

403(b) Plans – Best Practices Help Make Perfect

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Important Information

- This material is not intended to be used to avoid tax penalties, and was prepared to support the matter addressed in this presentation. The taxpayer should seek advice from an independent tax advisor.
- The discussion highlights key issues of final Internal Revenue Code and regulations. The information is provided for your education only and is not intended to be legal or tax advice. Consult your own independent tax and legal advisors regarding your individual situation.

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A college must have adopted or amended its 403(b) plan to meet IRS 403(b) regulations no later than:

A: 12/31/2018

B: 12/31/2009

C: 12/31/2010

D: There is no IRS deadline

\$1,000,000

\$500,000

\$250,000

\$100,000

\$50,000

\$25,000

\$10,000

\$5,000

\$1,000

\$500

\$200

\$100

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Know the Rules! When A 403(b) Plan Document Must Be Adopted to Reflect IRS Rules

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
2) You didn't adopt a written plan intended to satisfy the law by December 31, 2009.	Check your records to see if your organization adopted a written plan intended to satisfy the final 403(b) regulations by December 31, 2009.	Put the plan operations into a written plan that complies with the final 403(b) regulations and adopt it. Make a submission under the Voluntary Correction Program.	Make sure that your 403(b) plan document is in writing.

A 403(b) plan must have had a written plan in place by January 1, 2009. The written plan doesn't need to be in a single plan document, but may bundle several documents that detail all the provisions of how the plan works. The 403(b) plan sponsor should ensure that there is no conflict among the documents. There must be a single plan document coordinating administration among the plan's 403(b) vendors. The plan should then operate according to the terms, conditions and provisions contained in the written plan or program, in addition to the rules and regulations of the Internal Revenue Code. For example, if a 403(b) plan sponsor decides to offer participant loans and distributions because of financial hardship, then the written plan or program must explain the participant's ability to take loans or hardship distributions, and how the plan will manage the loan program and determine financial hardships.

The IRS released [Model Plan Language for Public Schools](#) to use to adopt or amend their 403(b) plans to meet the requirements of the final 403(b) regulations. Other types of eligible employers may also tailor the model language to use for their 403(b) plans. IRS released draft [Sample Plan Provisions](#) to assist in the drafting of 403(b) prototype plans.

Notice 2009-3 extended the deadline for a written plan to December 31, 2009, if the plan sponsor:

- adopted a written plan intended to satisfy the requirements of Section 403(b) (including the final regulations) effective as of January 1, 2009;
- operated the plan according to a reasonable interpretation of Section 403(b), considering the final regulations, during 2009; and
- corrected the plan operation to match the written program before the end of 2009, placing the participants in the same position they would have been if the program had been adopted on January 1. The correction should have been based on the general principles in [section 6 of Revenue Procedure 2008-50](#) and completed by December 31, 2009.

A 403(b) written plan must contain **mandatory** provisions and may contain **optional** provisions.

Source: <https://www.irs.gov/retirement-plans/403b-plan-fix-it-guide-you-didnt-adopt-a-written-plan-intended-to-satisfy-the-law-by-december-31-2009> (current as of 6/5/2018)

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A university may exclude the following employees from deferring into the 403(b) plan:

A: Union employees

B: Visiting professors

C: Employees not yet age 21 or completed 1 year of service

D: Students whose wages are not subject to FICA

\$1,000,000

\$500,000

\$250,000

\$100,000

\$50,000

\$25,000

\$10,000

\$5,000

\$1,000

\$500

\$200

\$100

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Know the Rules! Employees Eligible to Participate in the 403(b) Plan

Form 886-A (Rev. January 1994)

Section 403(b) Compliance Check

Questions 1-7 ask about the opportunity you offer to your employees to elect to defer salary into a 403(b) salary deferral plan from an outside organization.

