

# RetirementManager

Compliance Essential

Final 403(b) Regulations Compliance Self-Audit Checklist

# 403(b)

## Is your program **READY**?

The following checklists have been compiled to help the 403(b) Employer Plan Sponsor. They are designed to be used as quick step checklists. For more detailed information, refer to the 403(b) Compliance Manual. These checklists and the Compliance Manual are intended as helpful tools to identify some important 403(b) requirements and to assist with a review, but should not be construed as tax or legal advice or as a compliance guarantee. They reflect new requirements in the final 403(b) regulations, which become effective generally in 2009. However, current audit issues relate to requirements that already exist.

## 1. If your 403(b) program is audited, what should you do?

ITEM	DISCUSSION
<input type="checkbox"/> Recognize the audit likely is not a signal that you have done something wrong.	Take a deep breath. IRS audits tend to trigger a reaction of “Why me? What have I done wrong?” Know that many of the 403(b) audits are arising out of a general concern about compliance in 403(b) programs, rather than an identified problem in a particular employer’s plan.
<input type="checkbox"/> Involve your legal counsel early.	Involve your counsel early to ensure the best, most helpful presentation of relevant information is sent to the IRS. He or she should be able to advise you about what information is most appropriate to provide and when it is most appropriate to request a deadline extension so you can gather crucial information.
<input type="checkbox"/> Involve your investment providers early.	Often, they can provide important and useful information about the annuity contracts and amounts held under your 403(b) program. Of course, your providers cannot give you tax or legal advice. However, if they have worked with a number of past 403(b) audits, they could offer valuable insights for you and your legal representative to consider.
<input type="checkbox"/> Know your 403(b) program’s policies and procedures.	Know your policies and procedures, and communicate them to all applicable parties (HR, Payroll and eligible vendors) so you can articulate them appropriately to your legal counsel and/or the IRS. Your investment providers can usually help you quite a bit on this front, especially if they have a strong commitment to 403(b) compliance. After all, in many cases you will be relying on their procedures to meet your obligations with respect to your program.

## 2. What steps should you take to begin resolving issues in your 403(b) program?

ITEM	DISCUSSION
<input type="checkbox"/> Recognize that even the best programs are not perfect.	Whether you decide your 403(b) program has no problems, or you discover possible problems, the checklists will fulfill their purpose. If you find problems, you can determine a course of action to remedy them.
<input type="checkbox"/> Read (or reread) about audits.	The 403(b) Compliance Manual has background information on some of the correction alternatives that are available to you. See “Corrections and IRS Audits,” Section 3 of the 403(b) Compliance Manual.
<input type="checkbox"/> Share your findings with your counsel.	This advisor can help determine if there really is a problem and what correction alternatives are available to you.

### 3. What compliance concerns can you address today regarding employee eligibility?

ITEM	DISCUSSION
<input type="checkbox"/> Review eligibility of staff employed by another firm.	<p>School board members whose position does not require special training as an educator generally are not eligible to participate in the 403(b) plan. Also, if your organization or other staff includes individuals who are employees of another organization, such as an employee leasing or a private educational service firm, you should review those arrangements and determine if those employees are eligible to participate in your 403(b) program. Private firms that are not 501(c)(3) organizations generally are not eligible to contribute to a 403(b) program, and their employees cannot participate in the plan. See “Corrections and IRS Audits,” Section 3 in the 403(b) Compliance Manual for a discussion of alternatives available to eligible employees but ineligible participants who have already contributed to a 403(b) plan. For questions about what qualifies a private organization to qualify as a 501(c)(3) organization, consult the instructions for IRS Form 1023.</p>

#### 4. Which documents/compliance issues can you address today?

ITEM	DISCUSSION
<input type="checkbox"/> Start a 403(b) compliance file.	This is for documents and other materials relating to your review of your 403(b) program.
<input type="checkbox"/> Get product information from investment providers.	Ask your 403(b) program's investment providers to provide you with copies of the annuity contract, life insurance contract or custodial agreement currently offered to your employees under the plan. You may also want to ask them to highlight the contract or custodial agreement language regarding elective deferral limitations, withdrawal restrictions, permitted direct rollovers, and in the case of annuity contracts, nontransferability. [This is requested as a part of the Sample Hold Harmless Agreement found in Section 4 of the 403(b) Compliance Manual.]
<input type="checkbox"/> Make sure your plan documentation is comprehensive and current.	If your plan is governed by a plan document, make sure your files contain a copy of that document, along with any amendments and any written plan summaries provided to employees. Also include those procedures of investment providers upon which you are relying to keep the program in compliance with 403(b) requirements.
<input type="checkbox"/> Make sure all Salary Reduction Agreements do not allow contributions of amounts already paid or made available.	Another important document is a salary reduction agreement, used by employees to communicate their desire to make contributions to the plan. If you are using a standard salary reduction agreement, review that agreement to make sure it does not allow contributions of amounts already paid or made available. If you are relying on your investment providers to provide salary reduction agreements, obtain copies of those agreements and review them for compliance with that same requirement. Alternatively, you may want to consider adopting a standardized salary reduction agreement. A sample agreement is reproduced in the Sample Section 4 of the 403(b) Compliance Manual.
<input type="checkbox"/> Document your plan's procedures.	

