



Ministers Benefit Association (MBA)
403(b) Employer Rules, Adoption and Service Agreement
(MBA as One of Multiple Service Providers to a NQCCO)

This agreement is an [check one] original agreement amended agreement

This document is for the use of Assemblies of God ministry employers which meet all of the following requirements:

- Are **nonqualified church-controlled organizations (NQCCO)**.
- Are using MBA as one of the service providers (but not the sole provider) for their 403(b) plan.

Certain information will need to be shared with MBA and the other service providers in order to ensure compliance with 403(b) regulations. MBA will ask for that information when required to be obtained by us.

Terms used in this document and in the MBA Retirement Plan document have the same meaning.

If more space is needed to provide additional details of the plan information requested, please attach an addendum to this signed agreement. The addendum must be signed and dated as well as reference the appropriate section of this document.

I. EMPLOYER RULES & ADOPTION AGREEMENT

With adoption of this document, _____
Name of Ministry

Address of Ministry City, State, Zip Code

sets forth: 1) the rules of contribution and eligibility for participation of their employees in the 403(b) plan (Plan), 2) will use MBA as one of their service providers for plan purposes, 3) will follow the NQCCO rules on **universal availability** of elective deferrals, when applicable, and **nondiscrimination coverage**, 4) adopts the provisions of the MBA Retirement Plan document and the appropriate documents of other approved service providers and incorporates them by reference for 403(b) compliance purposes and for coordination of administration. The effective date of this agreement is _____, 20____.

This plan is a retirement income account under section 403(b)(9) of the Internal Revenue Code (IRC).

You may only contribute for your employees who receive W-2 income.

1. SERVICE PROVIDERS

- A. Employer adopts MBA as a service provider. The other approved service providers will be listed on another section of this document. Employer shall operate its plan in accordance to 403(b) regulations and other federal and state laws, the provisions of this document, and the provisions of the service providers' documents and agreements.
- B. Employer shall share information with the service providers, as needed, to ensure compliance of 403(b) regulations is met.

Certain features (e.g., loans, hardship distributions, designated Roth accounts, traditional after-tax accounts) may not be offered by all service providers. Check with each service provider to find which features they offer.

2. COMPENSATION

Recommended: Include all the items below for determining compensation for plan purposes.

Note A: For purposes of employer matching and employer discretionary contributions, compensation in excess of 401(a)(17) limits cannot be considered. The limit for 2019 is \$280,000. This amount is adjustable annually.

Note B: nondiscrimination testing is based on compensation as defined in IRC 414(s). Use or nonuse of some of the options below may affect the organization passing the test if you have highly compensated employees.

[THIS SECTION PROVIDES THE DEFINITION OF COMPENSATION WHEN CALCULATING A PERCENTAGE OF DEFERRALS AND/OR EMPLOYER CONTRIBUTIONS]

- Regular pay as reported on Federal tax form W-2
- Overtime pay as reported on Federal tax form W-2
- Bonus pay as reported on Federal tax form W-2
- Minister's housing allowance (credentialed ministers only)
- Annual rental value of a ministry-provided parsonage (credential ministers only)
- Other income as included on a Federal tax Form W-2 (please list)

Amounts deducted and excluded from taxable income as allowed by law, such as 403(b) elective deferrals, a cafeteria plan (section 125 flexible benefit plan) contribution, etc., shall be part of compensation unless otherwise noted. Check here if a signed addendum is attached that makes changes to this statement.

Contributions should not exceed legal limits. See maximum contribution limits on our web site www.agfinancial.org.

3. HOURS OF SERVICE

An hour of service shall be determined based on the number of hours for which an employee is paid or entitled to be paid unless otherwise noted in a signed addendum attached hereto.

Check here if an addendum is attached defining hours of service.

4. EMPLOYEE CONTRIBUTIONS (DEFERRALS AND DEDUCTIONS FROM PAY)

- We do not offer employee deferral contributions (go to section 5)

DEFERRALS SHOULD ONLY BE MADE PURSUANT TO A WRITTEN SALARY REDUCTION AGREEMENT SIGNED BY AN EMPLOYEE EXCEPT TO THE EXTENT THAT AN AUTOMATIC ENROLLMENT PROGRAM HAS BEEN ADOPTED (SEE SECTION 6).