1) Do you offer employees (not leased from an outside organization) the opportunity to enter into a salary reduction agreement to reduce their contribution to a 403(b) salary deferral plan?
 Yes (GO TO QUESTION 2) No (STOP HERE - CHECK INSTRUCTIONS)

2) Is this opportunity for employees to elect 403(b) salary deferrals for other employee benefits you offer (e.g. vacation, employer funded retirement, etc.)?
 Yes No

3) Do you require a minimum salary deferral amount?
 Yes (GO TO QUESTION 4) No

4) Identify the minimum deferral amount that you require.
 Less than \$200 \$200 Greater than \$200

5) Indicate the range of annual hours of service required for salary deferral:
 0-799 800-999 1,000-1,199

6) How often do you communicate the opportunity to employees?
 Annually Semi-annually Quarterly Monthly

Form 886-A (Rev. January 1994)

Explanations of Items

16) Which of the following faculty employee groups are excluded from electing 403(b) salary deferrals (CHECK ALL THAT APPLY)? For each of the groups, state the reason(s) for exclusion and the faculty type(s) excluded.

Faculty employees that make a one time irrevocable election to participate in a governmental retirement plan (including Indian Tribal Governments) instead of the 403(b) plan

Part time faculty employees

Faculty employees covered by a collective bargaining agreement

Visiting professors Assistant professors Associate professors

Faculty associates Research professors Adjunct professors

Adjunct instructors Adjunct lecturers Teaching fellows

Student assistants

Other (specify) _____

No exclusions

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A college must notify eligible employees about the ability to defer into its 403(b) plan:

A. At the time of hire only

B. As determined by collective bargaining agreements and employee contracts

C. At the option of the college. Not an IRS requirement.

D. Once a year

- \$1,000,000
- \$500,000
- \$250,000
- \$100,000
- \$50,000
- \$25,000
- \$10,000
- \$5,000
- \$1,000
- \$500
- \$200
- \$100

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Know the Rules! Notifying Eligible Employees about the 403(b) Plan

4.72.13.14.1 (08-11-2017)
Elective Deferrals –Universal Availability

5. Universal availability requires that all employees of a IRC 403(b) plan sponsor be permitted to make elective deferrals if any employee of the plan sponsor may make an elective deferral, subject to statutory exclusions described in *IRM 4.72.13.14.1 (9)* below. See 26 CFR 1.403(b)-5(b).
6. An employee is not considered to have had the right to make an election for an elective deferral if the employee does not have an "effective opportunity" to make such an election at least once during the plan year. See 26 CFR 1.403(b)-5(b)(2).
7. "Effective opportunity" is a facts-and-circumstances test. An effective opportunity is not considered to exist if there are any other rights or benefits that are conditioned (directly or indirectly) upon making or failing to make a cash or deferred election. See 26 CFR 1.403(b)-5(b)(2).
8. Factors that determine "effective opportunity" include:
 - a. Notice to the employee of the election and its availability
 - b. Period of time during which the election can be made
 - c. Any conditions placed on the election by the plan sponsor

Note:
See 26 CFR 1.403(b)-5(b)(2).

Source: IRS 403(b) Examination Guidelines at https://www.irs.gov/irm/part4/irm_04-072-013 (current as of 6/5/2018)

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A college's 403(b) plan document may offer:

A. Neither the 15 Years of Service nor the Age 50 Catch-up

B: Only the 15 Years of Service Catch-up

C: Only the Age 50 Catch-up

D: Both the 15 Years of Service and the Age 50 Catch-ups

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Know the Rules! Optional Features in a 403(b) Plan

