions, as well as employee elective deferrals is subject to limits under both IRC Sections 402(g) (discussed in Mistake #7) and 415(c).

- Employee elective deferrals may not exceed the 402(g) limits
- The total of all employer contributions, employee after-tax contributions and employee elective deferrals may not exceed the limits under 415(c). For 2013, the total employer and employee contributions (including the 15-year catch-up discussed in Mistake #6) cannot exceed the lesser of $51,000 or 100% of includible compensation. The dollar limitation is increased by cost-of-living adjustments in later years.
    - Special 15-year catch-up is included in this 415 limitation.
    - Age 50 catch-up contributions are excluded from the 415 calculation.

How to find the mistake:

First, you'll need to determine what types of contributions are allowed to the 403(b) plan. For a plan that only allows employee elective deferral contributions:

- Review the elective deferral amounts for each participant.
- Determine if the total elective deferrals made by each participant exceeds the lesser of:
    - The limit under 402(g) ($17,500 in 2013), or
    - 100% of their compensation, or
    - The dollar limitation under 415 ($51,000 for 2013).

Note that even with catch-up, elective deferral amounts can never exceed 100% of an employee's compensation.

If a plan includes employee elective deferrals and employer contributions, the 415(c) limit calculation becomes more complicated:

- Contributions for each participant may not exceed the 415 (c) limitations (lesser of: $51,000 (for 2013) or 100% of the participant's compensation).
- For each participant, determine the total of all contributions made to the plan, including employee elective deferrals, employee after-tax, matching, and other employer contributions.
- Make a list of each employee with the employee's compensation, employee contributions and employer contributions.
- If any employee's total employee and employer contributions (excluding age 50 catch-up) has exceeded 100% of the employee's compensation or $51,000, you may have a mistake that must be corrected.

Example:
Pat, age 50, who has worked as a teacher in the ABC School District for 15 years, is newly eligible for the 15-years-of-service catch-up benefit and has eligible compensation of $70,000 for 2012. Pat is eligible for ABC's 403(b) plan. What are Pat's maximum employee and employer contributions for 2012?

- Pat's 415(c) limit for 2012 is the lesser of 100% of his includible compensation or $50,000 (the 415(c) dollar limitation for 2012).
- Pat's maximum employee elective deferrals are $25,500 ($17,000 (2012 402(g) limit) + $3,000 (15-years-of-service catch-up) + $5,500 (2012 age 50 catch-up)).
- If the above maximum employee contributions are made then the maximum employer contribution is $30,000.
  - This figure is calculated by starting with the 415(c) limitation - the lesser of 100% of compensation ($70,000) or $50,000. Then you subtract the total elective deferrals, excluding the age 50 catch-up contributions ($25,500 – 5,500), which equals $20,000. Accordingly, $50,000 - $20,000 = $30,000.
- Contribution limits under a 457(b) plan are determined separately from 402(g) and 415. If ABC offered a 457(b) plan to its employees for 2012, Pat could defer an additional $17,000 to the 457(b) without exceeding the limits.

How to fix the mistake:

Corrective action:
Correction of a mistake to limit contributions to the 415(c) limit requires that the excess amount, adjusted for earnings, either be transferred to a separate account that complies with IRC Section 403(c), or be distributed to the participant by the end of the year in which the excess occurred. In either case, the excess is includable in the participant's gross income (to the extent the amount is nonforfeitable).

Example 1:
Charity X sponsors a 403(b) plan for its employees. At the end of 2012, 75 employees are eligible plan participants. The plan allows both employee elective deferrals and employer contributions. The 403(b) plan allows for elective deferrals to be deposited into a special after-tax Roth account. For the 2010 year, Tom exceeded the 415 limits.

Tom's 415 limit is based on the following:
- Compensation = $60,000.
- Pre-tax elective deferral = $15,000
- After-tax Roth elective deferral = $500
- Nonelective employer contribution = $36,500

415 Calculation:
Tom's total contributions ($15,000 + 500 + 36,500) = $52,000
Tom's 415(c) limit (Lesser of $60,000 or $49,000 (2010 dollar limitation)) = $49,000
Tom's 415 excess = $3,000

If the excess is neither transferred to a separate 403(c) account, nor distributed to the participant by the end of the year in which the excess occurred, the error can be corrected under EPCRS.

Example 2:
School District Y sponsors a 403(b) plan for its employees. At the end of 2012, the number of current and former plan participants is 275. The plan provides nonelective employer contributions, matching contributions and elective deferrals. Matching contributions are equal to 100% of elective deferrals up to 4%. For the 2006 year, two participants exceeded the limits

under IRC 415(c). Tuttle had 415 compensation of $60,000 and Ursula had 415 compensation of $20,000.

	Tuttle	Ursula
Elective deferrals	$ 5,000	$ 8,000
Nonelective employer contributions	$39,300	$ 13,100
Matching contributions	$ 2,400	$ 800
Total contributions	$46,700	$ 21,900
415(c) limit, 100% of compensation or $44,000	$44,000	$ 20,000
415(c) excess	$ 2,700	$ 1,900

If the excess is neither transferred to a separate 403(c) account, nor distributed to the participant by the end of the year in which the excess occurred, the error can be corrected under EPCRS.

Correction programs available:

Self-Correction Program:
Charity X and School District Y may correct their mistakes in 2013 under SCP if they determine they have the proper practices and procedures in place to operate a compliant plan and the mistake is insignificant.

Charity X uses Revenue Procedure 2013-12 to distribute $3,000 to Tom. The ordering of the distributions is based on Revenue Procedure 2013-12 section 6.06 and the safe harbor example in Appendix A.08. Therefore:

- Distribute $500 adjusted for earnings from Tom's Roth account.
- Distribute $2,500 adjusted for earnings from Tom's pre-tax elective deferral account.

School District Y uses Revenue Procedure 2013-12 to return the excess of $2,700 to Tuttle, based on the ordering in section 6.06 and the safe harbor example in Appendix A section .08. Therefore, $2,700, adjusted for earnings, is distributed from Tuttle's elective deferral account. Correction of Ursula's $1,900 415 excess will require this amount to be distributed to Ursula from her elective deferral account, adjusted for earnings.

In addition, School District Y and Charity X must change their administrative procedures to ensure that 415 excesses don't occur in future years.

Voluntary Correction Program:
Charity X and School Distrust Y may also choose to correct their mistake under VCP by completing a submission based on Revenue Procedure 2013-12.

The fee for Charity X's VCP submission (based on 75 plan participants) is $2,500 (per the table in Revenue Procedure 2013-12).

The fee for School District Y's VCP submission (based on 275 plan participants) is $5,000 (per the table in Revenue Procedure 2013-12).

Both Charity X and School District Y should make their VCP submissions using the model document in Appendix C - Part I and include Forms 8950 and 8951.