IF AN EMPLOYEE HAS MADE A ONE-TIME IRREVOCABLE ELECTION TO HAVE COMPENSATION DEFERRED TO A 403(b) PLAN ON OR BEFORE THE EMPLOYEE FIRST BECOMING ELIGIBLE TO PARTICIPATE, OR IF COMPENSATION DEFERRALS ARE MANDATORY AS A CONDITION OF EMPLOYMENT, SUCH CONTRIBUTIONS ARE NOT CONSIDERED EMPLOYEE DEFERRALS FOR CONTRIBUTION LIMITATION PURPOSES. THESE CONTRIBUTIONS WILL BE CONSIDERED EMPLOYER CONTRIBUTIONS AND ARE SUBJECT TO THE HIGHER OVERALL LIMITS OF 403(b) CONTRIBUTIONS. THESE CONTRIBUTIONS SHOULD ALSO BE SUBMITTED TO US MARKED AS EMPLOYER CONTRIBUTIONS. THESE CONTRIBUTIONS ARE SUBJECT TO FICA TAXES.

EMPLOYEES' RIGHTS TO MAKE A SALARY REDUCTION CONTRIBUTION MAY NOT BE CONDITIONED ON ANY OTHER RIGHT OR BENEFIT (EXCEPT FOR AN EMPLOYER MATCHING CONTRIBUTION). EXAMPLE: YOU CANNOT REQUIRE AN EMPLOYEE TO TAKE A CERTAIN LEVEL OF HEALTH INSURANCE IN ORDER TO BE ABLE TO MAKE SALARY REDUCTIONS TO THE 403(b).

The Internal Revenue Code and regulations require that if you offer deferrals to one employee you must offer them to all employees ([universal availability rule](#)) with some exceptions:

- Employees working less than 20 hours per week.
- Students performing services described in IRC 3121(b)(10).
- Non-resident aliens with no U.S. source income.
- Employees whose contributions to the plan would be less than \$200 per year
- Employees eligible to defer under a 401(k) or 457(b) plan that you maintain.

As part of the universal availability rules, regulations require that employers demonstrate that they have given an "effective opportunity" for all eligible employees to make an elective deferral (if allowed by the plan). Such notice can be made by payroll stuffers, emails, posters, and similar items. The effective opportunity should be made at the time the employee first becomes eligible to make elective deferrals and annually thereafter. The effective notice should contain:

- Notice of availability of making elective deferrals,
- The period of time during which an elective deferral may be made, and
- Whether any other rights or benefits (such as matching employer contributions) are conditioned on the employee's making elective deferrals.

- A. Eligibility requirements (**who** is eligible)—the following employees are eligible to participate in the Plan through deferrals and deductions from their pay:

403(b) regulations require that employee deferrals be transferred to providers within a period no longer than is reasonable for proper plan administration. Example: Transfer elective deferrals within 15 business days following the month in which these amounts would have been paid to the participant.

All employees are eligible to participate. ***Recommended Option**

OR

All employees are eligible to participate except for the following [check all that apply]:

Expected to work less than _____ hours per _____ [Cannot be more than the equivalent of 20 hours per week/1000 hours per year].

Students performing services described in IRC 3121(b)(10).

Non-resident aliens with no U.S. source income.

Employees whose contributions to the plan would be less than \$200 per year.

Employees eligible to defer under a 401(k) or 457(b) plan that this ministry maintains.

- Employees must be given an effective opportunity to make elective deferrals to the plan if they meet the eligibility requirements of this section regardless of their length of employment.

Employee deferrals are always 100% vested.

- B. Employees who qualify for employee contributions shall be able to make pre-tax deferrals to the Plan. They may also make the following after-tax contributions to the Plan if the boxes are checked:

Designated Roth contributions. Please note:

- If a designated Roth contribution is allowed, a pre-tax deferral must be allowed.
- A designated Roth contribution has different distribution restrictions than a Roth IRA. The distribution restrictions are the same as for pre-tax deferral contributions.
- Only employee deferrals are eligible to be designated Roth contributions. Employer-paid contributions are not eligible to be designated Roth contributions.
- Designated Roth deferral contributions are subject to the universal availability rules listed above.