## 5. What can you do now to make sure you're compliant with employee eligibility and nondiscrimination rules?

ITEM	DISCUSSION
<input type="checkbox"/> Review your program to make sure that you are making your program available to any employee who is not a member of an excludable group. Also, make sure that exclusions generally are applied on a consistent basis.	Teachers and other employees who normally are scheduled to work more than 20 hours per week on a regular basis should be given an opportunity to defer to the program.
<input type="checkbox"/> As just one example, for public schools and public colleges and universities: if you have a "permanent substitute" list or adjunct faculty list, review that list.	
<input type="checkbox"/> Invite eligible employees to educational meetings for the 403(b) program. This can include specific categories of employees who might be overlooked as being eligible to participate in your program.	Invite eligible employees who normally are scheduled to work more than 20 hours per week on a regular basis to educational meetings for the 403(b) program, so that they can be informed about the program if they become eligible to participate. Certain sports coaches, if not otherwise employed by the district, might also be eligible for participation.
<p><b>➔ 403(b) Regulations Update: Under the final regulations, this requirement is simplified, allowing plan sponsors to exclude anyone who did not work at least 1,000 hours in the prior year. In the case of employees with less than a year of service, the exclusion could apply to individuals not expected to work at least 1,000 hours in the service year. In some cases this can allow an exclusion that would not be available under the 20-hour rule. However, it can also require an exclusion that would not have been required under the 20-hour rule, such as exclusion of an individual who took a longer leave of absence in a previous year.</b></p>	
<input type="checkbox"/> Notify new employees, and existing employees who become newly eligible to participate, of their opportunity to enroll in the plan or to change or terminate an existing contribution.	Although there is not a specific notification requirement in the statute or the regulations, it is likely that the IRS will seek to confirm that the deferral opportunity has been made available to all qualifying employees. Information about this opportunity can be provided by the employer or by an investment or service provider. In addition, there is no specific requirement as to how frequently the notification should be provided.
<p><b>➔ 403(b) Regulations Update: The final 403(b) regulations specify that a plan must provide employees with an effective opportunity to make (or change) a deferral election at least once during each plan year.</b></p>	

## 6. What can you do now to be compliant with employee elective deferral limits?

ITEM	DISCUSSION
<input type="checkbox"/> Determine which contributions are elective deferrals and which are nonelective employer or employee contributions.	If your 403(b) program includes any types of contributions in addition to elective deferrals, such as nonelective employer contributions or nonelective employee contributions, review these parts of the program to confirm that they comply with the rules and are not considered elective deferrals. If your program includes employee contributions pursuant to a one-time irrevocable election made at the time of initial eligibility to participate, confirm that employees are not permitted to revoke their elections.
<input type="checkbox"/> Review plan descriptions of contribution types.	Review any plan materials describing the different contribution sources, to ensure that they are both administered and explained properly.
<input type="checkbox"/> Make sure contributions are posted to the correct calendar year.	Pay careful attention to deferrals made late in December or early in January, to be certain they are recorded for the appropriate calendar year.
<input type="checkbox"/> Make sure W-2s match the actual contributions.	Review W-2s to make sure the deferral amounts match the actual amounts deferred by the employees.
<input type="checkbox"/> Review all deferrals in excess of the basic deferral limit (\$16,500 in 2009).	Require investment providers to support procedures which address contributions <b>in excess of</b> this limit. If any excess deferrals are identified, work with the employees and the affected investment provider to have them returned by the following April 15. If they are discovered after the following April 15, see Section 3 "Corrections and IRS Audits."
<input type="checkbox"/> Make sure identified excesses are timely distributed.	Ask your investment providers to copy you on correspondence to participants regarding corrective distributions of excess deferrals, so that you can document both the actual compliance performed by your vendor and your own involvement.

## 7. How can you be sure you're compliant with total "Annual Additions" limits?

ITEM	DISCUSSION
<input type="checkbox"/> Review plan descriptions of contribution limits.	<p>Make sure that plan language, if any, properly reflects the applicable limits.</p>
<input type="checkbox"/> Obtain sample calculation worksheets from your investment providers and review with help from knowledgeable vendors and/or employer's counsel.	<p>Ask each investment provider to provide a copy of the calculation worksheet or a sample printout of its calculation to determine whether the limits are being applied properly. Confirm that the determination of compensation properly reflects 414(h) pickup contributions (generally, mandatory employee contributions to a state retirement system or other governmental plan) and any other mandatory nonelective contributions, if any.</p>
<input type="checkbox"/> Require a calculation with every SRA.	<p>Require investment providers to submit limit calculation worksheets with each salary reduction agreement for an annual contribution in excess of the basic deferral limit (\$16,500 in 2009).</p>
<input type="checkbox"/> Limit contributions to \$49,000 (2009).	<p>Limit the sum of employer and employee contributions to your 403(b) program to \$49,000 (2009) for any participant (not including age-based catch-up contributions).</p>
<input type="checkbox"/> Limit the total of employer and employee contributions to 100% of includible compensation.	<p>Because employers generally will not allow employees to defer more than they earn, this is generally a self-policing restriction. However, it could become a relevant issue if both employer and employee contributions are being made.</p>