4.72.13.7.1 (08-11-2017)
Written Plan Requirement

1. The IRC 403(b) written plan requirement does not require that there must be a single plan document. Instead, the written plan may consist of multiple documents, including documents that are incorporated by reference. All of those documents, taken together, must satisfy the requirements of IRC 403(b).
2. The IRC 403(b) written plan must contain all of the material terms and conditions for eligibility, benefits, limitations, available contracts, and the time and form of distribution in order to satisfy the written plan requirement in 26 CFR 1.403(b)-3(b)(3).
3. A plan may contain certain optional features that are consistent with but not required under IRC 403(b), such as hardship withdrawal distributions and loans. If a plan contains any optional provisions, the optional provisions must also meet, in both form and operation, the relevant requirement under IRC 403(b) and the Treasury Regulations for IRC 403(b). See 26 CFR 1.403(b)-3(b)(3).
4. The plan may allocate responsibility for performing administrative functions, but must identify responsibility for compliance with the IRC requirements that apply on the basis of aggregated contracts for a participant (such as loan limits).

Source: RS 403(b) Examination Guidelines at https://www.irs.gov/irm/part4/irm_04-072-013 (current as of 6/5/2018)

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When does the IRS require 403(b) participant contributions to be remitted to investment providers?

A: As soon as administratively practicable

B: In accordance with collective bargaining agreements

C: Both A and B

D: No timeframe required

- \$1,000,000
- \$500,000
- \$250,000
- \$100,000
- \$50,000
- \$25,000
- \$10,000
- \$5,000
- \$1,000
- \$500
- \$200
- \$100

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Know the Rules! Deadline to Invest Participant Contributions

When must the plan sponsor send elective deferrals to the vendor?

The 403(b) plan sponsor must send elective deferrals to the vendor within an administratively feasible period (generally, within 15 business days following the month in which these amounts would have been paid to an employee).

However, a 403(b) plan subject to the Employer Retirement Security Income Act of 1974 (ERISA) should review the [Department of Labor's](#) rules for a potentially shorter time-frame for forwarding elective deferrals to the vendor.

Source: https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-403b-tax-sheltered-annuity-plans?_ga=1.184754665.1783749829.1479819401#part (current as of 6/5/2018)

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A 403(b) plan document must be amended:

A: To meet federal legislative or regulatory requirements

B: To reflect changes in plan administration

C: Both A and B

D: Neither A or B – no amendments needed once plan is adopted

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Know the Rules! When to Amend a 403(b) Plan

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
<p>3) You didn't follow the terms of your 403(b) written plan.</p>	<p>Compare your written plan to its operation.</p>	<p>You may retroactively:</p> <ul style="list-style-type: none"> adopt plan amendments that match the 403(b) plan to its prior operation, or correct plan operation to match the 403(b) written plan terms. 	<p>Convey any changes made to your written plan or to the operation of your 403(b) plan to your plan service providers.</p>

Plan sponsors are responsible for keeping their plan in compliance with the tax laws; however, there may be many employees, vendors and tax professionals servicing your plan. You should convey any changes made to your plan document or to your plan's operation to everyone providing service to your plan. For example, if you amend your plan document to change the definition of compensation, you should communicate that change to everyone involved in determining deferral amounts withheld from the participants' pay, performing your plan's nondiscrimination tests or allocating employer contributions. Also, if you decide to use a different definition of compensation in operation, make sure you amend the plan timely to reflect that change.

Source: <https://www.irs.gov/retirement-plans/403b-plan-fix-it-guide-you-didnt-follow-the-terms-of-your-403b-written-plan> (current as of 6/5/2018)

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Internal procedures and practices for your 403(b) plan:

A: May be requested during an IRS audit of a 403(b) plan

B: Will determine whether the IRS audit of a 403(b) plan is streamlined

C: Are designed to provide sound plan administration

D: All of the above

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Know the Rules! Importance of Internal Controls