Traditional after-tax contributions. Please note:

- Traditional after-tax contributions made to a 403(b) plan have been taxed before the contribution is made. Earnings grow tax-free while in the Plan. Each distribution is considered a proportionate withdrawal of tax-free contributions and taxable earnings.
- There are no withdrawal restrictions on traditional after-tax contributions. The earnings portion of a distribution is taxable and a 10% early withdrawal penalty may apply on the earnings in certain circumstances.
- Traditional after-tax contributions are subject to the nondiscrimination rules mentioned in section 5 below.

- C. The annual notice to employees who are eligible for elective deferrals will be given 30 days prior to _____ [Choose a consistent period such as the employee's anniversary date OR January 1 of each year].

5. EMPLOYER CONTRIBUTIONS

We do not offer employer-paid contributions (go to section 6)

Note: For purposes of employer matching and employer discretionary contributions purposes, compensation in excess of 401(a)(17) limits cannot be considered. The limit for 2019 is \$280,000. This amount is adjustable annually.

Regulations require that employer contributions do not discriminate in favor of **highly compensated employees (HCEs)**. Policies should be developed to encourage participation where there are employer contributions that match employee deferrals. When there are HCEs in the organization, the Employer should take steps to have the plan tested to meet the nondiscrimination requirements in employer matching and employer discretionary contributions.

A. Eligibility requirements (**who** is eligible)—the following employees are eligible to participate in the Plan through employer-paid contributions:

- All employees are eligible to participate. ***Recommended Option**
OR
- All employees are eligible to participate except for the following [check all that apply]:
- Expected to work less than _____ hours per _____ [Cannot be more than the equivalent of 20 hours per week/1000 hours per year].
 - Students performing services described in IRC 3121(b)(10).
 - Non-resident aliens with no U.S. source income.
 - Employees whose contributions to the plan would be less than \$200 per year.
 - Employees eligible to defer under a 401(k) or 457(b) plan that this ministry maintains.
 - Employees who have not attained age (cannot exceed age 21).

(IF 5A HAS BEEN COMPLETED, SECTION 5B AND 5C MUST BE COMPLETED)

B. Service requirements (**when** an employee is eligible to participate)—the following is required before an eligible employee listed in 5A above will be eligible for employer contributions (check one):

- The first day that an employee meets eligibility requirements listed above. **Recommended Option**
- After months of service [cannot exceed either 1 year of service if employer contributions are not fully vested after 2 years of service OR cannot exceed 2 years in any other situation]. **We strongly recommend immediate vesting of employer contributions.**

C. The following types of employer contributions shall be made for eligible employees as defined in item 5A above and who meet the service requirements defined in item 5B above (check all that apply):

- Matching contributions (select one of the options):
- A matching contribution of 100% of the employee's deferral contribution up to a maximum of _____% of compensation*.
 - A matching contribution of _____% [such as 50%] of the employee's deferral contribution up to a maximum of _____% of compensation*.
 - As determined annually by the board
 - Other* (describe) _____
- Discretionary (non-matching) employer contributions (select one of the following options):
- A fixed percentage equal to _____% of the employee's compensation*.
 - A percentage of eligible employee's compensation* as determined annually by the ministry's official board.
 - Other* (describe) _____

* Eligible compensation used for these contribution calculations cannot exceed the 401(a)(17) limits. See the note under the section 2 heading.

6. OPTIONAL PROVISION: AUTOMATIC ENROLLMENT

Consult your legal advisor regarding the effect your state's wage garnishment laws may have on your ability to adopt automatic enrollment provisions. Review the benefits and responsibilities of automatic enrollment on our web site www.AGFinancial.org. Certain automatic enrollment policies are part of the Plan by reference.

