



403(b) Plan Compliance Manual

FOR PUBLIC SCHOOLS



AXA EQUITABLE

redefining / standards

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ABOUT THIS GUIDE

AXA Equitable created this guide to help you meet the administrative and compliance requirements of your 403(b) plan. It reviews key 403(b) plan regulations; provides a 403(b) compliance checklist; includes helpful tips; and lists where to find forms, notices, and related documents that will help make the compliance process easier for you.

AXA Equitable and the Retirement Benefits Group

AXA Equitable—Experience, Knowledge, and Resources

AXA Equitable is one of the nation's foremost providers of retirement savings plan products and services. We have the retirement plan expertise, technical knowledge, and administrative resources to provide the level of support you need to establish and maintain a 403(b) or paired 403(b)/457(b) plans, in addition to other retirement savings plans that are appropriate for your organization.

The Retirement Benefits Group—Servicing the People Who Build Our Communities

The Retirement Benefits Group (RBG), a specialized division of AXA Advisors, LLC, provides wealth management services and financial education to meet the retirement needs of those who build and serve our communities: educators and staff in our public schools, colleges, and universities; hospital and municipal workers; and nonprofit employees.

With its dedicated team of over 900 financial professionals, the RBG serves more than 17,000 schools, universities, and nonprofit organizations nationwide.¹ Your financial professional will provide your employees with the information, services, and confidence they need to plan for their retirement years. In addition, your financial professional will work with your employees, one-on-one, to help them enroll, review their retirement savings strategies, and make sure that their assets are appropriately allocated. Financial professionals offer securities products through AXA Advisors, LLC, and the annuity and life insurance products of an affiliate, AXA Equitable Life Insurance Company.

¹ As of August 31, 2008.

403(b) PLAN SERVICES

For You

As an approved investment provider for your 403(b) plan, AXA Equitable offers many services to help you maintain your plan and comply with 403(b) regulations, such as:

- A plan document and plan document updates.
- A sample information sharing and hold harmless agreement, employee salary reduction agreement, and related employee notices needed for compliance purposes.
- Bulletins, alerts, and personal communications keeping you and your staff up-to-date on 403(b) issues.
- Transaction-monitoring assistance for all EQUI-VEST® variable annuity contracts:
 - Tracks contributions and contribution limits; monitors loans, withdrawals, and required minimum distributions; and maintains information required by IRS regulations.
 - Reviews/approves hardship distributions and monitors related suspensions of participant contributions.
- Online access to data needed for recordkeeping and/or compliance purposes. Our **Employer Plan Administration Center** lets you and, if applicable, your third party administrator (TPA):
 - View your plan's cumulative EQUI-VEST® account balance information.
 - Look at participants' EQUI-VEST® account information, including:
 - Year-to-date and total contributions to their accounts by source;
 - Year-to-date inbound/outbound transfers, exchanges, and rollovers in their accounts;
 - Amount and type of distributions taken year-to-date;
 - Current available loan amount; and
 - Outstanding loan balance, date the loan was taken, and (if applicable) loan default amount.
 - Upload contribution files with EQUI-VEST® contribution information.
 - Access EQUI-VEST® participant information needed to evaluate loan and/or hardship withdrawal requests.
 - View general plan information, including a list of your plan's approved investment providers, their contact information, and whether they're approved for contributions, transfers, and/or exchanges.

For Your Employees

AXA Equitable provides a full complement of services to help your employees monitor account progress and make sound financial decisions, including:

- Online account access to their EQUI-VEST® accounts.
- Detailed statements and confirmation notices.
- Communications, such as retirement savings education materials, enrollment assistance, and individual annual reviews provided by your employees' personal financial professional. These reviews can help satisfy the annual meaningful notice requirement under 403(b) plan universal availability rules.²
- Periodic financial analysis to help employees identify their financial objectives, set a course for financial success, and ensure that their assets are appropriately allocated in each phase of their lives.
- Access to an array of investment options within their contracts.
- An extensive portfolio of financial products.

² Annual enrollments are the **minimum** required by 403(b) regulations. However, more frequent opportunities to enroll or change contributions are beneficial to employees because they let employees respond to their changing financial needs more than just once a year.