4.72.13.6 (08-11-2017)
Evaluation of Internal Controls

1. Internal controls are the procedures and practices of the plan administrator that are designed to promote and protect sound practices in plan administration and compliance with the law.
2. The evaluation of internal controls is a continuous process beginning with the pre-audit analysis.
3. Most of the information regarding the plan's internal controls will likely be obtained during the initial interview.
4. Adequacy of internal controls will determine the sample size utilized and will set parameters for the depth of review required.
5. It is important to evaluate internal controls for each aspect of plan administration.
6. A well-designed questionnaire will assist in the evaluation of internal controls and provide an understanding of the administrative and accounting systems that pertain to the plan. The questionnaire should be directed to those employees who are directly responsible for the administration of the plan and may be combined with initial interview questionnaires.
7. Plan records and persons responsible for maintaining them are usually located at the employer's place of business; therefore, the initial interview and the assessment of internal controls should be conducted at the plan sponsor's place of business. See 26 CFR 301.7605-1(d) and IRM 4.10.3.4, *Evaluating the Taxpayer's Internal Controls*.

Source: https://www.irs.gov/irm/part4/irm_04-072-013#idm140253802952160 (current as of 6/5/2018)

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The IRS will issue an approval letter that a college's 403(b) plan meets the regulatory requirements for:

A: All types of 403(b) plan designs

B: 403(b) prototype and volume submitter plans *only*

C: 403(b) individually designed plans *only*

D: None of the above. There is no IRS approval program.



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Know the Rules! 403(b) Plans Eligible for IRS Approval Program

What types of plans may apply for a pre-approval letter under the 403(b) Pre-approved Plan Program?

Under the 403(b) Pre-approved Plan Program:

- 403(b) prototype plans may apply for an opinion letter, and
- 403(b) volume submitter plans may apply for an advisory letter,

that the form of the plan documents satisfy the requirements of Internal Revenue Code Section 403(b), subject to certain restrictions.

When will the IRS establish a determination letter program for individually designed 403(b) plans?

At this time, the IRS does not anticipate opening a determination letter program for individually designed 403(b) plans.

Source: <https://www.irs.gov/retirement-plans/403b-pre-approved-plan-program-faqs-what-is-a-pre-approved-403b-plan> and <https://www.irs.gov/retirement-plans/403b-pre-approved-plan-program-faqs-remedial-amendment-period> (current as of 6/5/2018)

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If a college wants to restate its 403(b) plan to an IRS pre-approved 403(b) plan document, the effective date can be:

A: Retroactive to 1/1/2010

B: Retroactive to 1/1 of the year that the plan was adopted

C: As of the current date that the plan document was adopted

D: As of the date that the board resolution authorizes adoption

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Know the Rules! Effective Date Adopting for Pre-Approved 403(b) Plans

How does the 403(b) Pre-approved Plan Program affect a plan's remedial amendment period?

By adopting a 403(b) pre-approved plan by the deadline (the IRS will establish and announce the deadline), the Program allows an eligible employer to retroactively correct defects in the form of its written 403(b) plan back to the first day of the plan's remedial amendment period, which is the later of:

- January 1, 2010, or
- the plan's effective date.

The employer's adoption of a pre-approved 403(b) plan that has a favorable opinion of advisory letter automatically corrects any defects in its prior written 403(b) plan but **not** defects in any documents incorporated by reference in to the prior plan). Interim amendments are not required for a plan to be eligible for this remedial amendment period.

403(b) plans sponsors who didn't adopt a written plan before December 31, 2009, can use the [403\(b\) Voluntary Program Submission Kit](#) to correct this error.

Source: <https://www.irs.gov/retirement-plans/403b-pre-approved-plan-program-faqs-remedial-amendment-period> (current as of 6/5/2018)

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A former employee rehired by the university can be excluded from the 403(b) plan:

A: If he does not meet the plan definition of eligible employee

B: If he is at least age 70½

C: Because he had previously retired

D: Not applicable – there is no permitted exclusion

\$1,000,000

\$500,000

\$250,000

\$100,000

\$50,000

\$25,000

\$10,000

\$5,000

\$1,000

\$500

\$200

\$100

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Know the Rules! Who is Eligible to Participate

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
4) You didn't give all employees of the organization the opportunity to make a salary deferral.	Perform a review of the plan and its operation. Review employees who received a W-2 but didn't participate. Determine if you excluded any class of employees, such as janitors, cafeteria workers, bus drivers or union employees.	Provide improperly excluded employees the opportunity to participate in the plan in current and future years. Make a corrective contribution to the plan for the employees that compensates for their missed deferral opportunity.	Understand which employees you may exclude from the 403(b) plan. Provide proper notification to employees of their eligibility to participate in the 403(b) plan at least annually.