Audit Closing Agreement Program:
Under Audit CAP, correction is the same as described above. Charity X or School District Y and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

The employer has responsibility for making certain the plan doesn't exceed the 415(c) limits. The employer must work with its 403(b) vendors to limit the total contributions provided to an individual plan participant. If the employer knows how much the participant deferred, the employer can make a calculation to keep the total employee and employer contributions within the 415 limits. Tracking this mistake may be as simple as listing plan participants, together with their compensation, all deferrals to all plans of the employer and all employer contributions. Compare the total of the deferrals and employer contributions to the participant's compensation and the current 415 limit.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
For plans that offer "15-years of service catch-up" contributions, an employee making these contributions doesn't have the required 15 years of full-time service with the same employer.	Review total deferrals for each participant. If over the basic 402(g) limit, determine if it's because of a catch-up. If it's a 15-year catch-up, determine if the employer employed the employee for 15 years. Determine the level of the participant's 15-year catch-up.	Refund excess deferrals plus earnings. Report corrections on Form 1099-R.	Verify employees are eligible for the catch-up by ensuring that they have 15-years of service with the 403(b) plan sponsor, have unused amounts available for catch-up and have not exceeded the $15,000 lifetime limit. Before allowing participants to make 15-years of service catch-up contributions, ensure that the written program contains the proper language.

6. For plans that offer "15-years of service catch-up" contributions, an employee making these contributions doesn't have the required 15 years of full-time service with the same employer.

To qualify for the 15-years of service catch-up (if the employer's plan includes this provision) the employee must have 15 years of service with the **same** eligible 403(b) employer. The limit on elective deferrals to the participant's 403(b) account may be increased by up to $3,000 in any taxable year (lifetime employer-by-employer limit of $15,000) if the employee has at least 15 years of service with the same employer in a:

- public school system,
- hospital,
- home health service agency,
- health and welfare service agency,
- church, or
- convention or association of churches.

Sounds simple, but it gets more complicated. There are several calculations to determine a participant's eligibility to make up to a $3,000 catch-up contribution.

- The amount of the special 15-year catch-up and the underused amount is equal to the lesser of:
  - $3,000;
  - $15,000, reduced by the sum of prior years' 15-year catch-up deferrals; or
  - $5,000 x years of service with the employer, minus the total of all elective deferrals made to a 403(b), 401(k), SARSEP or SIMPLE IRA plan maintained by the employer, including the 15-year catch-up, but excluding the age 50 catch-up.
- The ordering for participants eligible for both types of catch-up contributions is:
  - 15-year catch-up, then
  - age 50 catch-up.

  If a participant uses an age 50 catch-up, but was eligible for the 15-year catch-up, the rules first count the contribution toward the 15-year catch-up lifetime maximum.
- A participant eligible for both types of catch-ups may contribute up to $3,000 extra for the 15-year catch-up, along with an extra $5,500 for the age 50 catch-up in 2013. The age 50 catch-up limit is subject to cost-of-living adjustments in later years.
- Designated Roth contributions in a 403(b) plan are included within all the different limits.

Making a determination that the years of service are with the same employer has its own complications. A few examples of the rules are:

- If an employee works for the same public school district, but at different schools within that system, the rules consider the employee to be employed by the same employer.

- If an employee works for a hospital system, but works at different hospitals within that system, the rules consider the employee to be employed by the same employer.
- If a minister is a self-employed minister, the rules consider all those years of service as a self-employed minister as working for the same employer.

It's also necessary to determine the years of service for any participant interested in making the additional 15-year catch-up contribution. How years of service are determined depends on whether the employee was full-time or part-time, whether the employee worked a full year or only a partial year and if the employee performed work for the employer for an entire year.

Full-time may be different for each position and for each employer, and involves the employer's annual work period, which is the usual amount of time an individual working full-time in a specific position is required to work. This period may be expressed in days, weeks, months or semesters and can span more than one calendar year.

This calculation may get complicated. An employer planning to use the 15-year catch-up should review Pub 571 for a more detailed look at this calculation. This also may be an area to ask for the input of a benefits professional.

How to find the mistake:

First, verify that the employer is eligible to provide this catch-up benefit. Beginning in 2009, catch-up benefits must be authorized by the terms of your written 403(b) plan. Then, at the end of each year, make a list of plan participants and their total deferrals. Remember that the 15-year catch-up increases the 402(g) limit for those years and to those participants to which it applies. Accordingly, for each participant with deferrals over the basic 402(g) limit, determine if the amount is because of a proper 15-year catch-up or age 50 catch-up. For each employee using the 15-year catch-up, check his or her hire date and determine if the employer has employed the employee for 15 years. The time doesn't need to be consecutive. If that is satisfactory, determine the level of 15-year catch-up that's available to the employee. You'll need records of all employee deferrals ever made to all 403(b), 401(k), SARSEP or SIMPLE plans sponsored by the employer. If the total of those deferrals is less than $5,000 x years of service, the employee may be eligible to contribute the difference (limited to $15,000), up to $3,000 per year.

How to fix the mistake:

Corrective action:
If the result of a failure to properly determine the 15-year catch-up is exceeding the 402(g) limits, first check to see if the age 50 catch-up is available under the plan and to the employee (see Mistake #7). If the amount over the basic 402(g) limit is the result of a properly applied age 50 catch-up, there may be no failure. However, if the age 50 catch-up is either not available, or doesn't account entirely for the deferrals over the 402(g) limit (or the 402(g) limit adjusted for a 15-year catch-up), the plan must refund any deferrals in excess of the 402(g) limit, plus earnings to the employee. In addition to making the corrective distributions, the plan sponsor should determine what lapse in plan administration led to the mistake.

- Who was in charge of determining if an employee was eligible for the catch-up?
- Did they have the proper training?
- Did the employer or vendors determine if an employee was eligible for the catch-up?
- What oversight did the employer supply in making these determinations?

The plan sponsor should remedy any voids in its practices and procedures. These mistakes are correctible under SCP, VCP or Audit CAP, by distributing the excess deferral to the employee and reporting the amount as taxable to the employee. The timing of the return of the excess to

the employee determines how and when that refund is taxed. For a discussion of these rules, see Mistake #5, above.

Example:
Nader Public School District sponsors a 403(b) plan that includes the 15-year catch-up contribution provision for its employees. At the end of 2012, 125 current and former employees were plan participants. NPSD counts all years of service as a public school teacher toward the 15 years of service catch-up. In 2011, Paul, a 48-year-old teacher, deferred $16,500 (402(g) limit for 2011) plus $3,000 of his 15-year catch-up. Paul only had 5 years of service with NPSD and was not eligible for the 15-year catch-up.

Correction programs available:

Self-Correction Program:
If NPSD determines this mistake is correctible under SCP, the normal method of correction is to distribute the 402(g) excess and correct any faulty administrative procedures. NPSD should distribute $3,000, adjusted for earnings, to Paul.

- If excess contributions, plus earnings, were returned to Paul by April 15, 2012:
  - The excess deferral is taxable in the calendar year contributed, 2011.
  - Earnings through the date of correction are taxable in the year they are distributed (2012).
  - There is no 10% additional early distribution tax, no 20% income tax withholding requirement and no spousal consent requirement.
- If excess contributions, plus earnings, were returned after April 15, 2012:
  - Excess deferrals are taxed both in the year contributed (2011) and in the year distributed (2012).
  - Earnings on excess deferrals are taxed in the year distributed (2012).
  - These late distributions are subject to the 10% early distribution penalty, 20% income tax withholding requirement and spousal consent requirements.

