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## IRS Summarizes Resolution Procedure for Ineligible 403(b) Sponsors

In its February 11, 2011, edition of *Employee Plan News*, the Internal Revenue Service (the Service) reiterated its process for resolving situations where section 403(b) programs have been adopted or operated by an employer that is not a tax-exempt or educational organization permitted to sponsor that program. This situation can arise, for example, where (i) an ineligible employer mistakenly adopts a section 403(b) plan in the first instance, or (ii) an eligible employer changes or loses its section 501(c)(3) status and contributions are made to the section 403(b) program for a period when the employer is not an eligible sponsor. In this latter case, if contributions cease at or before the time the employer ceases to be an eligible employer, the following resolution procedure is not required. Treas. Reg. §1.403(b)-10(a)(2).

In general, if (i) resolution is required and (ii) there is no notice of or ongoing Employee Plans, Exempt Organization or criminal examination of the employer or plan by the Service, the employer should:

- Complete and file with the Service a [streamlined submission](#) under the Service's Voluntary Compliance Program of the [Employee Plans Compliance Resolution System](#), including the form of Enforcement Resolution (which is completed by the Service);
- Include in the submission the [schedule for employer eligibility failure](#). The schedule includes a commitment to (i) cease all new contributions no later than the date of the submission, (ii) permit no new employer or employee contributions in the future, and (iii) maintain all prior contributions and earnings in section 403(b) annuities or custodial accounts until distribution is permitted under the applicable rules of section 403(b); and
- Pay the specified correction fee to the Service. The current schedule of standard fees is as follows:

Number of Participants	Fee
20 or fewer	\$ 750
21-50	\$ 1,000
51-100	\$ 2,500
101-500	\$ 5,000
501-1,000	\$ 8,000
1,001-5,000	\$15,000
5,001-10,000	\$20,000
More than 10,000	\$25,000

Upon issuance of the Enforcement Resolution by the Service, the program will not be disqualified under section 403(b), and the participants will receive the tax treatment provided under section 403(b).

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