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The Latest in the World of Code §403(b) Plans

Code §403(b) plans have received a lot of attention over the last few years. Why is this?

There was a great deal of concern and confusion in the 403(b) community after the Treasury regulations for 403(b) plans were issued in July 2007. These regulations, which generally became effective on **Jan. 1, 2009**, incorporate legislative changes to 403(b) plans from the past 43 years.

Significantly, the regulations require a 403(b) program to be maintained pursuant to a written plan. The written plan must contain all the terms and conditions for eligibility, limitations and benefits under the plan. Sponsors of 403(b) plans had to adopt a written plan document by **Dec. 31, 2009**. In addition, by the end of 2009, plans sponsors must have ensured that their 403(b) plans were operated in accordance with a reasonable interpretation of Code §403(b) and the regulations, and must have made their best efforts to retroactively correct operational failures to conform to the written plan.

The IRS is developing a determination letter program for 403(b) plans. How will the program work?

The IRS is developing a final 403(b) prototype, or pre-approved program. The IRS will release a revenue procedure to open the program, which will describe it and list the procedures to submit an application. The IRS will then follow up with a revenue procedure for the individually designed plan determination letter process. Visit the [IRS 403\(b\) Web page](#) for updates.

What error trends are common in 403(b) plans?

There are several. The most common error is universal availability. The universal availability rule means that, if an employer permits one employee to defer salary into a 403(b) plan, then that employer must also extend this offer to all its employees that do not meet statutory exclusions. It is easy to incorrectly assume certain employees who have a support role in the organization or who work in what some consider a part-time role are not eligible for the plan merely by their position classification in the organization. Nurses, substitute teachers and bus drivers are examples of employees that fall in this category.

Another common error occurs with the 15-year catch-up provisions. IRS agents find that many 403(b) plans do not have a proper calculation available for them to review. More often than not, when the agent reviews the calculation, most plans fail. Also, agents find employers giving credit for service with another unrelated employer when only years of service with the current employer should be credited.

What project has the IRS's Employee Plans Compliance Unit (EPCU) worked on in relation to the universal availability issue?

Public schools from kindergarten through high school in every state were asked to demonstrate their plan's compliance with this rule. The IRS is currently working on a summary report for this project, and it should be available on the [EPCU Web site](#) soon. EPCU is currently doing the same project for colleges and universities. EPCU has also followed up with the public schools to learn if these plans did actually have an error and, if so, the correction method they used to calculate the additional contributions needed. The plans have a choice of [two correction methods](#).

The purpose of the EPCU is to contact a large portion of a specific market segment with minimal burden to them. The 403(b) projects are intended to have a positive impact on compliance and clarify the new rules. The IRS understands that there is a learning curve for 403(b) compliance and addresses it by attaching an outreach component to the projects. They will help 403(b) plans comply with the new requirements, while still holding them accountable for existing 403(b) rules.

With the current state of the economy, many participants look for loans and hardship distributions from the 403(b) plan to tide them over the tough times. Are there any issues in this area?

Maintaining a loan program in a 403(b) plan can be difficult. Some vendors may not allow loans and those that do may not be collecting the loan payments. It is important for employers to understand they are ultimately responsible for their plan's loan program. Relying exclusively on the vendors to make certain the plan's loan program is running smoothly is usually a problem.

It is also common to see the recordkeeping for hardship distributions neglected. IRS agents validate that the distribution was a proper amount for the hardship and that the hardship request is for an immediate and heavy financial need.

What information is available on the www.irs.gov/ep website for 403(b) plans?

The IRS has a [website](#) devoted to the 403(b) program. Included on this page are links to two mini-courses, one for the employer that discusses law changes and how to properly operate a 403(b) plan, and one for the employee that provides information on the basics of the 403(b) plan and the advantages of participating in the plan. Finally, employers can perform their own 403(b) plan check-up and determine if their plan is free of the top errors found during examinations.

Source: Internal Revenue Service