Voluntary Correction Program:
NPSD may also correct the mistake using VCP. Correction is the same as under SCP. NPSD must distribute the amount in excess of 402(g), $3,000 (adjusted for earnings) to Paul. NPSD would submit a submission according to Revenue Procedure 2013-12. The fee for NPSD's VCP submission (based on 125 plan participants at the end of 2012) is $5,000 (per the table in the EPCRS Revenue Procedure). NPSD should make its VCP submission using the model document in Appendix C – Part 1 and Schedule 7 and include Forms 8950 and 8951.

Audit Closing Agreement Program:
Correction under Audit CAP is the same as under SCP and VCP; distribute the excess plus earnings, and correct faulty administrative procedures. NPSD and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

A basic understanding of how the 15-year catch-up works is your first step. Keep records and take responsibility for making the determination that employees are eligible for the catch-up by verifying they have 15 years of service with the 403(b) plan sponsor and they have unused amounts available for catch-up. If vendors are making this determination, provide employer oversight. Review calculations of the 15-year catch-up annually.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
Your 403(b) plan didn't limit elective deferrals, including catch-up and designated Roth contributions, to the amounts specified under the law in a calendar year.	Track deferrals for each employee. Conduct a year-end review of deferrals for each participant and compare to 402(g) limits for that year. If over the basic 402(g) limit, determine if the excess is based on a properly administered 15-years of service or on an age 50 catch-up program.	Refund excess deferrals plus earnings. Report corrections on Form 1099-R.	Understand that it's the employer's responsibility to limit deferrals and issue correct W-2s. With vendors, establish procedures to limit deferrals. Educate employees. Conduct year-end review of deferrals and refund any excesses prior to April 15.

7. Your 403(b) plan didn't limit elective deferrals, including catch-up and designated Roth contributions, to the amounts specified under the law in a calendar year.

A 403(b) plan may permit participants age 50 or over by the end of the calendar year to make additional employee elective deferral contributions. These catch-up contributions are not subject to the general limits that apply to 403(b) plans, including the limits under IRC Sections 402(g) (discussed below) and 415 (discussed in mistake #5). An employer is not required to provide for catch-up contributions in its plan. However, if a plan allows catch-up contributions, the plan must offer them to all plan participants who are eligible to make employee elective deferrals. A 403(b) program offering the opportunity to make age 50 catch-up contributions must be based on written documentation.

The features and requirements of catch-up contributions in a 403(b) plan include:

- The catch-up contribution limit for 2013 is $5,500, subject to cost-of-living increases.
- Catch-up contributions are additional to the maximum 402(g) limit ($17,500 in 2013, subject to cost-of-living increases).
- Employees eligible for both types of catch-ups may contribute up to $3,000 extra for the 15-year catch-up (discussed in mistake #6), together with an extra $5,500 for the age 50 catch-up (in 2013).

Internal Revenue Code Section 402(g) limits the aggregate amount of elective deferrals that a plan participant may contribute to any 403(b) plan.

- 402(g) limits elective deferrals to the lesser of the basic limit of $17,500 (in 2013, subject to cost-of-living adjustments in later years), or 100% of the participant's includible compensation.
    - While the age 50 catch-up doesn't count against the 402(g) limits, the 15-year catch-up raises the basic 402(g) limit for certain employees for certain organizations (see mistake # 6). So, for employers that offer the 15-year catch-up, the 402(g) limit is higher for those employees who qualify for the catch-up.
- The ordering for employees eligible for both types of catch-up contributions is:
    - 15-year catch-up, then
    - age 50 catch-up.
- Designated Roth contributions in a 403(b) plan are included within all the different limits.
- Any catch-up contributions made are in addition to the basic 402(g) limit. However, total elective deferrals, including catch-up contributions cannot exceed the participant's includible compensation for the year.

The 402(g) limit is an individual limit. An employee who participates in more than one plan that allows elective salary deferrals is subject to a single 402(g) limit.

- An employee who participates in more than one 403(b) plan must combine all elective deferrals to all 403(b) accounts.
- An employee who participates in both a 403(b) and a 401(k) plan must combine all elective deferrals to the 403(b) and 401(k) plans.
- An employee who participates in both a 403(b) and a 457(b) plan may defer up to $17,500 to the 403(b) plan and another $17,500 to the 457(b) plan in 2013.
- To avoid complications with the limitations imposed by IRC Section 415(c), elective deferral contributions may have to be limited to ensure that plan participants stay within the limits.

The law requires that a 403(b) contract or custodial account may not exceed the current calendar year's section 402(g) limit. For a 403(b) plan, this means that all of the contracts or custodial accounts held by a participant exceeding the deferral limit will lose their 403(b) status. To avoid the loss of 403(b) status for affected 403(b) contracts or custodial accounts, the plan may correct this mistake using EPCRS if it didn't distribute excess deferrals before the April 15 deadline.

The timing of the return of excess deferrals determines how and when the excess is taxed.

Timely withdrawal of excess deferrals by April 15

- Excess deferrals withdrawn by April 15 following the calendar year the deferral was made are taxable in the calendar year contributed
- Earnings through the date of correction are taxable in the year distributed
- There is no 10% early distribution tax, 20% income tax withholding and spousal consent requirement on amounts timely distributed

Excess not withdrawn by April 15

- Under Internal Revenue Code Section 401(a)(30), if the excess deferrals aren't withdrawn by April 15, each of the 403(b) contracts or custodial accounts of an affected participant is subject to the loss of the 403(b) status and would need to be corrected through EPCRS.
- Excess deferrals not withdrawn by April 15 following the calendar year the deferral was made are subject to double taxation.
    - Excess deferrals are taxed both in the year contributed and in the year distributed.
    - Earnings on excess deferrals are taxed in the year distributed.
    - Under EPCRS, these excess deferrals are still subject to double taxation.
- These late distributions could also be subject to the 10% early distribution tax, 20% income tax withholding and spousal consent requirements.

Reporting requirements for excess deferrals

- The plan must report corrective distributions of excess deferrals (including earnings) on Form 1099-R.
- Excess deferrals and earnings distributed during the year the excess occurred should be reported on one Form 1099-R (Code 8).
- Excess deferrals and earnings distributed between January 1 and April 15 of the following year may have to be reported using two Form 1099-Rs.
    - One Form 1099-R (Code P) for the excess deferral, and
    - One Form 1099-R (Code 8) for the earnings.
- Excess deferrals and earnings distributed after April 15 should be reported on one Form 1099-R (Code 8) for the year they are distributed.

IRC section 72(t) imposes a 10% additional income tax for taxable distributions that do not meet one of the Code's exceptions, such as death, disability or attainment of age 59 ½, among

others. To avoid the 72(t) tax, correct excess deferrals no later than April 15 following the year the excess was made. Imposition of the 10% additional tax is not correctible under EPCRS.

