

# Having Internal Controls Can Limit IRS' Focus During 403(b) Audits

## What 403(b) Sponsors Should Expect From IRS 403(b) Audits

**The Internal Revenue Service (IRS) statistics are startling:**

- **13% of Higher Education 403(b) plan sponsors did not adopt a plan document by the December 31, 2009 due date, according to interim findings from the IRS' 403(b) Universal Availability Higher Education Compliance Check.**
- **403(b) plans have a 70% error rate, according to IRS representatives discussing recent audit activity.**

**And the IRS has recently added resources dedicated to auditing 403(b) plans.**

---

### **Attention to Your Plan Procedures Will Help You Successfully Survive an IRS 403(b) Audit**

At Voya Financial™, we know that the prospect of an IRS 403(b) audit can be daunting. But with our dedicated expertise in 403(b) plans, we can provide you with the information below that can help you understand what IRS auditors may be seeking.

Traditionally, the IRS has requested such documentation on audit as your 403(b) plan document; lists of participants taking a loan, hardship or other distribution; and enrollment materials. However, in recent speaking engagements, the IRS has indicated that their auditors will also be looking for discrepancies between your written materials and your administrative practices.

In short, an IRS auditor will be exploring whether the employer has put "internal controls" in place – procedures designed to demonstrate a commitment to compliance and to minimize errors. Expect that you may be asked for documentation of the following internal controls:

- Human Resources procedures, including notifying eligible employees of the opportunity to contribute to the 403(b) plan and determining under what circumstances an individual is considered an independent contractor rather than an employee.
- Payroll procedures, including monitoring employee deferrals against the annual Internal Revenue Code (IRC) deferral limit.
- Calculations and supporting documentation for employees who are making catch-up contributions to assess whether they will exceed the IRC-permitted limits.
- If your 403(b) plan has more than one investment provider, procedures and agreements in place to share information for loans, hardships, and other distributions from the 403(b) plan.

This material has been provided for educational purposes only.

This material was created to provide accurate and reliable information on the subjects 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.

These materials are not intended to be used to avoid tax penalties, and were prepared to support the promotion or marketing of the matters addressed in this document. The taxpayer should seek advice from an independent tax advisor.

**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 penalties 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 or referred to, and cannot be used or referred to, in promoting, marketing, or recommending the transaction(s) or matter(s) addressed herein. Revised 9/14

**Action Step:** Review your procedures now to determine whether any of these areas currently are not addressed or should be enhanced. The IRS has indicated that a 403(b) plan with internal controls and procedures will be perceived as having greater credibility for operating in an IRS compliant environment.

- Procedures to indicate when employees' contributions are transferred to the investment providers designated under your plan.

**Action Step:** Check your procedures to determine whether employee contributions are transmitted to investment providers within the timeframes permitted under the IRC (and, if applicable, ERISA) requirements. If your plan uses a common remitter service, determine how quickly the common remitter sends those contributions to your plan's investment providers.

- Determination of whether any of your employees has an ownership interest of more than 50% in an outside business.

**Action Step:** Ask whether any of your employees have an ownership interest in an outside business. IRS rules typically will require aggregation of contributions made to your 403(b) plan and the outside business' plan. You can solicit this information from your employees when they complete the salary deferral agreement for your 403(b) plan. As year-end approaches, coordinate with those employees who indicated that they have an outside business as part of your annual contribution limit monitoring.

To determine whether the 403(b) plan document matches day-to-day operation, the IRS will likely request a copy of your most recent employee handbook. In the IRS' experience, an employer may not keep its plan document up-to-date to reflect current administration, but will often refresh the employee handbook on a regular basis.

**Action Step:** When you are preparing your latest employee handbook, read it against the terms of your plan document. If provisions between the two documents are not consistent, determine which document needs to be modified to reflect both your operating procedures and the IRS rules.

Your ability to anticipate IRS lines of inquiry in advance of an audit is the best preparation you and your plan's can counsel can undertake. As a provider for 403(b) plans and a trusted resource for 403(b) plan information and support, Voya™ will be ready to deliver any provider-related documentation needed to respond to the audit in order to help an IRS audit of your 403(b) plan go smoothly.

-2-

This material has been provided for educational purposes only.

This material was created to provide accurate and reliable information on the subjects 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.

These materials are not intended to be used to avoid tax penalties, and were prepared to support the promotion or marketing of the matters addressed in this document. The taxpayer should seek advice from an independent tax advisor.

**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 penalties 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 or referred to, and cannot be used or referred to, in promoting, marketing, or recommending the transaction(s) or matter(s) addressed herein. Revised 9/14