This universal availability rule means that if one employee is permitted to make 403(b) elective deferrals (including designated Roth contributions, if allowed by the plan), the employer must extend this option to all its employees. However, an employer may choose to include a plan provision to exclude the following employees from participating in the plan:

- Employees who will contribute \$200 annually or less
- Employees who are eligible to participate in a 401(k), 457(b) or other 403(b) plan of the same employer
- Non-resident aliens
- Employees who normally work less than 20 hours per week (meaning they don't accumulate at least 1,000 hours in at least one year)
- Students performing services described in IRC Section 3121(b)(10)

Note: Prior to 2009, a written plan provision was not necessary to exclude the above groups of employees. In addition, prior to 2009, Notice 89-23 allowed plan sponsors to exclude other groups of employees from the plan.

Source: <https://www.irs.gov/retirement-plans/403b-plan-fix-it-guide-you-didnt-give-all-employees-of-the-organization-the-opportunity-to-make-a-salary-deferral> (Current as of 6/5/2018)

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A college can rely on an IRS approval letter for a pre-approved 403(b) plan document for:

A. Any modifications to the plan document

B. All products provisions and the plan terms

C. Both operational compliance and the plan terms

D. The plan terms, based on options selected in the adoption agreement

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Know the Rules! Plan Document vs. Plan Administration

In Scope: IRS Approval Letter

- Meets the IRS "written plan" requirement

Not in Scope: IRS Approval Letter

- Plan operation
- Any factual matters
- Satisfying universal availability rule for deferrals
- 415 limits if school has more than one 403(b) plan
- Modifying terms of the plan document

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An IRS auditor examining a 403(b) plan will request:

A: The initial 403(b) plan document

B: Proof that the plan was adopted by an authorized individual

C: Amendments since the 403(b) plan was adopted

D: All of the above

\$1,000,000

\$500,000

\$250,000

\$100,000

\$50,000

\$25,000

\$10,000

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\$1,000

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Know What to Expect in an IRS Audit

PURPOSE OF REQUEST: To document plan provisions and ensure that the plan meets requirements of the Internal Revenue Code, the following documents are requested (**Please provide the information listed in 1 and 2 prior to the examination in electronic format if possible.**)

1. A short summary/history of the 403(b) plan including
 - a. The original effective date of the plan.
 - b. The employees permitted to participate.
 - c. How employees are notified of eligibility.
2. Copies of
 - a. The signed and dated written plan document adopted by 12/31/2009, including the adoption agreement (if applicable).
 - b. Signed and dated subsequent amendments to the plan.
 - c. Any ruling, including private letter rulings, issued by the Internal Revenue Service for the 403(b) plan.
3. The summary plan description (SPD), policy statements, employment handbooks, enrollment packages and any memoranda that describe 403(b) benefits provided by the employer.

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An IRS auditor may assess:

A: Payroll procedures

B: Human Resources procedures

C: Plan operation

D: All of the above

\$1,000,000

\$500,000

\$250,000

\$100,000

\$50,000

\$25,000

\$10,000

\$5,000

\$1,000

\$500

\$200

\$100

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Internal Controls Questionnaires

HR Personnel

System Procedures and Internal Control Questionnaire

Plan Name:
PTE:
Date:

Purpose
The questions below are meant to give the EP examiners an idea of the communication between the HR personnel and the plan as the records system used by the Employer to operate the plan.