How to find the mistake:

You can identify this mistake by tracking each employee's deferrals through your payroll process. If employees are eligible to participate in both a 403(b) and a 401(k) plan, add these amounts together and ensure that the total doesn't exceed the current year's 402(g) limits or the employee's total compensation. If the employee is also eligible to participate in a 457(b) plan, the amounts in that 457(b) plan don't count against the employee's 402(g) limit. Conduct a year-end review of deferrals for each employee to determine that the employee hasn't exceeded the 402(g) limits. For each employee with deferrals in excess of the 402(g) limit ($17,500 in 2013), determine if the excess is based on a properly administered 15-years of service catch-up or an age 50 catch-up program. Timely withdrawal of 402(g) excess deferrals is very important to avoid some onerous tax consequences.

Review your 403(b) written plan to determine if the age 50 catch-up is an option offered by your plan. One of the requirements is if you include the age 50 catch-up in your plan, you must offer this option to all employees who make elective deferrals. If your 403(b) plan offers age 50 catch-up contributions, you should review the procedures used to notify employees of this special plan provision. Educating employees on the availability of this option is key to meeting the requirements.

You may also have an issue if you note that participation by certain groups of employees is significantly less than other groups. For example, if cafeteria or maintenance workers in an elementary school who are age 50 or over are participating significantly less than similar workers in secondary schools, it may signal a problem that those groups have not been properly notified of their right to make age 50 catch-up contributions.

How to fix the mistake:

Corrective action:
The plan sponsor must ensure that the insurance company or financial institution that holds the 403(b) assets refunds deferrals in excess of the 402(g) limits, plus any earnings, to affected plan participants. If you determine that an employee was not eligible for an age 50 catch-up contribution, you must distribute any amounts in excess of the 402(g) limits, adjusted for earnings. In addition to making the corrective distributions, a plan sponsor should make certain the plan, annuity contract or custodial agreement contains the necessary language limiting the 402(g) limits. The law provides plan sponsors the opportunity to take corrective action to resolve this problem through the timely return of the excess deferrals.

Excess deferrals not timely removed from the plan by April 15 of the year following the deferral may cause all of the 403(b) contracts held by an affected participant to lose their 403(b) status. Plan sponsors who didn't timely distribute the excess deferrals may use EPCRS to avoid this. These mistakes are correctible by distributing the excess deferral to the employee as a taxable amount. The timing of the return of the excess to the participant decides how and when that refund is taxed. An excess deferral returned after April 15, following the calendar year of the deferral is subject to double taxation.

Example 1:
University J maintains a 403(b) plan. At the end of 2012, there were 3,300 current and former plan participants. For the 2009 year, five participants exceeded the 402(g) limit by $2,000 each and the excess was returned on October 1, 2010 (after April 15, 2010).

Example 2:
Jolly School District sponsors a 403(b) plan for its employees. At the end of 2012, there were 12,350 current and former plan participants. Beginning in 2005, Jolly permitted participants age 50 and over to make catch-up deferrals to its 403(b) plan. During a compliance audit, Jolly determined that it only informed employees in the district's secondary schools of their right to make catch-up deferrals. Jolly verified that 10 employees were age 50 or over in 2009, with five of those employees contributing the 402(g) limit in 2009, 2010 and 2011. The written 403(b) plan adopted by Jolly permitted catch-up contributions.

Correction programs available:

Self-Correction Program:

Example 1:
If University J determines the plan had the proper practices and procedures in place to help keep the plan operating in compliance with all laws, the mistake is correctible under SCP. Correction is to distribute the 402(g) excess.

- Excess contributions, plus earnings, were returned on October 1, 2010 (after April 15, 2010):
  - Excess deferrals ($2,000 for each affected participant) are taxed both in the year contributed (2009) and in the year distributed (2010).
  - Earnings on the excess deferrals are taxed in the year distributed (2010).
  - These late distributions are subject to the 10% early distribution tax, 20% income tax withholding and spousal consent requirements.

Example 2:
If Jolly determines it has the proper practices and procedures in place and that in the aggregate this was an insignificant failure, Jolly may correct using SCP by making a corrective contribution for each of the five participants who contributed up to the 402(g) limit.

First you must determine the "missed deferral" attributable to this failure. Under the EPCRS Appendix A safe harbor, the "missed deferral" attributable to catch-up contributions is 50% of the catch-up contribution limit for the year in which the employee was improperly excluded. The catch-up limit was $5,500 for 2009, 2010 and 2011.In this example, the missed deferral for catch-up contributions is assumed to be $2,750 for each year during the 2009-2011 period. The corrective contribution that must be paid to the 403(b) plan for each affected plan participant represents the missed deferral opportunity. This number is equal to 50% of the missed deferral for catch-up. Using the lost opportunity cost concept, Jolly may correct by making a corrective contribution for $4,125 (((50% X ($5,500 X 50%)) = $1,375 x 3 years), adjusted for earnings. This would have to be adjusted increased further for earnings determined through the date of correction.

Voluntary Correction Program:

Example 1:
Correction and tax consequences are the same as for SCP; amounts in excess of the 402(g) limit have to be distributed. University J may determine they must correct the mistake under VCP for several reasons. The University could decide they didn't have proper practices and procedures in place, or may choose to correct the error under VCP. In our example, if the reason the limits were exceeded is the annuity contract or custodial accounts didn't include the proper language with the 402(g) limits, the mistake would be a special failure and correction would have to occur using VCP. For 2009 and later plan years, if the written 403(b) plan didn't include proper language that complied with the 402(g) limit, this would be considered a plan document failure and could only be resolved under VCP if the written plan was not determined to be in compliance with the requirements of Notice 2009-3 and Announcement 2009-89.

Correction under VCP would require University J to make a VCP submission according to Revenue Procedure 2013-12. The fee for University J's VCP submission (based on 3,300 employees) is $15,000 (per the table in the EPCRS Revenue Procedure). University J should make its VCP submission using the model documents in Appendix C, including Schedule 7 and Forms 8950 and 8951.

Example 2:
Jolly may also correct this mistake under VCP. Correction would be identical to correction under SCP. Jolly would complete a submission, according to Revenue Procedure 2013-12. The fee for Jolly's VCP submission (based on 12,350 plan participants at the end of 2012) is $25,000 (per the table in the EPCRS Revenue Procedure). Jolly should make its VCP submission using the model document in Part I of Appendix C and include Forms 8950 and 8951.

Audit Closing Agreement Program:
Under Audit CAP, correction is the same as described above. University J or Jolly and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

Employers must understand that they have a responsibility to limit deferrals to the plan and to issue correct W-2s. Many organizations rely on vendors to limit the deferrals; however, the vendor may only have knowledge of a portion of the participant's deferrals. Review your practices and procedures to help eliminate these mistakes. Establish procedures with your plan's vendors to help identify these problems. These mistakes may affect the participant's tax liabilities, so it's also a good idea to educate participants on their responsibilities. If an employee participates in the 403(b) plan and a 401(k) plan sponsored by the same employer, the total of all 403(b) and 401(k) deferrals made to both plans is limited to the single 402(g) limit. However, if the employee participates in a 401(k) plan sponsored by an unrelated employer and this information is not shared with the 403(b) sponsor, the aggregate contributions to both plans must comply with the 402(g) limit and the employee has responsibility to communicate this to both employers.

Develop a procedure for notifying participants of the availability of the age 50 catch-up contribution. Employers are responsible for providing this notice to all plan participants who are age 50 and over. Make certain you have each employee's birth date. Before allowing participants to make age 50 catch-up contributions, make certain the written program contains the proper language.

