TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 70.45, **Tax Deferred Account Program**

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to define policies and procedures which are applicable to the Tax Deferred Account Program of Texas Tech University Health Sciences Center El Paso (TTUHSCEP).

REVIEW: This OP will be reviewed by February 1 of each even-numbered year (ENY) by the Executive Director of Human Resources (EDHR), with recommendations for revisions submitted to the Chief Financial Officer by February 15.

POLICY/PROCEDURE:

1. **General Plan Description.** The Tax Deferred Account (TDA) Program is a 403(b) plan under the Internal Revenue Code and is subject to federal regulation, regulation by the Coordinating Board of the State of Texas, and by Texas Tech. Traditional and Roth accounts are available. The TDA program is a government 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

   Under the TDA Program, employees enter into an agreement with Texas Tech (Attachment A) 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 carriers approved by Texas Tech. Contributions made under the TDA Program which 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 investment values of the plan will accumulate income tax-free until retirement, death, disability, or until such other time as the employee elects to receive the benefit payments, subject to provisions of the IRS Code.

   The Tax Deferred Account Program may be combined with participation in the Teacher Retirement System, the Optional Retirement Program, and/or the TexaSaver plan up to the limits prescribed by law.

   No contract issued under the Tax Deferred Account Program may provide a life insurance feature. Participation in the Tax Deferred Account Program is voluntary. It is the responsibility of the employee to select and monitor carriers and investments. Texas Tech has no fiduciary responsibility for the market value of the investments or for the financial stability of the carrier.

2. **Eligibility.** All employees, except students performing services described in IRC 3121(b)(10), are eligible to participate in the Tax Deferred Account Program.

3. **Contribution Limits.**

   a. The maximum amount which an employee may contribute to the Tax Deferred Account Program is the lesser of:

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

      This limit is determined annually by legislative action.

   b. In addition, participants who are age 50 or older are allowed to make additional catch-up contributions. This limit is determined annually by legislative action.

   c. Employees with at least 15 years of service and a history of low contributions may make additional contributions of up to $3,000 per year subject to a $15,000 maximum on aggregate catch-up contributions.

   d. The combination of ORP contributions and TSA contributions may not exceed 100% of compensation or the IRS Code Section 415(c)(1)(a) deferral limits.

   e. A representative of the Human Resources Office is available to assist employees in determining their maximum allowable contribution. The Human Resources Office also makes available a calculation formula which is believed to be within the sheltering limits of the Internal Revenue Code maximum allowable contribution.

   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 their 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.**

4. **Election to Participate and Effective Date of Participation.**

   a. Employees may elect to participate in the Tax Deferred Account Program effective the first day of any month by enrolling through the Texas Tech Retirement Manager system at https://www.myretirementmanager.com/?ttu It is the responsibility of each employee to have all carrier required forms completed and submitted to the carrier. Employees may submit a TDA Salary Reduction Agreement form to Human Resources as an alternative to enrolling through Retirement Manager.

   b. An employee’s TDA Program contributions are deducted from the employee’s regular pay on either a nine (9) month basis or a twelve (12) month basis, depending on the employee’s basic appointment period. For example, faculty on nine (9) month contracts who do not have their salary spread over twelve (12) months, as well as other eligible employees whose basic appointment period is less than twelve (12) months, will have their contributions deducted from their regular pay over a nine (9) month period. Faculty on nine (9) month contracts who do have their salary spread over twelve (12) months, as well as other eligible employees whose basic appointment period is equal to twelve (12) months, will have their contributions deducted from their regular pay over a twelve (12) month period. TDA Program contributions cannot be taken from summer school or other temporary salary payments.

c. Employees must make their own determination as to whether or not to participate in TSA and must select the carrier and annuity contract or mutual fund which best fits their individual retirement objectives. Texas Tech assumes no liability or responsibility for the federal income tax consequences of participating in TSA or the terms or provisions of any annuity contract or mutual fund option selected under TSA.

5. **Income Tax Deferral of Contributions.**

a. Multiple 403(b) Salary Reduction Agreements may be executed during a calendar year. For the purposes 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 deferred account program carrier. Texas Tech will continue the 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 Carriers and Representatives.**

a. Only carriers approved by Texas Tech may provide Tax Deferred Account products to TTUHSCEP employees.

b. Only representatives authorized in writing by an officer of the carrier and approved by Texas Tech may conduct business for employees of TTUHSCEP. The carrier 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 carriers and representatives may be obtained from the Human Resources Office, the Human Resources website at www.ttuhsc.edu/hr, or from Retirement Manager at https://www.myretirementmanager.?ttu.

d. Employees are requested to notify the Human Resources Office of any violations of TTUHSCEP rules and regulations by carriers or representatives.