HR and Personnel Responsibilities

- Interview conducted with or data supplied by:
Name: Title:
- Is there a separate HR/Personnel department (Structure coordination with the organization)?
- Who manages/supervises that department/function?
Name: Title:
a) If there are different departments under #2, who are their functions?
- Describe the process that interfaces the hiring & termination benefits delivery:

Payroll

System Procedures and Internal Control Questionnaire

Plan Name:
PTE:
Date:

Purpose
This questionnaire is designed to give the EP examiner an idea of how employee payroll is handled and communicated to the Plan administrator? What controls are in place to ensure the correct data is communicated?

Payroll Function

- How many payrolls & detail of how each is handled?
- What is the structure and how is it run in coordination with the organization?
- Are any payroll services performed in-house? If so, for what and how is in this payroll communicated to the other functions?
a) Who is in charge & responsibilities?
- Is an outside payroll service used?
Name:
Contact:
- Describe how payroll is prepared:
a) Are there separate pay periods for different category of employees? Please list the category and the periods?
- How often is each payroll cut?
a) Holiday period?
b) What is normal payroll?
- Is all pay run through normal payroll? For example, bonuses, executive pay, etc., if not how is it handled and communicated?

Plan Administration

System Procedures and Internal Control Questionnaire

Purpose
EP Examiners will want to get an idea of the controls related to plan administration, including an idea of the communication between the sponsor, the 3rd party administrator and the record keeper.

Plan Administration Responsibilities

- What steps does the employer take to identify all members of the Controlled Group to the Plan administrator?
a. Identify the members of all each Controlled Group, including any affiliated service groups members and related entities?
b. Does the Employer have more than one retirement/qualified plan? Yes / No
c. Please identify all plans, e.g. DB, Cash Balance, Profit Sharing, 401(k), 529, 403(b), 457(b), IR, etc. for each group.
d. Please identify all plans whose assets have been transferred/merged/spun-off into this plan.
e. TABLE (Please complete for each Group identified in 1a)

Plan Name	Plan Type	Sponsor	Plan Sponsor EIN	Number of Covered Participants	Number of participating Employees	Collectively Stipulated

For each plan please answer questions 2 through 16.

Source: <https://www.irs.gov/retirement-plans/ep-team-audit-epla-program-internal-control-questionnaire> (current as of 6/5/18)

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Tools You Can Use!

Coping With IRS 403(b) Audits – A Guide for What to Expect

As the Internal Revenue Service (IRS) continues to audit 403(b) plans, it's important to be prepared—the IRS may request numerous documents and information relating to your 403(b) plan. Understanding what information could be requested and ensuring you have access to that information can help to make your IRS audit go smoothly.

How will I be notified that the IRS intends to audit our 403(b) plan?

The IRS will typically send a letter. In perhaps the auditor will provide a courtesy phone call to the employer sponsor the 403(b) plan. Contingent upon the size of the plan, the IRS auditor will provide an overview of the audit process, describe primary concerns and audit parties, review types of information that will be requested, and may establish a physical location for the auditor, which could be in the employer's office. Subsequent information and data will be requested on IRS Form 4354, entitled "Information Document Request" (IDR). There may be one comprehensive IDR several IDRs requesting various data elements about the 403(b) plan.

How long will the audit last and how much time will I have to gather the information requested via Form 4354?

The length of the audit depends on the size of the plan and the extent of the internal controls established by the employer to oversee plan administration. For example, plans with 2,500 or less have are considered relatively small. Plans with say, 30,000 lives are considered large and an employer can expect an audit to continue for a year. Generally, an employer will have 30-45 days to complete an IDR.

Who should be involved with an IRS audit?

The IRS will be looking for specific documentation and explanation of processes and procedures for administration of 403(b) plan. Therefore, your human resources and payroll employees may need to be involved in an IRS audit, as well as investment providers you have approved under the plan, and, if applicable, your third-party administrator. Managers generally not directly involved in the IRS audit but should be informed of the audit. In addition, you should consider involving your legal counsel in the audit process.

In the event of an IRS audit, what should you have easy access to?