At the end of each year, compile a list of participants and their deferrals. For each participant with deferrals over the 402(g) limit, determine if one of the available catch-ups allows the excess. If not, remove the excess from the plan no later than April 15 of the following tax year.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
For a 403(b) plan offering a 5-year post severance provision, elective deferrals are permitted under the provision.	Understand how this feature works and seek the help of a retirement plan professional, if needed.	Distribute excess 415(c) contributions. Report corrections on Form 1099-R.	Consider using the services of a retirement plan professional. Know how the feature works and keep good records.

8. For a 403(b) plan offering a 5-year post severance provision, elective deferrals are permitted under the provision

Five-year post severance contributions are employer contributions made to a 403(b) plan after the employee's severance from employment. In general, post severance contributions must meet the following:

- Employer contributions may be made for an employee for up to 5 years after the employee's employment ends.
- Post severance contributions must be based on includible compensation for the employee's last year of service.
  - Includible compensation doesn't include amounts contributed by the employer to the employee's 403(b) account.
  - Compensation for an employee working less than full-time should include a time period that would constitute a year of service.
- Contributions may be made up to the limits under Internal Revenue Code Section 415 (see mistake #5) for each of the 5 years.

How to find the mistake:

If your 403(b) plan offers post severance contributions, it's important you understand how this feature works. It's likely you've already sought the help of a retirement plan professional. Post severance contributions should have an outside review of the eligibility and contribution calculations.

How to fix the mistake:

Example:
ABC College properly maintains a 403(b) plan with 5-year post severance contributions. After separation from employment, employees will have a contribution made to the plan in an amount equal to the highest compensation the employee received during the previous three years. During a compliance review of the plan for the 2010 year, ABC noted that employee, Sue, had an employer contribution of $40,000 per year made to its 403(b) plan for each of 5 years after termination from service (2006 – 2010); however, Sue's final year of compensation was only $35,000. The result is Sue received an extra $5,000 contribution for each of those 5 years. ABC discovered the error in 2013. At the end of 2012, the plan had 48 participants.

Correction programs available:

Self-Correction Program:
If ABC determines it has the proper practices and procedures in place and the mistake was insignificant, ABC may use SCP to fix this mistake. Insignificant failures can be corrected at any time. If ABC deemed the failures to be significant, SCP wouldn't be available because correction would be occurring beyond the 2-year timeframe that is available to correct significant operational failures.

Voluntary Correction Program:
ABC may correct this mistake under VCP. This is an Internal Revenue Code Section 415 failure so the following correction methods would be available:

- ABC should remove the accumulated $25,000 from Sue's 403(b) account and place it into a taxable 403(c) account. This would generate a taxable event to Sue and would require ABC to issue a W-2 or 1099-R.
- If the extra $5,000 payment made for the 2009 plan year was not consistent with the plan's written terms, ABC could request that Sue return the payment since the plan's terms did not authorized it.

Under appropriate circumstances, the $5,000 excess for the 2010 plan year could be returned to ABC. ABC would submit an application in accordance with Revenue Procedure 2013-12 to correct under VCP. The fee for ABC's VCP submission (based on 48 plan participants at the end of 2012) is $1,000 (per the table in the EPCRS Revenue Procedure). This assumes ABC makes the VCP submission in 2013. ABC should make its VCP submission using the model document in Appendix C - Part I and include Forms 8950 and 8951.

Audit Closing Agreement Program:
Under Audit CAP, correction of this mistake is the same as described above. ABC and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

If your plan contains these features, you should consider using the services of a retirement plan professional to help avoid mistakes. As usual, knowing how the feature should work and keeping good records are essential to keeping your plan in compliance.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You haven't limited loan amounts and enforced repayments as required under IRC Section 72(p).	Review the plan and all outstanding loan agreements to ensure that the loans comply with the plan's terms and the employees are repaying their loans timely.	You may correct some failures by corrective repayment and/or modification of loan terms, if you make a submission under the Voluntary Correction Program.	Review and follow the plan provisions relating to making loans, including the amount of loan, terms of the loan and repayment terms. Make sure there are loan procedures in place.

9. You haven't limited loan amounts and enforced repayments as required under IRC Section 72(p).

Many 403(b) plan sponsors rely on many vendors to maintain their plan; however, the plan sponsor is always responsible for the plan's operation, including its loan program. Plan sponsors are responsible for determining that each participant loan meets the requirements of the loan program and for enforcing loan repayments. "Hold harmless" agreements between a 403(b) plan sponsor and its vendors doesn't lessen the plan sponsor's responsibility.

Participant loans must meet a number of rules to prevent the law from treating them as a taxable distribution to the participant. There are two primary areas of concern.

1) Does the written 403(b) plan allow for participant loans?

The 403(b) written plan must first contain language allowing loans to participants. Since many 403(b) plans attempt to coordinate a loan program with many different vendors, it's important to outline how the loan program is to be operated. This applies to 2009 and subsequent years.

Some plans have multiple vendors, some of whom allow plan loans and others who don't. A written plan must ensure that the plan loans meet certain requirements. In addition, the underlying vendor documents that allow loans must be consistent with the written plan.

2) Do the participant loans meet the Internal Revenue Code Section 72(p) requirements?

In general, a loan to a participant must satisfy the following conditions to avoid being treated as a taxable distribution:

- The plan must base the loan on a legally enforceable agreement.
    - This must generally be a paper or electronic document.
    - The loan terms must comply with the IRC Section 72(p)(2) requirements.
    - The loan agreement must include the date and amount of the loan, and a repayment schedule that would ensure that the participant repays the loan timely.
- The plan administrator must limit the loan amount to the lesser of:
    - 50% of the participant's vested account balance at the time of the loan, or
    - $50,000.
        - an exception allows a participant to borrow up to $10,000, even if it exceeds 50% of the participant's account balance.
        - If the participant previously took out another loan, then the plan administrator must reduce the $50,000 limit of the loan by the highest amount owed by the participant on other participant loans from the plan (or any other plan of the employer or related employer) during the one-year period ending the day before the loan.

- The participant must repay the loan within 5 years, unless the participant used the loan to purchase his or her principle residence.
- Generally, the terms of the loan must require the participant to make substantially level payments, at least quarterly, over the life of the loan. (There are exceptions for a leave of absence or military service.)