II. OTHER SERVICE PROVIDERS IDENTIFIED

Employer identifies, in the section below, vendors (service providers) that it currently has approved for Plan services and those that it has formerly used for retirement services.

Upon completion of proper forms, MBA is authorized to receive transfers of employee and former employee accounts from all service providers listed below. Such forms shall be subject to MBA's approval.

Upon completion of proper forms, MBA is authorized to transfer accounts it holds to approved vendors. Such forms shall be subject to MBA's approval

By checking here, the Employer indicates that it has used those vendors identified in the following table as retirement service providers for its employees subsequent to December 31, 2004.

Vendor Name	Select One	
_____	Approved	Previous

If an employee has taken a hardship distribution, pre-tax deferrals, designated Roth deferrals, and traditional member after-tax contributions should cease for that employee for a period of six months following the distribution.

If any employee has an outstanding loan with another vendor, please communicate the loan information with MBA so that MBA can properly administer any other plan loan within IRS and Plan limitations. Such information should include the following information: Name and Social Security number of the employee, the vendor administering the loan, maturity date of the loan, current balance, and the highest outstanding balance in the last 12 months.

III. SERVICE AGREEMENT

1) Employer Certifications

- a) Employer certifies that it meets all of the following criteria in order to participate as a plan sponsor in MBA's 403(b) retirement plan:
 - i) It is an organization which is associated with or controlled by the Assemblies of God (AG), an Assemblies of God District Council or an Assemblies of God church.
 - ii) It is a 501(c)(3) organization under the Internal Revenue Code (IRC) of the United States.
 - iii) It is not a church or an Assemblies of God District Council.
 - iv) It does not meet the qualifications of a qualified church-controlled organization under Internal Revenue Code section 3121(w)(c)(3).
- b) Employer shall make contributions for employees only. Employer shall not make contributions for independent contractors and other self-employed individuals.
- c) The Employer certifies that MBA shall be one of two or more approved service providers of 403(b) and other IRS qualified retirement plans for its employees. As such, Employer will make retirement contributions and allow transfers and exchanges from prior qualified plans solely to the approved providers.
 - i) Employer will identify any approved vendor used and any vendor or investment provider previously used for retirement plan service.