403(b) PLANS

A VALUABLE BENEFIT FOR YOU AND YOUR EMPLOYEES

Section 403(b) of the Internal Revenue Code permits public schools and 501(c)(3) nonprofit organizations to set up tax-sheltered accounts (TSAs) for employees. A TSA is a retirement plan that allows eligible employers to offer annuity contracts and custodial account mutual funds as funding vehicles to participating employees. Contributions can come from employees and/or employers; employee contributions are made either on a pre-tax basis or, in the case of a Roth 403(b) account, on an after-tax basis.

For you, a 403(b) plan can be an important recruitment and retention tool. For your employees, a 403(b) plan offers the benefit of tax-deferred savings, the convenience of payroll deductions, and the ability to supplement their pensions and (if they are eligible) Social Security.

The Final 403(b) Regulations

On July 26, 2007, the IRS published an updated version of the regulations for 403(b) plans. These regulations—commonly called the “final” 403(b) regulations—are generally effective as of January 1, 2009.³

Most of the final regulations confirm existing practices related to 403(b) plans. They also include related IRS rulings and guidance issued since 403(b) regulations were last released in 1964, eliminate provisions that no longer apply due to changes in law, and provide additional guidance on certain administrative practices. Equally important, the final regulations enable the IRS to focus on a single entity—i.e., you, the plan sponsor—during a 403(b) plan audit.

Employers Have Increased Responsibilities Under the Final 403(b) Regulations

To comply with the final 403(b) regulations, you need to:

- Adopt and adhere to a written plan.
- Monitor—either directly with cooperation from your approved investment providers, or through a designated third party (i.e., a TPA)—all plan transactions and the universal availability requirement. Note: transactions include contributions, contract exchanges, withdrawals, loans, qualified domestic relations orders, and required minimum distributions.
- Remit employee contributions as soon as administratively reasonable following the date on which the amounts would have otherwise been paid to the employee, but no later than the 15th business day of the month following the contribution.⁴

³ Church-sponsored 403(b) plans become subject to the final regulations as of the first plan year after December 31, 2009. The effective date for collectively bargained 403(b) plans varies depending on the expiration date of current agreements. Other exceptions: (1) as of September 24, 2007, 403(b) contributions may not be used to fund new life insurance contracts and (2) as of September 25, 2007, tax-free transfers of employee account assets within the same plan (now called exchanges) are subject to information sharing for compliance purposes.

⁴ Note that state statutes may require a faster remittance. Check your state statutes to determine if a shorter time frame is required.

- Provide employees with an annual meaningful notice of their right to participate in your 403(b) plan and a meaningful opportunity to do so at least once a year.
- Limit tax-free transfers of employee account assets within the same plan—now called exchanges—to:
 - Your plan’s approved investment providers, and/or
 - Investment providers with whom you have agreements to furnish account information needed for compliance and/or recordkeeping purposes.
- Accept tax-free plan-to-plan 403(b) transfers of employee account assets only with approved investment providers in your plan.
- Limit the distribution of employer contributions (if any) to “distributable events” as listed in your written plan, such as: attainment of a certain age, a stated event, disability, after a fixed number of years, or severance of employment. Or, direct employer contributions to the employee accounts in which employee contributions are made so that the withdrawal restrictions for both types of contributions are consistent.

Caution on 403(b) Account Exchanges

Your employees should be aware of the risk of implementing account exchanges without getting confirmation from you, as plan sponsor, that the receiving investment provider has agreed to share information with you. Employees need to understand that account exchanges from one investment provider to another could be treated as taxable distributions and also be subject to tax penalties if the investment provider receiving the account assets is not either an approved plan investment provider or an investment provider with whom you have an information sharing agreement.

ERISA Exemptions Still Apply

The final 403(b) regulations **do not** change a plan’s status under the Employee Retirement Income Security Act of 1974 (ERISA). 403(b) plans sponsored by governmental employers—including public school districts, public universities, district or county hospitals, and some charter schools that are governed by state agencies—continue to be exempt from ERISA, including its fiduciary requirements and IRS Form 5500 reporting.

State Fiduciary Requirements Remain Unchanged

You should check with your legal counsel to determine if there are any state and/or local fiduciary laws that apply to your 403(b) plan. Note, however, that final 403(b) regulations do not change state and/or local fiduciary laws in any way.

