

## Regulation 2510.3-2(f)

The Department of Labor (DOL) provides plans sponsored by §501(c)(3) organizations with a safe harbor from ERISA under 29 CFR 2510.3-2(f). This exemption indicates that the 403(b) plan must be funded with only salary reduction contributions. The *regulation follows*, and it limits involvement by the employer and requires all of the following items to be satisfied:

1. Participation must be voluntary.
2. All rights under the annuity contract or custodial account are enforceable solely by the employee, by a beneficiary of such employee, or by any authorized representative of such employee or beneficiary.
3. The sole involvement of the employer is limited to any of the following:
  - a. Permitting funding agents to publicize their products to employees.
  - b. Requesting information concerning proposed funding media, products or annuity contractors.
  - c. Summarizing or otherwise compiling information provided by proposed funding media in order to facilitate review and analysis by employees.
  - d. Entering into salary savings agreements with employees, withholding compensation under the terms of such agreements, remitting amounts withheld to applicable funding agents and maintaining administrative records with respect to such withholding.
  - e. Holding in the employer's name, one or more group annuity contracts covering its employees.
  - f. Limiting the funding media or products available to employees and/or limiting the contractors who may approach employees to a number, which is designed to afford employees a reasonable choice in light of all relevant circumstances. Such circumstances include:
    - i. the number of employees affected,
    - ii. the number of contractors, who have indicated interest in approaching employees,
    - iii. the variety of available funding products,
    - iv. the terms of the available arrangements,
    - v. the administrative burdens and costs to the employer, and
    - vi. the possible interference with employees' performance as a result of the direct solicitation by sales agents.
  - g. The employer receives no direct or indirect consideration or compensation for administrative services provided under the program, other than reasonable reimbursement for expenses incurred by the employer in providing such services. ■