



TEXAS TECH UNIVERSITY™

Operating Policy and Procedure

OP 70.09: Tax Deferred Account Program

DATE: June 1, 2018

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to define policies and procedures applicable to the Tax Deferred Account (TDA) Program of Texas Tech University.

REVIEW: This OP will be reviewed in June of even-numbered years by the Assistant Vice President for Human Resources and the Managing Director of Payroll & Tax Services with substantive revisions forwarded through administrative channels to the Vice President for Administration & Finance and Chief Financial Officer.

POLICY/PROCEDURE

1. General Plan Description

The Texas Tech University System Tax Deferred Account (TDA) Program is authorized under Section 403 (b) of the Internal Revenue Code. Traditional and Roth accounts are available. The TDA program is a governmental plan and is not covered by the Employee Retirement Income Security Act of 1974 (ERISA).

Traditional TDA – the employee’s contributions will be deducted from his/her pay before federal income tax is calculated, so the employee does not pay current income tax on the contribution or on the investment earnings.

Roth TDA – the employee’s contributions will be deducted from his/her pay after federal income tax is calculated, so the employee pays current income tax on the contributions. The employee does not pay income tax on the investment earnings now or in the future.

A 403(b) plan, also known as a tax-sheltered annuity (TSA) plan, is a retirement plan for certain employees of public schools and employees of certain tax-exempt organizations.

Individual accounts in a 403(b) plan can be one of the following types:

- An annuity contract, which is a contract provided through an insurance company
- A custodial account, which is an account invested in mutual funds

The TDA Program may be combined with participation in the Teacher Retirement System, the Optional Retirement Program, and/or the TexaSaver 457 Plan up to the limits prescribed by law.

Under the TDA Program, employees enter into an agreement with Texas Tech to reduce gross salary up to specified limits, and to request that Texas Tech apply the proceeds of such reduction to the purchase of a 403(b) fixed annuity, variable annuity, or custodial mutual fund account from

vendors approved by Texas Tech. Contributions made under the TDA Program that are within the prescribed limits are not subject to income tax until received by the employee, unless they are designated Roth contributions. The employee owns and controls all rights to the benefits of the plan selected. The investments values of the plan will accumulate income tax free until retirement, death, disability, or until such time the employee elects to receive the benefit payments, subject to provisions of the IRS Code.

No contract issued under the TDA Program may provide a life insurance feature. Participation in the TDA Program is voluntary.

2. Eligibility

All employees, except students performing services described in Internal Revenue Code section 3121(b)(10), are eligible to participate in the TDA Program.

3. Contribution Limits

a. The maximum amount that an employee may contribute to the TDA Program is the lesser of:

- (1) 100 percent of includable income, or
- (2) The IRS regulated limit for the current calendar year

The limit is determined annually by federal legislative action.

b. The combined tax deferred account and optional retirement deferrals cannot exceed 100 percent of compensation or the IRS Code Section 415(c)(1)(a) deferral limits.

c. Participants who are or will be age 50 or older at any time during a calendar year are allowed to make additional catch-up contributions. This limit is determined annually by federal legislative action.

d. Participants who have at least 15 years of service and a history of low contributions may qualify for an additional \$3,000 per year deferral, subject to a lifetime maximum of \$15, 000.

e. The calculation of the maximum allowable contribution allowed is the responsibility of the employee. IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans) is available from the Internal Revenue Service to aid individuals in complying with sheltering limits.

f. Employees are advised that if the Internal Revenue Service rules adversely against the TDA Program or the sheltering of an individual employee, only the employee assumes liability for the payment for all taxes due. If federal income tax laws, state laws, and/or court rulings result in adverse rulings against the taxability of any of these contributions and/or earnings, the employee will be solely liable for the payment of all taxes due. Texas Tech assumes no responsibility for the individual's tax liability with respect to the Tax Deferred Account Program.

Texas Tech payroll system in coordination with Human Resources monitors TDA contributions to assist employees with total yearly contributions, but the responsibility of the maximum allowable contribution limits rests solely with the employee. The employee may want to consult a tax professional or financial advisor.

4. Election to Participate and Effective Date of Participation

Texas Tech University utilizes an online system called Retirement Manager. This system can be accessed through www.myretirementmanager.com/?ttu or the Human Resources website. Within the Retirement Manager system, employees can create individual accounts as well as manage contributions to the TDA Program.