How to find the mistake:

Review loan agreements and repayments to verify loans have met the rules to keep the law from treating them as taxable distributions. The added complexity of attempting to coordinate a large number of vendors greatly enhances the chances for error. You may want to take these steps to find mistakes in your loan program administration:

- Review the loan requirements outlined in the written program (including, if necessary, the participant loan provisions in underlying vendor documents).
- Review each participant loan agreement and determine if each loan was made following the rules of IRC Section 72(p).
    - Is each loan evidenced by a written loan agreement?
    - Is the loan amount within the $50,000/50% of the account balance limit?
    - Are participants required to repay loans within 5 years?
        - For each loan in excess of 5 years, is there documentation to indicate the participant used the loan to purchase his or her primary residence?
    - Does the repayment schedule require the participant make level payments at least quarterly? Are the level amortization amounts properly calculated?
    - For each loan, determine that participants are timely making loan payments.
        - Does the plan allow for a “cure period” that provides a period of time for participants to make missed payments?
            - If the plan doesn’t provide for a cure period, one missed payment could put the loan into default.
            - If the plan provides for a cure period, the loan is in default if the participant hasn’t made payments before the end of the calendar quarter following the calendar quarter in which the participant missed the payment.
    - Is each loan made according to the plan’s terms?
        - A plan may have stricter limits than section 72(p) (for example, a plan may limit the amount to less than $50,000, or the term to less than five years or provide that participants may have only one loan outstanding). Loans that don’t meet the stricter plan limits may cause an operational problem.
    - Does each loan bear a reasonable interest rate?
        - Ensure that the interest rate charged on each loan is similar to what a participant would reasonably expect to receive from a financial institution for a secured personal loan.
    - Are loans made available on a reasonably equivalent basis?
    - Are loans adequately secured by the participant’s account balance?
        - Additional security may be required if a participant defaulted a previous loan.
- For each loan, determine whether loan payments are being deposited to the plan timely.
    - Participant loan payments made through payroll withholding should be deposited into the plan as soon as administratively feasible.
    - Evaluate the payroll system to make certain participant loan payments are being withheld from the employee’s salary timely, in the proper amount and consistent with the loan’s terms.

How to fix the mistake:

Loan mistakes come in many varieties, each with their own correction attributes. The mistakes discussed below are the most common mistakes we see in VCP submissions and in 403(b) plan audits.

In 2009 and later plan years, the plan does not allow for any participant loans; however, participant loans are made - correct this mistake by making a retroactive plan amendment to provide for plan loans.

- To correct under SCP or VCP, these loans must have been made available to all participants on an equal basis and have complied in operation with all IRC Section 72(p) requirements.
- Plan sponsors may correct this mistake under SCP if proper practices and procedures are in place. Correction is also available under VCP or Audit CAP.
- SCP for this mistake is only available under Revenue Procedure 2013-12.

Plan loan exceeds the dollar limit - this mistake is only correctible using VCP or Audit CAP - to correct, the participant must repay the excess loan amount, choosing among three repayment methods:

- The participant would make a special supplemental loan payment equal to the original loan excess amount plus interest. Prior loan repayments made by the participant would be applied solely to reduce the portion of the loan that didn't exceed the limit;
- The participant would make a special supplemental payment equal to the original loan excess amount. Prior loan repayments made by the participant would be applied to pay the interest on the portion of the loan in excess of the limit, with the remainder of the repayments used to reduce the portion of the loan that didn't exceed the limit; or
- The original participant loan is treated as two loans; one being the amount in excess of the limit and the second being the amount up to the limit. Prior loan repayments made by the participant would be applied pro rata against both loans. The participant would be required to make a special supplemental corrective payment equal to the amortized remaining balance of the original loan excess.
- After the participant makes the corrective payment, the participant may reform the loan to amortize the remaining principal balance over the remaining period of the original loan.
- If the affected participant isn't willing to make corrective payments or have the loan re-amortized then the plan or plan sponsor may simply report the excess loan amount as a deemed distribution and issue the form 1099-R in the year of correction. In 2009, and later years additional actions may need to be taken to recover the excess loan monies.

Plan loan exceeds the 5-year limit - this mistake is only correctible using VCP or Audit CAP.

- Correction is to re-amortize the loan balance over the remaining 5-year period that began on the original loan date.
- If the 5-year limit has expired, the only correction available under VCP or Audit CAP is to make the loan a deemed distribution in the current or prior year.

Plan loan is defaulted because the participant fails to make required payments - this mistake is only correctible using VCP or Audit CAP.

- The participant must either:
    - Make a lump sum payment for the missed installments (including interest), or
    - Re-amortize the outstanding balance of the loan, including unpaid interest over the remaining life of the original loan term.
        - Balance to be re-amortized must include all missed interest payments.
        - Balance may not exceed the statutory limit of $50,000. The participant may make a lump sum payment to the 403(b) plan to bring the balance to the statutory limit.

  - If the affected participant isn't willing to make corrective payments or have the loan re-amortized then the plan or plan sponsor may simply report the unpaid loan amount as a deemed distribution and issue the form 1099-R in the year of correction.

When does a plan loan become defaulted?

- For 2009 or subsequent plan years, if the written plan or program contains language for a "cure period" or if the cure period was part of the annuity contract or custodial account in pre-2009 years:
  - Plan may allow for a "cure period" that permits participants to make up missed payments.
    - This cure period may extend to the end of the calendar quarter following the calendar quarter of the missed payment.
    - Therefore, a participant loan becomes defaulted after the end of the calendar quarter following the calendar quarter of the missed payment.
- If the plan doesn't contain language for a "cure period" or if the language was not part of the annuity contract or custodial account in pre-2009 plan years:
  - Participant loan becomes defaulted after the first missed payment.

During the VCP submission process or in Audit CAP, the IRS may require the employer to pay a portion of the correction payment for the participant. The only portion of the correction payment that the employer may pay is the additional interest owed for failure to timely repay the loan. In general, the affected participant is responsible for paying any delinquent loan payments.

Example:
Private University maintains a formal loan program for its 403(b) plan participants. The plan had 2,500 participants as of December 31, 2012. Private University is **not** a governmental entity. Private University conducted an internal review of its loan program and uncovered the following:

- Bob received a loan from the plan on May 1, 2011. The loan was for $60,000 over a five-year term, amortized monthly using a reasonable interest rate. Bob made the required loan payments on time. The loan amount is less than 50% of Bob's vested account balance. However, the loan amount exceeds the maximum limit of $50,000.
- Terri received a loan of $10,000, dated April 1, 2011, over a 6-year period. Payments are timely and the interest rate is reasonable. The term of the loan exceeds the maximum 5-year repayment period.
- Dean borrowed $10,000, dated March 1, 2011, over a 5-year period. Because of a payroll error, Private University failed to withhold the required loan payments from Dean's pay since August 1, 2011. The loan amount is less than 50% of Dean's vested account balance and the interest rate is reasonable.
- Private University corrected the errors on February 1, 2012.

Corrective action:
Bob – Loan amount in excess of the $50,000 limit - Private University decided to correct this mistake by treating the loan as two loans - loan A for $50,000 and loan B for $10,000. Private University chose this correction method because it provided Bob with the smallest repayment, the amortized remaining balance of the original loan excess. After repayment, the remaining balance of the loan is reamortized over the remaining period of the original loan.

Terri – Loan term in excess of the 5-year limit - Private University is correcting this mistake by re-amortizing the loan balance over the remaining period of the 5-year limit, starting from the original loan date. On February 1, 2012, Private University reamortized the balance of the loan for Terri so that it will be fully repaid by April 1, 2016 (within 5 years of the original loan).

Dean – Loan payments not made - The loan went into default as of November 2, 2011, on the expiration of the plan's stated cure period of three months. It was determined the employer was

partially at fault, because of its failure to continue collecting loan payments. Private University decided to correct the mistake by requiring Dean to make a lump sum repayment equal to the additional interest accrued on the loan and to re-amortize the outstanding balance over the remaining period of the loan.