Employer Contributions

403(b) plans may include a non-elective (i.e., employer) contribution feature. Many public schools make matching or discretionary employer contributions as well as post-employment employer contributions on behalf of their employees.

Post-Employment Employer Contributions

The ability to make contributions to a 403(b) plan may enable you (subject to state and local laws) to:

- Adopt early retirement incentive plans by making 403(b) contributions on behalf of employees who choose to take early retirement, or
- Replace more expensive severance pay, including unused sick leave or vacation pay, with the post-employment employer contributions.

Contribution Limits

You can make post-employment contributions on an employee's behalf for up to five years following the year the employee leaves your employment. (Contributions must stop in the month of an employee's death, if death occurs before the total amount is paid.) Contributions are based on includible compensation—that is, an employee's earnings during the last full 12-month period of service with you. The annual contribution limit is 100% of the employee's includible compensation up to \$46,000 in 2008 and up to \$49,000 in 2009. This amount will be indexed for inflation in subsequent years. If post-employment contributions are made in the year an employee leaves your employment, the annual contribution limit is based on employer and employee contributions combined.

Nondiscrimination Rules

Governmental employers, including public school districts, are exempt from nondiscrimination rules for employer contributions to 403(b) plans. Governmental employers (and church employers) may make employer contributions for **any employee or for any group of employees**.

Do Not Give Individual Employees a Cash (or Any Other) Option

In order to qualify as an employer contribution, any amounts given to employees cannot be offered as a choice between either post-employment or in-service employer contributions, or a taxable cash benefit. The decision of who will be eligible for the benefit either must be made unilaterally by you or through the bargaining process with the employees' union(s). Failure to properly implement this procedure risks the reclassification of your contributions as employee contributions, which are subject to payroll taxes, lower annual limits, and no post-severance contribution opportunity.

Contact your AXA Advisors financial professional to learn more about using post-employment contributions.

Do Employer Contributions Make 403(b) Plans Sponsored by Public Schools Subject to ERISA?

No, employer contribution features do not make 403(b) plans sponsored by governmental employers—including public school districts—subject to ERISA.

403(b) REGULATIONS

A periodic review and analysis of your plan should be part of your standard operating procedures. This is important no matter how you administer your plan—i.e., with assistance from your investment providers and/or a TPA. It is also one of the best ways to ensure that your plan stays in compliance with all pertinent regulations. And, compliance problems are easier and cheaper to fix when they're small and haven't continued over a long period of time.

Compliance Checklist

The following checklist outlines key compliance areas for a 403(b) plan. Use it periodically to help make sure your plan conforms to 403(b) regulations.

The checklist is meant to serve as a guide; it is not intended to be a comprehensive list of all 403(b) compliance requirements, so answering “yes” to each question may not mean your plan is 100% compliant. You should consult with your legal counsel or tax advisor to determine the compliance activities and administrative process reviews that best fit your organization’s specific circumstances.

I. Plan Setup

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1. Are you eligible to sponsor a 403(b) plan? Yes No
 To be eligible, you must be a public education employer under IRC 170(b)(1)(A)(ii) (public school, community college, state college/university, or a department of education) or a 501(c)(3) organization.
-
2. Do you have a procedure in place to monitor plan transactions (e.g., contributions, contract exchanges, hardship withdrawals, loans, and required minimum distributions) and the universal availability requirement? Yes No
 Effective September 25, 2007, all 403(b) contract exchanges are limited to your plan’s approved investment providers and/or investment providers with whom you have an information sharing agreement. Your AXA Advisors financial professional can provide you with a sample information sharing and hold harmless agreement.
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3. Have you confirmed your investment providers’ (and, if applicable, your TPA’s) responsibilities in writing and provided copies to all involved parties? Yes No
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4. If your plan includes an automatic enrollment feature, have you confirmed that your state’s statutes permit automatic enrollments? Yes No
-

II. Approved Plan Investment Provider(s)

1. Are your plan's approved investment providers listed in your written plan? **Yes** **No**

Only approved investment providers can receive employee contributions and transfers. To be an "approved" investment provider, the provider must be listed in your written plan (see Section III).