- a. Employees may elect to participate in the TDA Program at any time during the calendar year. The cut-off dates in Retirement Manager will mandate the payroll effective date. It is the responsibility of each employee to have all company-required forms completed and submitted to the company to set up the account. Employees may submit a *Tax Deferred Account (TDA) Salary Reduction Agreement* form to Human Resources as an alternative to enrolling online through Retirement Manager.
- b. An employee's TDA Program contributions are deducted from the employee's regular pay. For example, faculty on nine-month contracts who do not have their salary spread over twelve months, as well as other eligible employees whose basic appointment period is less than twelve months, will have their contributions deducted from their regular pay over the time frame they receive pay. Faculty on nine-month contracts who do have their salary spread over twelve months, as well as other eligible employees whose basic appointment period is equal to twelve months, will have their contributions deducted from their regular pay over a twelve-month period.
- c. Employees must make their own determination whether or not to participate in the TDA Program and must select the company and annuity contract or mutual fund that best fits their individual retirement objectives. Texas Tech assumes no liability or responsibility for the federal income tax consequences of participating in TDA or the terms or provisions of any annuity contract or mutual fund option selected under TDA.

5. Income Tax Deferral of Contributions

- a. Multiple 403(b) salary reduction agreements may be executed during a calendar year. For the purpose of this subsection, a change in an employee's salary reduction agreement means a change in the amount that an employee authorizes the institution to withhold from salary and remit to a Tax-Sheltered Annuity Program company. Texas Tech will continue the *Tax Deferred Account (TDA) Salary Reduction Agreement* from one tax year to the next tax year unless a change is received.
- b. The tax year for Texas Tech is defined as the period reported on each employee's W-2 form for tax purposes. Since December earnings for monthly salaried employees are reported in the next tax year, the tax year for monthly salaried employees is December of one calendar year through November of the next calendar year.

6. Approval of Companies and Representatives

- a. Only companies approved by Texas Tech may provide tax-sheltered annuity products to Texas Tech employees.
- b. Only representatives authorized in writing by an officer of the company and approved by Texas Tech may conduct business for employees of Texas Tech. The company is responsible

for the actions of its representatives and for ensuring that they are informed of and abide by all Texas Tech rules and regulations, federal laws, and Coordinating Board rules.

- c. A list of currently approved companies and representatives may be obtained from the Employee Services Center of the Human Resources office, the Human Resources website at <http://www.depts.ttu.edu/hr/EmpBenefits/Retiring/RetirementPlans.php> or from Retirement Manager at <https://www.myretirementmanager.com/?ttu>.
- d. Employees are requested to notify Human Resources of any violations of Texas Tech rules and regulations by companies or representatives.

7. Solicitation Regulations

- a. Only authorized representatives from approved companies are permitted to conduct business with eligible employees.
- b. Representatives of approved companies are not authorized to initiate contact with Texas Tech employees. Employees interested in the TDA Program should contact one of the approved representatives of the company of their choice to obtain information about an annuity and to secure forms to apply for the program of their choice.
- c. Company representatives are not to initiate contact with Texas Tech employees under the guise of marketing a non-TDA product and then make a TDA sales presentation to an employee.
- d. Authorized representatives are permitted to make sales presentations to eligible employees on Texas Tech premises only at the employee's request and may not solicit business with any employee unless contacted first by the employee.
- e. Representatives of companies are permitted on Texas Tech facilities as guests of Texas Tech and are expected to comply with all applicable rules and regulations.
- f. No campus mailings or telephone campaigns are permitted to campus offices.
- g. Providing gifts or monetary rewards in exchange for information on newly hired employees is strictly prohibited.
- h. All company representatives are expected to abide by the parking regulations in effect at the various campus locations.
- i. Approved representatives are responsible for supplying administrative service to Texas Tech.
- j. Company forms are the responsibility of the company and the employee. It is the responsibility of the employee to set up user information on the Retirement Manager website. The changes submitted and transmitted to the university will determine the effective date of the participation.
- k. Company representatives must be familiar with the benefits provided under the Teacher Retirement System, and with applicable Texas laws, Coordinating Board rules and regulations, and Internal Revenue Service Codes.

