



IRS 403(b) Universal Availability Compliance Requirements

PLAN ADMINISTRATION GUIDE

The IRS requires that all employees who have the right to make elective deferrals to a 403(b) plan must be offered the ability to do so. The IRS also requires employers to **annually notify all eligible employees** of their right to participate in the plan. These requirements are known as the “universal availability” rule.

The IRS may audit a public school district’s 403(b) plan at any time in an ongoing attempt to assure that the plan is in compliance with the universal availability rule. The rule states that if any employee is permitted to make elective salary deferrals to a 403(b) plan, then all employees, with limited exclusions, must have the same opportunity to participate in that plan.

Employee eligibility notification can be done in written or electronic form, but orally is not good enough.

Is your 403(b) plan compliant?

No matter how you administer your plan – whether in-house or with assistance from your TPA – it’s important to make sure you are in compliance with the universal availability requirements of IRC 403(b)(12) (A) (ii) and the final 403(b) regulations. Compliance problems are best avoided altogether and, if encountered, easier and cheaper to fix when they’re small and caught early.

This document will provide you with insights to help you understand and comply with the IRS 403(b) Universal Availability Requirements.

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What to know about the IRS 403(b) Universal Availability Requirements

The Employee Plans Compliance Unit (EPCU) of the IRS is tasked with auditing 403(b) plans to examine procedures for allowing and informing all eligible employees of their right to participate.

If you haven't been audited or been notified about the requirements, you should still be aware of the requirements. You may also receive a request from the IRS for information on your 403(b) plan.

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School districts may be asked to answer questions relevant to their 403(b) plan. This might be a precursor to a pending IRS audit. Districts should be prepared to provide the following information if requested:

- Requirements for any employee to participate in your 403(b) plan.
- Employees or groups of employees, if any, who are excluded from participating in your 403(b) plan.
- Whether your district maintains any other plans with salary deferrals, such as a 401(k) or 457(b) plan.
- Methods used to communicate to employees that they are eligible to participate in your 403(b) plan. If the methods differ by groups of employees or if there are different hiring packages, you will be asked to explain that as well.
- Other documents that may satisfy the universal availability requirements of the district's 403(b) plan can be included.

How to handle your response to an IRS inquiry

- The universal availability requirement and inquiry should be brought to the attention of the person in your district with primary responsibility for the day-to-day administration of your employee benefit programs, including 403(b) plans.
- Your employees who have the task of sorting and routing mail should be made aware of the importance of delivering the correspondence from the IRS directly to those who will respond.
- Your districts must respond in a timely fashion. The details will be spelled out in the inquiry.
- Consult with your district's tax advisor or attorney for assistance in providing the information requested by the IRS.

Where to get more information about the IRS 403(b) Universal Availability Requirements

For more information on the universal availability rule, visit the official IRS 403(b) universal availability requirement web page at:

<https://www.irs.gov/retirement-plans/403b-universal-availability-requirement>.

We can help!

Scan or [click here](#) to go to our Plan Sponsor Resource Center for the tools you need to oversee your plan, and educate and serve your employees.



Scan the QR code for easy online access.

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