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2. Have you given each of your approved plan investment providers a list of all your approved providers and a list of all other investment providers with whom you have information sharing agreements? **Yes** **No**

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3. Have you instructed your approved investment providers to:
- a. Limit transfers to your plan's approved investment providers? **Yes** **No**
 - b. Limit exchanges (to or from your 403(b) plan) only to approved investment providers or to investment providers with whom you have information sharing agreements? **Yes** **No**

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4. Do your approved investment providers furnish you—and your TPA, if applicable—with periodic reports or website access to employee data demonstrating that they are performing their compliance-monitoring responsibilities? **Yes** **No**

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5. Do you have a procedure to add/drop approved investment providers? **Yes** **No**

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6. Do the annuity contracts and/or custodial accounts available through your plan's investment providers contain the following provisions, which are required for employee contributions to be considered qualified 403(b) contributions:
- a. State the contract is not transferable (annuity contracts only)? **Yes** **No**
 - b. State the employee's 403(b) contribution limits (all contracts)? **Yes** **No**
 - c. Include provisions to have an eligible rollover distribution directly transferred to another qualified plan that accepts such distributions or to an IRA (all contracts)? **Yes** **No**

III. Written Plan

1. Do you have a written plan? **Yes** **No**

The written plan does not have to be in a single document; however, the IRS suggests that 403(b) plans with multiple investment providers adopt a single written plan document. Your AXA Advisors financial professional can provide you with a written plan. Churches and qualified church-controlled organizations are not required to adopt a written plan unless the plan is established as a 403(b)(9) retirement income account.

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2. Does your written plan:
- a. Specify all terms and conditions under the plan, such as eligibility, benefits, types of employee contributions permitted (pre-tax, Roth [if available], and catch-up contributions), contribution limits, and distributions? **Yes** **No**
 - b. Include the plan's requirements on loans, hardship withdrawals, rollovers, exchanges, and transfers? **Yes** **No**
 - c. List all approved investment providers available to receive contributions, exchanges, and plan-to-plan transfers? **Yes** **No**
 - d. Identify the party administering your plan—i.e., you, a TPA, or other parties? **Yes** **No**
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3. Do you have a procedure in place to amend your written plan to reflect changes in the plan and/or the regulations? **Yes** **No**
-

IV. Universal Availability Requirement

1. Is your 403(b) plan available to all eligible employees, including:
- a. Full-time and part-time common-law employees who are not eligible to participate in another salary deferral plan you sponsor, such as another 403(b) plan, or a 401(k) or 457(b) plan? **Yes** **No**
 - b. Employees who contribute at least \$200 per year? **Yes** **No**
 - c. Employees who normally work 20 hours or more per week and are either expected to work 1,000 hours or more in their year of hire, or worked 1,000 hours or more in the prior year? **Yes** **No**

This requires that records be kept on hours worked. (To avoid maintaining records on hours worked, you can simply permit all common-law employees to participate.)
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2. Does your plan allow new participants to start contributing to the plan without the need to meet:
- a. A service requirement? **Yes** **No**
 - b. A minimum age requirement? **Yes** **No**
- 403(b) regulations permit a service and/or minimum age requirement for employer contributions (if offered)—but not for employee contributions.
-
3. Do you have a procedure in place to provide employees with both a written notice—i.e., an “annual meaningful notice”—about their eligibility to participate in the plan and a meaningful opportunity to participate in the plan or make changes to their current contributions at least once a year? **Yes** **No**
- The IRS’s position is that the plan is not actually available if employees are not aware of it. Your AXA Advisors financial professional can provide you with a sample annual meaningful notice.
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4. Does your written notice (i.e., “annual meaningful notice”) cover:
- a. Eligibility requirements (who can and cannot participate in the plan)? **Yes** **No**
 - b. Enrollment procedures (how and when to enroll)? **Yes** **No**
 - c. Types of employee contributions permitted (pre-tax, Roth [if available], and catch-up contributions)? **Yes** **No**
 - d. How and when contribution amounts can be changed? **Yes** **No**
 - e. Sources for additional information, including information on approved investment providers? **Yes** **No**
- The notice can also satisfy the requirement to provide employees with an effective opportunity to enroll or change contribution elections at least once a year.