7. **Solicitation Regulations.**

a. Only authorized representatives from approved carriers are permitted to conduct business with eligible employees.

b. Representatives of approved carriers are not authorized to initiate contact with TTUHSCEP employees. Employees interested in the TDA Program should contact one of the approved representatives of the carrier of their choice to obtain information about an annuity and to secure forms to apply for the program of their choice.

c. Carrier representatives are not to initiate contact with TTUHSCEP 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 TTUHSCEP premises only at the employee's request and may not solicit business with any employee unless contacted first by the employee.

e. Representatives of carriers are permitted on TTUHSCEP facilities as guests of TTUHSCEP and are expected to comply with all applicable rules and regulations.

f. No campus mailings or telephone campaigns are permitted to campus offices.

g. The providing of gifts or monetary rewards in exchange for information on newly hired employees is strictly prohibited.

h. All carrier representatives are expected to abide by the parking regulations in effect at the various campus locations.

i. Approved carriers are responsible for supplying administrative service to TTUHSCEP.

j. Carrier forms are the responsibility of the carrier and the employee. A Texas Tech University Health Sciences Center El Paso Salary Reduction Agreement must be submitted to the Human Resources Office. Any Salary Reduction Agreement submitted which is incorrect or incomplete will be returned to the employee. It is the responsibility of the employee to resubmit a corrected Salary Reduction Agreement within the eligibility period. The final Salary Reduction Agreement submitted will determine the effective date of the participation.

k. Carrier 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.

l. Texas Tech reserves the right to limit or revoke the solicitation privileges of any representative or carrier at its discretion.

8. **Transmittal of Funds to Carriers.**

a. All Tax Deferred Account contributions will be transmitted to carriers through the Texas Tech Retirement Manager System following each payroll processing.

b. It is the carrier'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 carrier.

9. **Change of Carriers and In-Service Exchanges.**

a. Employees may change Tax Deferred Account Program carriers without transferring deposits with the prior carrier. However, a nontaxable transfer, In-Service Exchange, is permitted between Texas Tech approved carriers. To transfer prior contributions to the new carrier, The employee must access the Texas Tech Retirement Manager system at https://www.myretirementmanager.com/?ttu and print an In-service Exchange certificate to accompany required carrier 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" carrier to the "new" carrier is made; and

(2) The transferred funds continue to be subject to the same or more stringent early distribution restrictions.

c. The following procedures have been adopted by Texas Tech and apply to partial transfers (In-service Exchanges), mutual funds to annuity transfers, or vice versa, and full transfers (In- service Exchanges):

(1) The receiving carrier completes its forms which indicate the contract number, address to which funds should be sent, and other information appropriate for the carrier.

(2) The employee accesses their account in the Retirement Manager System and prints an In-service Exchange Certificate.

(3) The employee submits all forms to the surrendering carrier.

(a) In-service Exchanges from any TDA account, current or prior, must be to a Texas Tech approved company.

(b) Exchanges of the full balance from the company to which the employee is currently contributing can only be made if the employee changes their current deduction so that contributions are directed to the receiving company or to another approved company.

(4) Upon receipt of the proper company transfer forms and In-service Exchange Certificate, the surrendering carrier will transfer the funds directly to the receiving carrier within 10 business days of the legal availability of funds.

If a full transfer is completed by the surrendering carrier (i.e., the total funds are transferred to the receiving carrier), any additional funds subsequently received by the surrendering carrier will be subsequently surrendered directly to the receiving carrier.

This situation may occur if the full transfer request is processed prior to receipt or posting of the final deposit.

10. **Cancellation.** Employees may stop Tax Deferred Account participation effective with the first day of any month by accessing their account in the Texas Tech Retirement Manager system at https://www.myretirementmanager.com/?ttu by the monthly cut-off date. A Tax Deferred Account form may also be submitted to the Human Resources Office.

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 which can be expected to result in death or to be of long-continued and indefinite duration.

"Hardship" withdrawals may consist of contributions only; earnings may not be withdrawn. Hardship withdrawals are allowed only if there are no other resources reasonably available to meet the need and only for:

(1) Medical expenses incurred by the employee, spouse or dependents;

(2) Purchase of a principal residence of the employee;

(3) Payment of tuition for the next semester or quarter of post-secondary education for the participant, spouse, or dependents;

(4) Payments to prevent eviction from or foreclosure on the principal residence of the participant.