The IRS can request all documents and information pertaining to your 403(b) plan. Being proactive can help the audit smoothly. That is, understanding what information could be requested and ensuring you have access to the following information will facilitate a well-organized and efficient audit for both you and the IRS.

- Plan document timely adopted by 12/31/2009 and any subsequent amendments to that document due to plan design changes.
- Annuity contracts and/or custodial arrangements.
- Salary deferral agreements.
- Annual notice provided to eligible employees each year about the opportunity to defer into the 403(b) plan.
- Names and Social Security Numbers of plan participants.

This material has been prepared for educational purposes only for sponsors and prospective sponsors. This material was created to provide access and relate information on the subject covered. It is not intended to provide specific legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your individual situation.

IRS Circular 230 Disclosure: Any tax advice contained in this document (including any attachments) was not intended by the author of this document to be used, and cannot be used, by the audience or any other person, for the purpose of avoiding any Internal Revenue Code provision that may be imposed on such person. Any tax advice contained in this document was not intended by the author of this document to be used in reliance on, or to avoid, any penalty, including, but not limited to, the preparer's penalty.

Keeping your plan on course with the IRS' 403(b) fix-it guide

To be able to audit, summarize your 403(b) plan details from the Internal Revenue Code (IRC) requirements. But you can help put your 403(b) plan back on track with the Internal Revenue Service's (IRS) 403(b) Fix-It Guide. The 403(b) Fix-It Guide summarizes common plan defects and a step-by-step guide of how to identify and correct those issues in your 403(b) plan. The IRS also tells you how which defects but under a self-correction program and which would require a filing with the IRS to receive approval of the correction. Below are some of the defects described in the 403(b) Fix-It Guide; additional information can be found on the IRS website, irs.gov.

- Not eligible to sponsor a 403(b) plan?**
If you do not timely adopt a 403(b) plan by 2009, the IRS will allow you to do so retroactively to 2009 by applying under the Voluntary Correction Program.
- Not operating in accordance with plan terms?**
Amend your plan retroactively but not earlier than 2009. If you have proper plan administration practices and procedures in place, you may self-correct without an IRS filing. Communicate changes to plan participants.
- Not letting everyone eligible participate?**
Make certain contributions, plus earnings, to reflect best deferral opportunity for impacted employees using one of the IRS self-help formulas for calculating the best salary deferral amount and earnings.
- Not accumulating 401 annual additional contributions?**
Distribute excess amounts including any earnings to impacted participants by the end of the year in which the excess occurred. Otherwise, track the excess separately as 403(b) non-qualified amounts.
- Not accumulating employee deferrals?**
Distribute by April 15 after the calendar year that amounts were deferred any excess amounts including any earnings after voluntary additional catch-up contributions that make under the 1% rule of Service Catch-up and make a check-in or plan "top-up" if excess not being corrected on funds to meet the year of deferral and the year of distribution, earnings on amounts are based in the year of distribution. In some situations, corrections will need to be made by applying under the Voluntary Correction Program.
- Not approving hardship payments for the plan and IRS rules?**
If the withdrawal did not meet the plan's definition of "hardship," seek repayment from impacted participants. If the plan did not permit hardship withdrawals, amend the plan retroactively, provided hardship distributions were made available in a nondiscriminatory manner in accordance with the guidance in the 403(b) Fix-It Guide.
- Not submitting loans purchased for the plan and IRS rules?**
If the loan exceeds the IRS limit, determine whether corrective steps can be taken to meet the IRS limit. If the plan did not permit loans, amend the plan retroactively. If applicable, there may be a possibility of employees in nondiscriminatory manner. Typical rules apply to loans greater than the IRS permitted term.
- Not making post-annuity contributions to former employees in accordance with IRS rules?**
Determine whether self-correction or filing under the Voluntary Correction Program is available. When a lump-sum distribution of any excess contribution, if IRS can permit, or track the excess separately as 403(b) non-qualified amounts.



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