- 2) **Common responsibilities.** The following are the common and/or joint responsibilities of MBA and Employer:
- a) Agree to share information that is necessary for each party to carry out its responsibilities under IRC 403(b), U.S. Treasury Regulations for 403(b), any other federal or state law, and the written plan provisions.
 - b) Maintain and administer the Plan according to federal and applicable state laws.
 - c) Will not rely on employee or former employee self-certifications to carry out administration and compliance of the Plan regarding employment status including eligibility to delay required minimum distributions, eligibility to participate, contribution limits, eligibility for Plan loans, qualifications for hardship distributions, eligibility for other distributions, and any other matters prohibited by 403(b) regulations.
 - i) Section 2c of this document does not preclude receiving some self-certifications from the employee. The intent of the provision of the section is that the primary reliance on certification for compliance with 403(b) regulations will be from sources other than the employee.
 - ii) Employees who are responsible for Plan administration and compliance can certify items on behalf of the employer when proper documentation is available.
 - d) Implement necessary corrective action steps in relation to listed responsibilities.
- 3) **Employer responsibilities.** The following are Employer's responsibilities under this Agreement:
- a) Serve as the plan administrator.
 - b) Maintain a written plan that contains provisions which:
 - i) Identifies which employees or groups of employees are eligible to participate,
 - ii) Identifies when employees are eligible to participate,
 - iii) Identifies what contribution benefits are available to employees,
 - iv) Gives all employees, with exceptions listed in IRC 403(b)(12)(A)(ii), the opportunity to make elective deferrals if the Plan allows for such deferrals,
 - v) Defines compensation for purposes of determining contribution benefits,
 - vi) Contains any other provision of eligibility and benefits,
 - vii) Does not violate 403(b) regulations, federal and state laws, and MBA written plan provisions and policies.
 - c) Follow the terms of its written plan.
 - d) For the employee accounts maintained by MBA, Employer adopts the provisions of MBA's written plan by reference as part of Employer's plan.
 - e) Provide MBA a copy of the Employer written plan document, including any documents incorporated by reference, and provide MBA with any future amendments made to such plan document.
 - f) Inform eligible employees what contribution benefits are available and information on how to enroll in the Plan.
 - g) Provide eligible employees with proper forms for deferrals to the Plan if the Employer allows such contributions.
 - h) Transfer contributions to MBA on behalf of employees within a period no longer than is necessary for proper Plan administration. Contributions shall be made on an MBA-provided form or a form that is acceptable to MBA.
 - i) Monitor contributions so that the aggregated contributions to all service providers and vendors do not exceed maximum allowed contributions under IRC sections 402 and 415 including the 15-years of service catch-up provision of IRC 402(g)(7) and the alternative limit under IRC 415(c)(7).
 - j) Maintain records of Plan contributions and actions taken regarding administration of the Plan.
 - k) Cease pre-tax, designated Roth deferrals, and traditional after-tax contributions to MBA and any other service provider or vendor on behalf of employees who have taken a hardship distribution from the Plan.
 - l) Perform administrative functions for determining if an employee qualifies for a hardship distribution under U.S. Treasury Regulation 1.403(b)-6 and exchange such information with MBA for processing the distribution.
 - m) Perform administrative functions for determining if an employee exceeds plan loan limitations under Internal Revenue Code section 72(p) and exchange such information with MBA and other service providers as needed for processing plan loans.
 - n) Perform administrative functions necessary for plan-to-plan transfers and contract exchanges under U.S. Treasury regulation 1.403(b)-(10)(b). Such functions shall include entering into an information sharing agreement with service providers for contract exchanges.
 - o) Perform other administrative functions and information sharing with MBA and other service providers for all responsibilities that need coordination of Internal Revenue Code requirements.
 - p) Provide employee enrollment information to MBA on MBA-provided forms or on forms that are acceptable to MBA.
 - q) Inform MBA when an employee has had a severance of employment. Such information shall be in a manner and form that is acceptable to MBA,
 - r) Communicate errors in enrollment information, contributions, eligibility of employees to participate, and any other matter to MBA as soon as administratively feasible.
 - s) Assign one or more employees as an MBA contact for purposes of implementing, administering, and coordinating administration of the Plan.
 - t) Inform MBA when Employer no longer qualifies to participate in the Plan as an eligible employer as defined in MBA's plan document and section 1a above.
 - u) Provide for nondiscrimination testing in employer-paid contributions and employer matching contributions applicable to coverage, contributions, and other plan benefits listed under IRC sections 401(a)(4), 401(a)(5), 401(a)(17), 401(m), and 410(b) when the employer has highly compensated employees as defined by Internal Revenue Code 414(q)(1).