1. Texas Tech reserves the right to limit or revoke the privileges of any representative or company at its discretion.

8. **Transmittal of Funds to Companies**

- a. All tax-sheltered annuity contributions will be transmitted to companies through the Texas Tech Retirement Manager system following each payroll processing period.
- b. It is the TDA company's responsibility to promptly credit each employee's account and to distribute the funds among the various product options as may have been selected by the employee.
- c. Accountability for funds transmitted to carriers in accordance with the above procedure becomes the responsibility of the company.

9. **Change of Companies and Transfers**

- a. Employees may change TDA Program companies without transferring contributions or deposits with the prior company. However, a nontaxable transfer, in-service withdrawal, is permitted only between Texas Tech approved companies. These kinds of transfers can be facilitated in Retirement Manager. The employee must access the Retirement Manager system and print an *In-service Exchange* certificate to accompany required company forms.
- b. IRS Ruling 90-24 authorizes partial and full transfers to and from 403(b)(7) mutual fund accounts and/or 403(b)(1) annuity accounts and states that such transfers are nontaxable if the following conditions are met:
 - (1) A **direct** transfer from the "old" company to the "new" company is made; and
 - (2) The transferred funds continue to be subject to the same or more stringent early distribution restrictions.

10. **Cancellation**

Employees may stop participation in the TDA Program at any time during the plan year. Cancellations are processed through the Retirement Manager website or a TDA form may be submitted to the Human Resources office. The payroll processing calendar will determine the date it will be effective.

11. **Withdrawal of Contributions**

- a. The total value of a tax deferred account on December 31, 1988, is available for withdrawal without restrictions; however, such accounts are subject to income tax and may be subject to an additional penalty tax.
- b. Withdrawal of amounts attributable to contributions made after December 31, 1988, and to earnings credited after December 31, 1988, on all contributions may **not** be made prior to age 59 ½, unless a qualifying event occurs. Qualifying events are:
 - (1) Separation from service;

- (2) Disability; and
- (3) Hardship

"Separation from service" is defined as removal from the payroll of Texas Tech for one full calendar month without any expectation of returning to employment with any Texas public institution of higher education.

"Disability" is defined in Internal Revenue Code section 72(m)(7) as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.

"Hardship distributions" from an employee's elective deferrals account can only be made if the distribution is because of an immediate and heavy financial need and the distribution is not in excess of an amount necessary to satisfy that financial need. Hardship distributions can only be made from accumulated elective deferrals, not from earnings.

IRS rules provide "safe harbors" for determining if a hardship distribution is because of an "immediate and heavy financial need."

- Expenses for medical care previously incurred by the employee, the employee's spouse, dependents, or beneficiary or is now necessary for these persons to obtain medical care;
- Costs directly related to the purchase of a principal residence of the employee;
- Payment of tuition, related educational fees, and room and board expenses for the next 12 months of post-secondary education for the employee, employee's spouse, dependents, or beneficiary of the employee;
- Payments to prevent eviction from or foreclosure on the principal residence of the employee;
- Funeral expenses for the employee, spouse, dependents, or beneficiary of the employee; or
- Certain damage repair expenses for the employee's principal residence.

The company is responsible for determining the validity of hardship withdrawals. All company forms for a hardship withdrawal must have a *Hardship Withdrawal Certificate* from the Texas Tech Retirement Manager system.

- c. Contributions and earnings are taxable in the year withdrawn and may be subject to a tax penalty for early withdrawal.
- d. A 10 percent additional tax is imposed on withdrawals made before age 59 ½, regardless of when the contributions to which the accumulations are attributable. The 10 percent additional tax may not apply to distributions made prior to age 59 ½ if the distribution is:

- (1) Made after the employee separates from employment and is part of a scheduled series of substantially equal periodic payments for the life expectancy of the employee or the joint lives or life expectancies of the employee and a beneficiary;
 - (2) Made to an employee because of early retirement under a retirement plan of Texas Tech after attainment of age 55;
 - (3) Made to an employee who has separated from service and used to pay medical expenses to the extent that they are tax deductible under the Internal Revenue Code;
 - (4) A result of a disability retirement;
 - (5) Made to a beneficiary of the employee's estate after death; or
 - (6) Subject to a special exception that applies to payments to an alternate payee, not to the employee, according to a qualified domestic relations order.
- e. Tax deferred account companies are prohibited from releasing funds for withdrawal without verification of the employee's termination.
- f. It is the company's responsibility to process all withdrawals of contributions in compliance with federal regulations, to make required tax withholdings, and to provide employees with any required notices describing the taxation of distributions, rollover rights, and withholding rules, including the 20 percent withholding on the taxable portion of a distribution made to the participant.