(5) Funeral expenses for the employee, spouse, dependents, or beneficiary of the employee; or

(6) Certain damage repair expenses for the employee's principal residence.

The carrier is responsible for determining the validity of hardship withdrawals. All carrier forms for a hardship withdrawal must also have a Hardship Withdrawal Certificate from the Texas Tech Retirement Manager system https://www.myretirementmanager.com/?ttu.

c. Contributions and earnings are taxable in the year withdrawn and may be subject to a tax penalty for early withdrawal.

d. A 20 percent additional tax is imposed on withdrawals made before age 59 ½ regardless of when the contributions to which the accumulations are attributable. The 20 percent additional tax does 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 carriers are prohibited from releasing funds for withdrawal without written verification of employee's termination.

f. It is the carrier'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 carriers will process a loan to the employee from their Tax Deferred Account. An employee may only have up to 50% of the value of all of their accounts on loan at any time.

a. The employee must access their account in Retirement Manager and print a Loan Certificate.

b. Carriers may also require the submission of carrier forms for loan processing

c. Interest rates and pay back schedules are determined by the carrier.

13. **Required Distributions.**

a. Distribution of an employee's account balance must commence no later than April 1 of the calendar year following the year in which age 70 ½ is attained regardless of the actual retirement date. One exception is if the employee turned age 70 ½ after December 31, 1987 and is still employed at a public institution of higher education. Then, distributions must begin no later than April 1 following the year in which employment with that institution is terminated. Distributions that do not begin by this deadline will be subject to an additional tax equal to 50 percent of the amount of the minimum amount that should have been distributed.

b. If the entire account balance is not totally distributed to the participant pursuant to the above provisions, the account balance must be distributed over one of the following periods:

(1) The life of the employee,

(2) The lives of the employee and a designated beneficiary,

(3) A period not extending beyond the life expectancy of the employee, or

(4) A period not extending beyond the life expectancy of the employee and a designated beneficiary.

14. **Program Subject to Change.** The Employee Retirement Income Security Act of 1974 (ERISA), the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Federal Deficit Reduction Act of 1984 (DEFRA), the Retirement Equity Act of 1984 (REACT), the Tax Reform Act of 1986 (TRA), Unemployment Compensation Amendments Act of 1992, the Small Business Protection Act of 1996 and the 1997 Tax Relief Act[1], all imposed new and/or revised federal regulations on employee benefit plans. Future laws may change the provisions, tax status, and/or benefits available from individual Tax Deferred Account Program contracts. The Texas Tech Board of

[1] The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)

Regents and/or administration also reserve the right to make changes in Texas Tech regulations governing the Tax Deferred Account Program.

15. **Forms/Processes.** All forms and Retirement Manager access information may be obtained from the Human Resources Office or the HR website at www.ttuhsc.edu/hr. Carrier forms are the responsibility of the carrier and/or its representatives.

ACTION	PROCESS/FORM
Enroll	Access Retirement Manager https://www.myretirementmanager.com/?ttu or TDA Salary Reduction Agreement (submit to Human Resources) Carrier Application (submit to carrier)
Increase Amount	Access Retirement Manager https://www.myretirementmanager.com/?ttu or TDA Salary Reduction Agreement (submit to Human Resources)
Decrease Amount	Access Retirement Manager https://www.myretirementmanager.com/?ttu or TDA Salary Reduction Agreement (submit to Human Resources)
Change Carriers	Access Retirement Manager https://www.myretirementmanager.com/?ttu or TDA Salary Reduction Agreement (submit to Human Resources)
In-service Exchange (while employed)	In-Service Exchange Certificate from Retirement Manager https://www.myretirementmanager.com/?ttu Carrier forms (submitted to carrier)
Exchange (after termination)	Carrier Forms (may require signature from Human Resources)
Stop TDA	Access Retirement Manager https://www.myretirementmanager.com/?ttu or TDA Salary Reduction Agreement (submit to Human Resources)

16. **TDA Carrier Liability.** Each carrier must certify that as a carrier it will be primarily responsible for the defense of any suit against Texas Tech resulting from the actions of the carrier or from the actions of the design of the carrier's program. Such responsibility includes any awards, court costs, attorney's fees, damages or other expenses 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 carrier's program, the misplacement of funds sent to the carrier by Texas Tech but not properly credited, misinformation or misrepresentation by the carrier or any representative of the carrier, or any other issue arising from the carrier’s program.

17. **Right to Change Policy.** Texas Tech reserves the right to interpret, change, modify, amend, or rescind this policy in whole or in part at any time without the consent of employees.