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5. Do you offer employees access to educational workshops that review your 403(b) plan, enrollment periods, and available investment providers? **Yes** **No**
- While not a requirement, we strongly recommend you conduct workshops at least quarterly. Your local AXA Advisors financial professionals are always available to conduct workshops as well as one-on-one employee enrollment meetings.

V. Administrative Procedures

1. Salary Reduction Agreements
- a. Does your salary reduction agreement collect information about employee investments in other pre-tax retirement plans—e.g., other 403(b) plans, 401(k) plans, SIMPLE IRAs, or SARSEPs—which is needed to calculate an employee’s maximum available contribution under your plan? **Yes** **No**
 - Your AXA Advisors financial professional can provide you with a sample salary reduction agreement.
 - b. Do you have a procedure in place to:
 - Retain copies of all current salary reduction agreements? **Yes** **No**
 - Reject salary reduction agreements if the contribution levels will exceed deferral limits? **Yes** **No**

2. Contributions

Do you have a procedure in place to:

- a. Stop accepting employee contributions when employee contribution limits are reached? **Yes** **No**
- b. Stop accepting all contributions for an employee when the IRC 415(c) limit is reached? **Yes** **No**
- c. Obtain and maintain documentation for all catch-up contributions? **Yes** **No**
The IRS selects one of the three tax years prior to the current tax year for its audits. Therefore, you should retain the documentation for three full years after the year for which it was developed.
- d. Remit contributions as soon as administratively reasonable following the date on which the amounts would have otherwise been paid? **Yes** **No**
Contributions should be remitted no later than the 15th business day of the month following the month contributions were made. In many states, however, state statutes require a faster remittance. Check your state statutes to determine if a shorter time frame is required.
- e. If applicable, designate employer versus employee contributions? **Yes** **No**
- f. Correct excess contributions? **Yes** **No**
-

3. Loans (if permitted)

- a. Does your plan's loan form collect information on all plan investment providers to whom an employee directs contributions (including contributions to other plans where you permit loans)? **Yes** **No**
Your AXA Advisors financial professional can provide you with a sample loan request form.
- b. Do you require your plan's approved investment providers to respond to loan information inquiries from other approved plan investment providers—or your TPA, if applicable—within five days, so loan requests can be processed on a timely basis? **Yes** **No**
- c. Do you require your investment providers to enforce participant loan repayments and limit aggregate loan amounts as required under IRC 72(p)? **Yes** **No**
Defaulted loans or loans in violation of IRC 72(p) may be deemed a taxable distribution and reported as income to the participant.
- d. Does your plan prohibit new loans for employees who have outstanding defaulted loans with your 403(b) plan or any other retirement plan you sponsor? **Yes** **No**
Note, if you permit employees with outstanding defaulted loans to take new loans from your 403(b) plan, you must require that the new loans be repaid through payroll deductions.
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4. Hardship Withdrawals (if permitted)

- a. Are your employees required to provide documentation verifying that hardship withdrawal requests meet the definitions and requirements for hardship in the IRC 401(k) regulations? **Yes** **No**

The sample hardship withdrawal request form your AXA Advisors financial professional can provide you with requires such documentation.

- b. Is there a procedure in place to have your payroll department suspend voluntary employee contributions to all of your 403(b), 401(k), and 457(b) plans for six months after a hardship withdrawal? **Yes** **No**

5. Non-grandfathered Orphan Accounts

Have you made a reasonable, good faith effort to coordinate information sharing for non-grandfathered orphan accounts held by providers that were at one time part of your plan? **Yes** **No**

A non-grandfathered orphan account is held by a current employee and is either:

- An account for which, between January 1, 2005, and December 31, 2008, you forwarded contributions to an investment provider that, as of January 1, 2009, is neither one of your plan's approved providers nor a provider with whom you have an information sharing agreement;
- An account in your plan that was exchanged between September 25, 2007, and December 31, 2008, for an account with an investment provider that as of January 1, 2009, is neither one of your plan's approved providers nor a provider with whom you have an information sharing agreement; **or**
- An account with an investment provider that after January 1, 2009: (1) is dropped as an approved provider under your plan, (2) continues to receive exchanges from other accounts held by your employees, **and** (3) does not execute an information sharing agreement with you after being dropped from your plan.