**8. How can you make sure your program’s withdrawal restrictions are compliant today?**

ITEM	DISCUSSION
<input type="checkbox"/> Obtain copies of contract or custodial agreement provisions setting out these requirements.	Requested as a part of the Sample Hold Harmless Agreement provided in Section 4 of the 403(b) Compliance Manual.
<input type="checkbox"/> Confirm that investment providers are applying these requirements, and require them to continue to do so.	

## 9. How can you make sure your program's loan provisions are compliant?

ITEM	DISCUSSION
<input type="checkbox"/> Loans limited to the lesser of 50% or \$50,000 (as adjusted; see General Introduction).	<p>An annuity or custodial provider should be able to demonstrate through contracts, loan agreements and other materials that this limitation is being applied to all loans.</p>
<input type="checkbox"/> Loans repayable within five years unless they are for purchase of the participant's principal residence.	<p>An annuity or custodial provider should be able to demonstrate through contracts, loan agreements and other materials that this limitation is being applied to all loans.</p>
<input type="checkbox"/> Loans repayable in level installments, at least quarterly if not more frequently.	<p>An annuity or custodial provider should be able to demonstrate through contracts, loan agreements and other materials that this limitation is being applied to all loans.</p>
<input type="checkbox"/> Loans defaulted upon the participant's failure to make a scheduled payment by the date due, or if later, within the grace period and reported as a deemed distribution.	<p>An annuity or custodial provider should be able to demonstrate through contracts, loan agreements and other materials that this limitation is being applied to all loans.</p>
<input type="checkbox"/> Defaulted loans foreclosed only if the participant is eligible for a distribution of the defaulted amount.	<p>An annuity or custodial provider should be able to demonstrate through contracts, loan agreements and other materials that this limitation is being applied to all loans.</p>
<input type="checkbox"/> Additional loans taken while a defaulted loan remains outstanding must be repaid by payroll deduction.	<p>An annuity or custodial provider should be able to demonstrate through contracts, loan agreements and other materials that this limitation is being applied to all loans.</p>

## 10. What steps can you take today to make your required minimum distributions guidelines compliant?

ITEM	DISCUSSION
<input type="checkbox"/> Their annuity contracts or custodial agreements include the distribution requirements.	If the provisions are not in the contracts or agreements, either in general terms or in very specific terms, it may be difficult for the provider to enforce such requirements.
<input type="checkbox"/> Each year, they notify participants who are at least age 70½ that they may be required to take distributions unless they are still working, or unless they are taking the required distributions from another 403(b) account.	Participants are not required to begin taking distributions while they are still working for the employer sponsoring the plan, and they also are not required to take a distribution from one 403(b) contract or account if they are taking the required distribution attributable to that contract or account from another 403(b) contract or account.
<input type="checkbox"/> They calculate the required distributions in accordance with the Code distribution requirements.	There are very specific rules for how the required distributions are to be calculated. Those rules generally exclude 403(b) contract or account values that were in the contract or account as of December 31, 1986, until the participant attains age 75 or separates from service, whichever is later.

## 11. What can you do today to ensure transfer and rollover compliance within your 403(b) program?

ITEM	DISCUSSION
<input type="checkbox"/> Understand the different rules for transfers and rollovers.	Participants and practitioners alike can become confused over these rules. However, many providers have clear procedures to ensure proper processing of transfers and rollovers.
<input type="checkbox"/> Do not allow rollovers until the participant is eligible for a distribution.	Direct rollover rules do not pre-empt the distribution restrictions discussed earlier.
<input type="checkbox"/> Apply 20% mandatory withholding to any distribution made directly to the participant or to the participant's spouse that is an eligible rollover distribution.	If a participant elects to receive in cash a distribution that qualifies for a direct rollover, that amount is subject to mandatory 20% withholding, even if the participant could later decide to roll some or all of the distribution to another qualifying plan.
<input type="checkbox"/> Provide participants with notice of their right of direct rollover with respect to eligible rollover distributions.	Participants must be given this notice, and they must be given at least 30 days to review the notice before making an election. They can, however, choose to waive the 30-day notice in order to obtain an immediate distribution.

Yes, I reviewed the 403(b) Compliance Manual checklist regarding operation of the plan.

Group Plan Sponsor: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Contact your information source  
on 403(b) regulations at  
**1-877-403(b)REG (2734)**  
or **403bUniversity.com**