12. Loans

Certain companies will process a loan to the employee from their tax deferred account. An employee may only have a loan for up to 50 percent of the value of all their accounts.

- a. The employee must access their Retirement Manager account and print a *Loan Certificate*.
- b. Companies may also require the submission of company specific forms for loan processing.
- c. Interest rates and pay back schedules are determined by the company.

13. Required Distributions

- a. Other than distributions because of death, distributions from TDAs (no matter what the form) must begin by an employee's "required beginning date." The Small Business Job Protection Act of 1996 (SBA) defines an individual's "required beginning date" as April 1 of the calendar year following the later of:
 - (1) The calendar year in which the employee attains age 70 ½; or
 - (2) The calendar year in which the employee retires.

Distributions that do not commence by the "required beginning date" will be subject to an excise tax equal to 50 percent of the amount of the minimum amount that should have been distributed.

- b. Distributions can be made in a single sum over the life of the employee, over the lives of the employee and designated beneficiary, or over a period not extending beyond the life expectancy of the employee and designated beneficiary.

14. Program Subject to Change

- a. The federal regulations that currently govern the Texas Tech Tax-Sheltered Annuity Program include:
 - (1) The Employee Retirement Income Security Act of 1974 (ERISA);
 - (2) The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA);
 - (3) The Federal Deficit Reduction Act of 1984 (DEFRA);
 - (4) The Retirement Equity Act of 1984 (REACT);
 - (5) The Tax Reform Act of 1986 (TRA);
 - (6) The Unemployment Compensation Amendments Act of 1992;
 - (7) The Small Business Job Protection Act of 1996 (SBA); and
 - (8) Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

Any revision to these regulations or the implementation of new regulations may necessitate changes in the Texas Tech Tax Deferred Account Program. Future laws may change the provisions, tax status, and/or benefits available from individual Tax Deferred Account Program contracts.

- b. The Texas Tech Board of Regents and/or administration also reserves the right to make changes in Texas Tech regulations governing the Tax Deferred Account Program.

15. Forms/Processes

All forms, except the company forms, may be obtained from the Employee Service Center of the Human Resources Department. Company forms are the responsibility of the company and/or its representatives.

Action	Process/Form
Enroll	Access Retirement Manager www.myretirementmanager.com/?ttu or <i>Tax Deferred Account (TDA) Salary Reduction agreement</i> (submit the HR office) Company Application (submit to company)
Increase Amount	Access Retirement Manager www.myretirementmanager.com/?ttu or <i>Tax Deferred Account (TDA) Salary Reduction agreement</i> (submit the HR office)

Decrease Amount	Access Retirement Manager www.myretirementmanager.com/?ttu or <i>Tax Deferred Account (TDA) Salary Reduction Agreement</i> (submit the HR office)
Change Carriers	Access Retirement Manager www.myretirementmanager.com/?ttu and contact transferring company
In-service Exchange (while employed)	Access Retirement Manager www.myretirementmanager.com/?ttu or <i>Tax Deferred Account (TDA) Salary Reduction Agreement</i> (submit the HR office) Company Application (submit to company)
Exchange (after termination)	Company Forms (may require signature from Human Resources)
Stop TDA	Access Retirement Manager www.myretirementmanager.com/?ttu or <i>Tax Deferred Account (TDA) Salary Reduction Agreement</i> (submit the HR office)

16. TDA Company Liability

Each company must certify that it, as a carrier, will be primarily responsible for the defense of any suit against Texas Tech resulting from the actions of the company or from the actions of the design of the company's program. Such responsibility includes any awards, court costs, attorney's fees, damages, or other expense required as a result of the suit and/or suits against Texas Tech. Such suits may include, but are not limited to, tax issues, sex or age discrimination issues resulting from the design of the company's program, the misinformation or misrepresentation by the company or any company representative, or any other issue arising from the company's program.

17. Right to Change Policy

Texas Tech reserves the right to interpret, change, modify, amend, and/or rescind this policy, in whole or in part, at any time without the consent of employee.

18. Authoritative Reference

Internal Revenue Services, 26 CFR

This material is intended to describe available plans and provide a general explanation of the plan provisions. This document is not meant to include the complete details of all benefits available. Every effort has been made to ensure that the information is complete and accurate; however, if there is ever a conflict or difference between this document and the governing entity, the governing entity rules will prevail.