VI. Employer Contributions (if offered)

1. Do state and local laws permit you to make employer contributions to your 403(b) plan? **Yes** **No**

2. Do any employees for whom you want to make post-employment contributions have contracts that could affect your ability to do so? **Yes** **No**

For example, a superintendent's contract may not permit any amendments, or a collective bargaining agreement may require equal treatment for all members.

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3. Does your written plan describe your employer contribution guidelines, including:
- a. Eligible employees? Yes No
 - b. Employer contributions remain in your control? Yes No
 - c. Employer contribution limits? Yes No

Note, for post-employment contributions, if your plan replaces unused sick leave or vacation pay (or other types of severance pay), language needs to be included in your plan specifying that amounts will be made as employer contributions up to the eligible contribution limit and that any balances will be paid to the employee as compensation.
 - d. For post-employment contributions:
 - The purpose of the employer contributions? Yes No
 - What employees must do in exchange for the contributions, e.g., retire at a certain time, stay in your employment for a specific time period, etc.? Yes No
 - The need to perform calculations for each eligible employee to determine maximum contribution amounts? Yes No
-

4. If you make post-employment employer contributions, do you ensure that employees do not have a right to elect these contributions in cash? Yes No
- You cannot give employees a choice between post-retirement contributions or some other arrangement, such as a cash payment. If you do, the IRS would consider the post-retirement contributions to be employee contributions and disallow the contributions. Employees cannot make contributions after they have severed employment (except from certain types of compensation they would have received had they stayed, and then only if that compensation is paid before the end of the calendar year of severance, or, if later, within 2½ months following severance). Employer contributions are allowed for up to five tax years following the tax year of severance.
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Common / Potential Plan Violations

The 403(b) regulations require that 403(b) plans be maintained in accordance with plan provisions. This means you are responsible for ensuring that your plan documents accurately reflect the operation of your plan and that your plan complies with IRS requirements. Plan violations to watch out for are:

General Plan Administration

- *No written plan*—The written plan must cover all of the plan’s terms and conditions including eligibility, benefits, contributions, approved investment providers, withdrawals, loans, rollovers, transfers, and distributions. The terms of the plan must also be followed.

- *Permitting exchanges between investment providers that are neither approved providers for the plan nor providers with whom the plan has information sharing agreements*—Effective September 25, 2007, all 403(b) exchanges are limited to either your plan’s approved investment providers or investment providers that agree to share information for plan compliance purposes. Your AXA Advisors financial professional can provide you with a sample information sharing and hold harmless agreement.
- *Ineligible investment options*—An employer that remits 403(b) contributions to a bank suspense account rather than to qualified investment providers would be using an improper investment option. A mutual fund without a custodial arrangement (as required under the regulations) is an improper investment option, as is an annuity without the required 403(b) regulatory language. A violation can also occur if new endorsements are not being given out to all annuity contract holders. In these cases, the IRS would likely disqualify all of the affected 403(b) accounts and may or may not require you to pay all under-withheld federal income taxes for those disqualified accounts.

Employee Eligibility and Contributions

- *Eligible employees have not been given the opportunity to participate in your plan*—Because the exclusion of substitute teachers is a common violation, it is important to permit substitute teachers to participate if they choose to do so. To avoid the problem of payroll periods when the substitute may not have generated enough salary to support a flat dollar contribution, you can permit these types of employees to make contributions based only on a percentage of compensation.

Under the final 403(b) regulations (which are generally effective January 1, 2009), all full-time and part-time common-law employees are eligible to participate; however, you can exclude employees who fall into the following classifications:

- Employees who are nonresident aliens;
- Employees who are eligible to participate in another salary deferral plan you sponsor, such as another 403(b) plan, or a 401(k) or 457(b) plan;
- Employees who elect to contribute less than \$200 per year;⁵
- Employees who normally work less than 20 hours per week and either are not expected to work 1,000 hours or more in their year of hire, or worked less than 1,000 hours in the prior year (requires that records be kept on hours worked); and
- Students who perform services for a university as described in IRC 3121(b)10.