While the above corrections are consistent with the correction principles Revenue Procedure sections 6.07(2) and (3) that allow for tax-free correction, the IRS will limit its approval of these correction methods to situations that it considers appropriate. The IRS will review the VCP applicant's submitted explanation to see if it would be appropriate to allow the above correction methods and grant the participants income tax relief from what would normally be associated with a deemed distribution.

Alternatively, Private University can use the VCP process to issue Form 1099-Rs to the affected plan participants for the deemed distributions and request that Private University issue the forms to the participants in the year of correction instead of the year of the failure.

Correction programs available:

Self-Correction Program:
Under Revenue Procedure 2013-12, starting in 2009, SCP is only available to correct a 403(b) plan that allowed for participant plan loans in operation, but didn't contain language providing for them. This applies to very limited circumstances. For the loans in the examples above, Private University may only make correction under VCP or Audit CAP. See Revenue Procedure 2013-12, section 4.05 and Appendix B section 2.07.

Voluntary Correction Program:
Under VCP, the loan failures could be corrected in a tax-free manner, if Private University requests that the affected participant loans be corrected by developing correction methods based on Revenue Procedure 2013-12 sections 6.07(2) and (3).

Private University submits a VCP submission according to Revenue Procedure 2013-12 and requests that the deemed distribution not be reported on any Form 1099-R and repayments made do not result in the affected participant having additional basis in the plan for determining the tax treatment of subsequent distributions from the plan to the affected participant. Private University would have to provide a detailed explanation supporting this request. The fee for Private University's VCP submission (based on 2,500 plan participants at the end of 2012) is $15,000 (per the table in the EPCRS Revenue Procedure). However, Private may qualify for a 50% reduction on the regular compliance fee if the participant loan failures that are to be resolved by the VCP are the sole failure of the submission and the number of affected loans does not exceed 25% of the plan sponsor's participants in any of the affected years.

Plan sponsors are encouraged to make their VCP submission using the model documents in Appendix C, including Schedule 5 and Forms 8950 and 8951.

Audit Closing Agreement Program:
Under Audit CAP, correction is the same as described above. Private University and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

It is critical that the 403(b) plan, the plan sponsor and 403(b) vendors associated with the plan have systems in place to ensure that the terms of a participant loan and the actual repayments comply with all the conditions necessary to keep the loan from being treated as a taxable

distribution to the participant. A plan sponsor working with the plan's 403(b) vendors should develop comprehensive loan procedures, which should include:

- Plan administrators should determine the maximum loan amount as part of the process for approving a loan request. Make data relating to a participant's account balance and prior loan history available to the individuals responsible for ensuring that the loan is made within the applicable limit.
- Have a policy for determining the interest rate for the loans that considers current market factors.
- Each loan should be a written agreement. Never base a loan on an oral agreement or any informal basis.
- Document any loans that depart from general rules. For example, each loan that exceeds five years should include materials to verify that the participant is using the loan for the purchase of a primary residence.
- Develop procedures to monitor the loans for timely repayment. Most plans enforce loan repayment by payroll deduction; increasing the likelihood of timely payments. Work with the payroll department or service provider to develop a system to collect and forward the proper loan payment to the plan. Loan payments must meet the same stringent deposit rules as elective deferrals.
- Develop procedures for the plan's record keeper to monitor the receipt of loan payments and allocate the amounts to the appropriate participants' loan balances.
- Obtain accurate software (or other aides) used to determine loan limits, repayment amounts, etc.
- Adopt a cure period to allow time for the plan administrator to resolve any missed installment payments before the loan is considered in default.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You don't have documentation ensuring that hardship distributions meet the definitions and requirements for hardship distributions.	Review all in-service distributions and determine that hardship distributions met the plan requirements.	Amend your plan retroactively to allow for hardship distributions.	Be familiar with your plan's hardship provisions. Implement procedures to ensure that you follow the provisions in operation. Ensure that the plan administrators and payroll offices share the plan's hardship distribution information.

10. You don't have documentation ensuring that hardship distributions meet the definitions and requirements for hardship distributions.

IRS rules treat a distribution as a hardship distribution only if it is made both:
- because of an immediate and heavy financial need of the employee, and
- is not more than an amount necessary to satisfy that financial need.

Additionally, the 403(b) written program must:
- allow for hardship distributions, and
- contain language that specifies how a hardship is determined.

Find the hardship distribution rules that apply to 403(b) plans in the IRC Section 401(k) regulations.

Immediate and heavy financial need
The plan sponsor or other persons responsible for administering the plan (but never the employee requesting the hardship) may determine eligibility for a hardship distribution. They must make the determination of an immediate and heavy financial need and the amount necessary to meet the need with objective standards in the written plan. A distribution made to an employee for the purchase of a boat or television would generally not constitute a distribution made because of an immediate and heavy financial need. A financial need may be immediate and heavy even if it was reasonably foreseeable or voluntarily incurred by the employee.

IRS rules deem certain distributions are because of an employee's immediate and heavy financial need if the distribution is for:
- Expenses for medical care previously incurred by the employee, the employee's spouse, any dependents of the employee or the employee's beneficiary or necessary for these persons to obtain medical care;
- Costs directly related to the purchase of a principal residence for the employee (excluding mortgage payments);
- Payment of tuition, related educational fees, and room and board expenses for the next 12 months of post-secondary education for the employee, or the employee's spouse, children or dependents or beneficiary;
- Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage on that residence;
- Funeral expenses for the employee's deceased parent, spouse, etc.; or
- Certain expenses relating to the repair of damage to the employee's principal residence.

Starting in 2009, the 403(b) written plan or program should be amended prior to making any hardship distributions based on these events.

Keep in mind that an immediate a heavy financial need is based on all relevant facts and circumstances and may include reasons other than those described above.

Amount necessary to satisfy that financial need

You can't treat a distribution as necessary to satisfy an immediate and heavy financial need if:

- The distribution is more than the amount needed to relieve the employee's financial need,
  - The amount needed may include amounts needed to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution.
- The need can otherwise be relieved by:
  - Reimbursement or compensation by insurance or otherwise;
  - Liquidation of the employee's assets;
  - Cessation of elective or employee contributions under the plan;
  - Other distributions or nontaxable loans (at the time of the loan) from plans maintained by the employer or any other employer;
  - Borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.
- The financial need may be satisfied from other resources that are reasonably available to the employee including those assets of the employee's spouse and minor children.
- The distribution isn't limited to the total of employee salary deferrals, excluding income, reduced by any prior hardship distributions.

One of the above actions cannot reasonably relieve a financial need if the effect would be to increase the amount of the need. For example, a plan loan cannot reasonably relieve the need for funds to purchase a principal residence if the loan would disqualify the employee from obtaining other necessary financing.

The 403(b) plan sponsor must prohibit an employee, under the terms of the plan or an otherwise legally enforceable agreement, from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least six months after receipt of the hardship distribution.

It's important that a record be available of all information used to determine that a participant was eligible for a hardship distribution and the amount distributed was the amount necessary to alleviate the hardship. Failing to meet hardship requirements could cause the employee's entire account to become immediately taxable. Even though the 403(b) plan sponsor may be relying on outside vendors for much of their plan administration, plan sponsors bear ultimate responsibility for following the written plan, including hardship requirements. Hardship distributions are generally subject to the 10% additional tax if they are made prior to the participant reaching age 59 ½.