- 4) **MBA Responsibilities.** MBA's responsibilities are limited to accounts maintained by MBA. MBA shall have no responsibilities, except responsibilities to share information as required by 403(b) regulations, in relation to accounts maintained by other service providers and vendors under the Employer's Plan. The following are MBA's responsibilities under this Agreement:
- a) Maintain a denominational written plan that contains general 403(b) provisions including, but not limited to the following:
 - i) Identify maximum contribution limits that do not violate provisions of IRC 403(b) including those referred to in IRC 415 and IRC 402.
 - ii) Identify the time and form of benefit distributions that do not violate IRC 403(b).
 - iii) Authorizes MBA to designate clergy housing allowance on distributions made to ministers of the gospel within the meaning of IRC 107.
 - iv) Contains other provisions for the proper administration of the Plan that are not allocated to the Employer under this Agreement.
 - b) Establish policies and procedures for the proper administration of the Plan.
 - c) Provide for recordkeeping of employee 403(b) accounts in the Plan.
 - d) Provide investment options for employee contribution accounts in the Plan.
 - e) Accept and process employee contributions from the Employer.
 - f) Monitor and process requests for distributions including, qualified domestic relation orders (QDRO) and, when accompanied by Employer's certifications of employee eligibility, hardship distributions and Plan loans according to MBA's Plan provisions
 - g) Report distributions for tax purposes.
 - h) Assist in informing the Employer on provisions of IRC 403(b) and U.S. Treasury regulations regarding 403(b) plans via the AG Financial Web site or by other means.
 - i) Assist in providing employees 403(b) educational material through the AG Financial Web site or by other means.
 - j) Provide customer service to Employees regarding their accounts in the MBA 403(b) Plan. Such service shall not include service for those provisions that are controlled by the employer, e.g., eligibility, service requirements, contribution benefits, and definition of compensation for contribution purposes.
- 5) **Miscellaneous Provisions.**
- a) **Confidentiality.** The Parties agree that each, or their authorized representatives, will maintain as confidential any information provided by the other pursuant to this Agreement, unless otherwise required by law.
 - b) **Indemnification.** The Employer agrees to indemnify the MBA, its parent, subsidiaries, affiliates, its officers, directors and employees against any loss, liability or expense, including reasonable attorney's fees, incurred by them arising out of any breach, act or omission or violation of law by Employer in connection with MBA's performance of this Agreement.
 - c) **No Authority to Sign for Company.** The Employer has no authority to enter into contracts or agreements on behalf of the MBA. This Agreement does not create an employment relationship, a partnership or joint venture between the parties hereto.
 - d) **Accuracy of Information.** The Parties agree that each is obligated to provide only information available on its records and MBA does not guarantee the accuracy of any information that is based on certification by a participant or a previous provider.
 - e) **Assignment.** The Parties agree that the Employer may authorize (in writing) a third party to provide the information described above. However, this Agreement is not assignable without the prior written consent of MBA.
 - f) **Successors and Assigns.** All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.
 - g) **Term.** The dates stated in this Agreement, except for the execution date, shall be deemed to be extended to conform to any later available compliance dates that may be permitted by the IRS after the date this Agreement is signed.
 - h) **Headings.** Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.
 - i) **Waiver.** Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.
 - j) **Amendment or Termination.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto. This Agreement will remain in effect until terminated at any time by either of the parties upon thirty (30) days written notice, provided, however, that no amendment or termination of this Agreement shall terminate or limit the information sharing necessary to comply with Code § 403(b) and the Regulations with respect to any Contracts existing prior to the date of such amendment or termination or affect any liability incurred by the MBA prior to the date of such amendment or termination.
 - k) **Unenforceability of Provisions.** If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
 - l) **Governing Law.** This Agreement shall be governed under the laws of the State of Missouri.

IV. ADOPTION AND EXECUTION

By signing below, I certify that I am a duly authorized officer or representative of the ministry named and that this ministry has adopted these rules as part of its 403(b) plan. I also certify that this ministry agrees to follow the provisions in this document and to perform the administrative functions associated with complying with the requirements of IRC section 403(b) and regulations except to the extent that those functions are allocated to MBA in its plan document and any service agreements signed by the parties.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year written below. The parties hereto agree that facsimile signatures shall be as effective as if originals.

Agreement is entered into as of the _____ day of _____, 20_____.

ASSEMBLIES OF GOD

MINISTERS BENEFIT ASSOCIATION:

EMPLOYER:

By: _____
Authorized MBA Officer's Signature

By: _____
Authorized Employer Officer's Signature

Name: _____

Name: _____

Title: _____

Title: _____

The MBA Officer's signature does not represent acceptance or approval of the Employer Rules and Adoption Agreement. It serves exclusively as acceptance of the Service Agreement.

Please provide contact information in case we have questions: (please print in the fields below).

Name: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

This information and the information contained in links are not considered legal or tax advice. AG Financial Solutions and MBA are available to give guidance and assistance to your ministry and your ministry's legal and tax professionals. Changes to these rules will require adoption of amended rules by the ministry employer. Please send a copy of the amended rules to MBA with a note to indicate the amended status.

WHEN COMPLETED, PLEASE SEND MBA A COPY OF THIS DOCUMENT:

MAIL: 3900 S. OVERLAND AVE, SPRINGFIELD, MO 65807 FAX: 417.831.7429 EMAIL: MBA@AGFINANCIAL.ORG