Individuals who are not eligible to participate under any circumstances include: leased employees, independent contractors, and elected officials (except where the elected official’s job requires a background in education to qualify for the position, e.g., State Superintendent of Public Education).

- *Employee contributions exceed eligible limits*—You must monitor all employee contributions, regular and catch-up, to ensure that they do not exceed annual limits. If 15-year catch-up contributions are permitted, you must also be sure that employees’ age 50+ catch-up contributions are properly coordinated with their 15-year catch-up contributions. If an employee is eligible for both catch-ups in the same year, the 15-year catch-up is counted first.

⁵ Be sure to require that your approved providers accept contributions of at least \$200 per year. If you do not offer this option, your plan may be found to be discriminatory.

Other violations can occur when:

- An employee's total 15-year catch-up contributions exceed the \$15,000 lifetime maximum,
 - An ineligible employer allows its employees to make 15-year catch-up contributions, or
 - An ineligible employee makes 15-year catch-up contributions.
- *The plan has a service or minimum age requirement before employees can start contributing*—The universal availability requirement prohibits such restrictions on employee contributions. Only employer contributions may be subject to a service or minimum age requirement.

Loans, Withdrawals, and Distributions

- *Loans have not been administered in accordance with plan regulations*—Common loan violations include: failure to make required payments when due, which results in the default of the entire loan; granting of a new loan when there is an outstanding defaulted loan unless the new loan is being repaid through payroll deductions; poor documentation; and loans from multiple plan investment providers or other plans of the employer that in the aggregate exceed the allowable loan limits.
- *Pre-age-59½ plan hardship withdrawals have been made by individuals who do not meet the “qualifying event” requirements*—Common hardship withdrawal violations involve inadequate documentation proving that the distribution is the result of a financial hardship, or hardship distributions from multiple plan investment providers that in the aggregate exceed the amount needed to relieve the hardship. If the safe-harbor method is used to determine hardship, violations can also occur if employees take hardship withdrawals and you do not suspend those employees' voluntary contributions to all of your 403(b), 401(k), and 457(b) plans for six months.
- *IRS required minimum distributions have not been made to eligible individuals*—Distributions to participants in your plan must begin by the later of: the April 1st after the participant reaches age 70½, or following the year after the participant is no longer employed by you. The law requires that the participant pay a 50% federal penalty tax on the required distribution if it is not made in a timely manner.
- *Income taxes on distributions have not been properly reported*—Incorrect distribution codes used on 1099 forms can result in the improper tax treatment of distributions and/or a failure to report the 10% early withdrawal federal penalty tax.

What to Do If You Uncover Plan Violations

The IRS has two programs you can use to correct plan violations you uncover.⁶ The programs are part of the IRS's Employee Plans Compliance Resolution System (EPCRS). Consult with your legal counsel for more information about these programs and how they may apply to your specific circumstances.

Self-Correction Program (SCP)

This program is for operational violations, i.e., mistakes that are made when the plan's operations do not follow the terms of the plan. Examples include: failure to keep contributions within deferral limits, failure to offer the plan to all eligible employees, and failure to pay required minimum distributions. The SCP has no fees and you do not have to contact the IRS.

⁶ There is a third program, the Audit Closing Agreement Program (Audit CAP), for plan violations discovered during an IRS audit. It is described in the following section, “What to Do If Your Plan Is Audited.”

SCP rules require that corrections to significant operational failures be made by the end of the second plan year following the plan year in which the “failure” occurred. Insignificant operational failures can be corrected at any time. There are IRS guidelines on how to distinguish significant from insignificant operational failures. See Revenue Procedure 2008-50⁷ or future releases. Using the SCP will not prevent an audit, however, it can reduce the number of violations an audit would uncover.

Voluntary Correction Program (VCP)

VCP is available if your plan is not being audited. Use it if the plan failure is not eligible for relief under the SCP. You will have to identify each failure and its duration, indicate what correction you have made or propose to make, and indicate what specific measures you have taken to ensure that the failure will not happen again. You will also have to include payment of a pre-established fee based on the number of employees you have. (The fee does not include excise taxes, unpaid FICA taxes, or similar items.) And if the correction involves making changes to your written plan, you may need to simultaneously submit a determination letter application with its applicable fee.