For distributions made after September 11, 2001, the 10% early withdrawal penalty does not apply to qualified reservist distributions. A qualified reservist distribution is:

- One made to a reservist called to active duty for a period of at least 180 days or for an indefinite period.
- Made beginning on the date of the order calling to active duty and ending on the close of the active duty period.
- Made from an IRA or from amounts attributable to elective deferrals under a 403(b) plan, 401(k) plan or certain similar arrangements.

How to find the mistake:

Review your 403(b) plan to determine if it allows for hardship distributions, and then review your plan's hardship procedures. If you don't have procedures for reviewing hardship applications, establish them. If you discover the vendors have been solely responsible for the hardships, reach out to them and establish procedures for sharing hardship information and ensuring that employee contributions are suspended for at least six months.

Review all distributions made during the year and determine which ones may have been a hardship distribution. Distributions to participants who continue to be employees are very limited, so start your review with those distributions. For each hardship distribution, make a determination whether it met the hardship distribution requirements outlined by your 403(b) plan. Look for abuse of the hardship feature. Almost anyone can find himself or herself in need of a financial bailout; however, if most of your hardship requests come from a specific group of employees, you may have some participants abusing the plan's hardship feature.

How to fix the mistake:

Our discussion of mistakes involving hardship distributions focuses on mistakes involving plan document issues and distributions that don't meet IRS hardship rules.

- The 403(b) written program does not allow for hardship distributions, but in operation, hardship distributions do occur.
  - Correction may involve a retroactive amendment to allow hardship distributions.
  - Hardship distributions must have been made available, with the exception of public school employees, in a nondiscriminatory manner.
- Hardship distributions are made to participants that don't meet the hardship requirements of the written program or the 401(k) regulations.
  - Correction may involve a repayment to the plan of the amounts that didn't meet the hardship requirements of the plan or aren't in compliance with the 401(k) regulations.

Example 1:
ABC School maintains a 403(b) plan with 150 participants as of December 31, 2012. Plan provisions don't allow for hardship distributions; however, hardship distributions were made to several participants during the 2008 and 2009 plan years. During a review of its plan's operations, ABC determined that these hardship distributions were made available to all participants and the IRS rules for hardship distributions were met. ABC discovered the failure on July 1, 2012.

Example 2:
XYZ Public School, with 7,500 participants (as of December 31, 2012), provides for hardship distributions in its 403(b) plan; however, the 403(b) vendors make the determination that a distribution meets the hardship requirements and keep all the records. During an internal review of its plan for the 2010 year, XYZ determined that ten hardship distributions made by one vendor did not have documentation. Further investigation by XYZ revealed that five of the distributions were not based on any hardship. There were no written procedures in place to review a participant's hardship application. XYZ discovered the failure on April 27, 2011.

Correction programs available:

Self-Correction Program:
Example 1:
IRS considers this mistake an operational error that ABC may correct under SCP if it determines that:

- it has established practices and procedures in place to promote the overall compliance of its plan, and
- the hardship withdrawals were administered in a nondiscriminatory manner.

If ABC applies the provisions of Revenue Procedure 2013-12, they may correct the mistake by adopting a retroactive plan amendment, effective January 1, 2009, which would allow the 403(b) plan to provide for the hardship distributions that were made during 2009. This amendment must provide that the hardship distribution option is available in a nondiscriminatory manner. Note that the retroactive plan amendment cannot be made effective prior to January 1, 2009, because there was no written plan requirement. This retroactive amendment correction method is not available under Revenue Procedure 2008-50. For 2008, ABC wouldn't have to take any action based on the facts in this example if the specific annuity contracts and/or custodial accounts of the affected plan participant contained appropriate financial hardship language. If this language was not in those documents or was not in compliance with the financial hardship rules, then it may be necessary to seek repayment of the hardship distributions by the affected participants if the participants are still employed by the plan sponsor.

Example 2:
This mistake may not be eligible to correct under SCP since neither XYZ, nor one of its 403(b) vendors maintained adequate policies and procedures in place for hardship distributions and overall compliance with the distribution restrictions applicable to 403(b) plans.

Voluntary Correction Program:
ABC may also correct the mistake under VCP by adopting a retroactive plan amendment, effective January 1, 2009, to provide for the hardship distributions that were made available. The amendment must also provide that the hardship distribution option is made available in a nondiscriminatory manner. For 2008, ABC could apply the methods used for SCP in a VCP submission as long as the correction doesn't involve corrective plan amendments.

The compliance fee for a 150-participant plan is $5,000 per section 12.02 of the EPCRS Revenue Procedure. ABC should consider using the model documents in Appendix C, including Schedule 9 and Forms 8950 and 8951.

XYZ may correct this mistake under VCP.

- For the five participants eligible to receive a financial hardship distribution, the plan sponsor will work with its 403(b) vendors to ensure that it obtains all necessary documentation before any financial hardship distributions are made. Those specific steps must be described and be part of the VCP submission.
- XYZ must request that the five participants who received distributions that did not meet the financial hardship requirements of the plan repay the amounts plus earnings to the plan.
- In addition, XYZ must improve the plan's administrative procedures regarding hardships to ensure that such distributions are only made if there is a genuine financial hardship consistent with the requirements of the 401(k) regulations, and starting in 2009, the written terms of the 403(b) plan.

Expecting these amounts to be repaid in full to the plan may be a problem because the participants may have already spent the funds. Possible tax issues on the distributions could further complicate the final correction. Correction will depend on all the facts and circumstances of each individual situation and may include repayments and possibly some form of plan amendment. If this represents your situation, file a VCP submission and work with the agent to determine the proper correction.

The compliance fee for a 7,500-participant plan is $20,000 per section 12.02 of the EPCRS Revenue Procedure. The plan is exempt from filing Form 5500 as the plan sponsor is

presumably a government entity. XYZ would submit a submission, according to Revenue Procedure 2013-12 to correct the mistake under VCP. XYZ should consider using the model document in Appendix C Part 1.

Audit Closing Agreement Program:
Under Audit CAP, correction of these mistakes are the same as described above. The plan sponsor and the IRS enter into a closing agreement outlining the corrective action and negotiate a sanction based on the maximum payment amount.

How to avoid the mistake:

The following are a few things employers can do to cut down on mistakes in this area:

- Starting in 2009, review your 403(b) plan to determine when and under what circumstances a distribution can be made.
- Make certain the written program matches your intentions for providing for hardship distributions.
- Establish hardship distribution procedures with your 403(b) vendors. Work with your vendors and other service providers to determine if the procedures are sufficient to avoid mistakes.
- Only allow hardship distributions that meet the requirements of the 401(k) regulations and your 403(b) plan.
- Look for signs that the hardship distribution program is being abused or badly managed.
  - Too many hardship requests by one group or division may be a sign of abuse.
  - Requests for hardship distributions that appear identical from multiple employees may require further attention.
  - Only the higher paid employees have hardship distributions. This may be a sign that rank-and-file employees have not been properly notified of the availability of hardships

Return to Table