If you use the VCP to correct plan violations, your plan will **not** be audited until the VCP process is complete. This means you avoid the risk of having your plan disqualified, which could happen if it is audited before you correct the violations.

What to Do If Your Plan Is Audited

The best preparation for a plan audit is to have an ongoing compliance procedure in place. Your procedure should identify who is responsible for overseeing your plan’s compliance activities and who will communicate with the IRS if your plan is audited.

If you have outsourced any or all plan administration to a TPA, your TPA should be able to both oversee compliance activities and communicate with the IRS. If you are not working with a TPA, you should designate someone in your organization to handle these responsibilities. Your compliance coordinator, whether internal or external, should maintain a list of whom to contact at each of your plan’s investment providers to obtain any additional information that may be needed during an audit.

Audit Closing Agreement Program (Audit CAP)

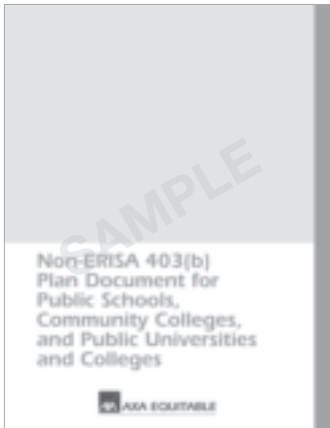
Audit CAP is for violations discovered by the IRS while your plan is being audited. If the IRS uncovers a violation and your plan faces possible disqualification, you may be given the opportunity to correct the violation and potentially pay a penalty, which is usually a percentage of the tax that would be due if the plan were disqualified.

For more information on Audit CAP and/or other IRS compliance resolution programs, consult your legal counsel.

⁷ Available online at <http://www.irs.gov/pub/irs-drop/rp-08-50.pdf>.

FORMS AND NOTICES

Your AXA Advisors financial professional can provide you with a written plan document, an information sharing and hold harmless agreement, as well as sample 403(b) plan forms and notices. These are important tools for keeping your plan in compliance.



Plan Document—You must have a written 403(b) plan. Our plan document fulfills this requirement for 403(b) non-ERISA plans sponsored by public schools, community colleges, and public universities and colleges.



Information Sharing and Hold Harmless Agreement—403(b) regulations require you to limit exchanges of employee account assets within the same plan to your plan’s approved investment providers or to providers with whom you have information sharing agreements. Our agreement provides for information sharing and lets you confirm investment providers’ responsibilities under your plan.



Annual Meaningful Notice of Eligibility—Our sample satisfies the “annual meaningful notice” requirement. The regulations require that you provide your employees with a written notice at least once a year about their eligibility to participate in your 403(b) plan.

Salary Reduction Agreement—Our sample includes a section that collects information about employee investments in other pre-tax retirement plans (e.g., other 403(b) plans, 401(k) plans, SIMPLE IRAs, or SARSEPs) which is needed for compliance purposes.

Loan Request Form—Gathers data required for plan compliance, such as information on all plan investment providers to whom an employee directs contributions, including contributions to other plans where you permit loans.

Hardship Withdrawal Request Form—Our sample requires the participant to provide documentation verifying that the hardship meets plan and IRS requirements. The IRS has noted that lack of such documentation is a common compliance error.

These forms and notices can also be downloaded from the AXA Equitable 403(b) Information Center website at www.axa-equitable.com/403b-information-center.

AXA EQUITABLE

YOUR 403(b) RESOURCE

You have several resources available to you if you need help with your 403(b) plan, have a question, or need information.

Call

- Your local AXA Advisors financial professional
- The EQUI-VEST® Service Center at (800) 628-6673

Go Online

- For specific information on your 403(b) plan, log on to the Employer Plan Administration Center⁸ at www.axa-equitable.com
- For general information, including sample forms and notices, visit the AXA Equitable 403(b) Information Center website at www.axa-equitable.com/403b-information-center

Email

- EV.Collections@axa-equitable.com

⁸ You must register with the EQUI-VEST® Service Center to use the Employer Plan Administration Center. To get started, email EV.Collections@axa-equitable.com or call (800) 628-6673, press 2, and ask to speak to the EPAC technical support representative.

403(b) Plan Compliance Manual for Public Schools

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