

Compliance Essential Kit

Implementation Quick Steps

The enclosed kit is designed to assist you in the final phase of transitioning your plan to meet the January 1, 2009, regulatory deadline. The folder and additional materials should be helpful as you complete your process and celebrate the beginning of a new year in 403(b) administration.

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

## STEP 1: Finalize Qualified Service Provider Agreements

New 403(b) regulations generally consider all accounts with active contributions in the plan from January 1, 2009, to have the highest sense of compliance obligation from a plan sponsor perspective. Thus, it's critical that both the documents and the generic Service Provider Agreements requested from active providers be carefully crafted to support that requirement.

The Qualified Service Provider Agreement in the Compliance Essential Kit was carefully crafted to support your plan's form and operation as it relates to the model plan document provided. It is imperative that each provider that will be active and receiving contributions after January 1, 2009, sign this agreement prior to receiving contributions.

In addition to the careful consideration of the plan's form and operation, the plan document and Qualified Service Provider Agreement found in Compliance Essential can have other key benefits to your organization. The Qualified Service Provider Agreement asks for a signature from an officer of the company and contains basic provisions to create accountability from your vendor(s) of choice. This can help ensure that vendor(s) are accountable for ongoing compliance operations and will be held to the standards set forth in your document.

### Q&A: Finalize Qualified Service Provider Agreement

#### What is the difference between an Information Sharing Agreement (ISA) and a Qualified Service Provider Agreement?

Information Sharing Agreements are generally designed to provide guidelines for sharing of information between the plan sponsor and providers that have accounts "outside the plan" under Revenue Procedure 2007-71. Information Sharing Agreements are not prohibited for accounts inside the plan but may be useful to help formalize procedures, information flow, etc.

A Qualified Service Provider Agreement takes the concept a step further and provides specific guidance, direction and accountability for your selected vendors to maintain the compliance integrity of your plan.

#### Can I Use Compliance Essential with only ISAs and not Qualified Service Provider Agreements?

Generally, no. A provider that may affirmatively sign an ISA may not be held to critical form and operation requirements set forth specifically through the Qualified Service Provider Agreement. It should be noted that the Qualified Service Provider Agreement makes strong efforts to accommodate different vendors and product types and is available for contributions only as a stand alone, or contributions, loans and hardships as a vendor.

#### What if a vendor refuses to sign the agreement?

Plan sponsors and vendors alike generally recognize that compliance with the employer's plan document and entering into a Service Provider Agreement consistent with the plan's requirements are essential to the plan's form and operation. Many plan sponsors are clearly directing vendors that if they are not willing to sign the agreement, they will not be included in the plan going forward.

#### Should I keep the agreements on file for future use?

Yes, you will want to maintain copies of your document and all vendor agreements in a secure location for future use. You may need to refer to those agreements in the future as you consider design or vendor changes, or if you receive notice of inquiry from the IRS on an examination of your plan.

#### Can I keep our ISAs together with the Qualified Service Provider Agreements?

Yes. Information Sharing Agreements are generally required for all exchanges outside the approved providers in the plan and are a way to formalize communication with all providers if additional information is needed. Information Sharing Agreements with all providers can be stored in the kit and used for future reference. Note that they might not contain the key requirements needed for active vendors after January 1, 2009.

## STEP 2: Execute Plan Document and Send Copy of Document and Approved Vendor List to Approved Vendors

The Compliance Essential Kit includes a sample of the adoption agreement for the 403(b) plan document for your review with counsel; these documents can help you put in place the key document governing your plan. In the adoption agreement itself you'll also find a menu of options that provide flexibility to you and your plan participants in key areas such as loan and hardship availability, Roth contributions and other key issues. We encourage you to review these features and benefits and use them on a flexible basis to support the design of your program going forward.

- Sign plan document adoption agreement.
- Update your approved vendor list.
- Print copy of signed agreement and document and include in compliance file kit for future reference.
- Provide a copy of the document and approved vendor list to your providers of choice.

### Q&A: Plan document and approved vendor list

#### Where do I get an updated copy of the plan document or updated adoption agreement?

- The most recent updates to the adoption agreement and plan document can be found on our dedicated Web site, 403bUniversity.com. 403(b) University is designed to be a single point of reference for ongoing administration of your organization's program.

#### Does my document need to be reviewed or approved by the IRS?

- Currently the IRS does not review prototype 403(b) plan documents, however they may in the future. The Essential Plan document consists in large part of the model plan document language used in Revenue Procedure 2007-71 and also found in the ASBO document, and according to that Revenue Procedure use of the model language affords the plan sponsor direct reliance to the extent of the model language incorporated into the plan. A signed adoption agreement and document is required under current guidelines, and a copy of both with an approved vendor list should be forwarded to your providers.

#### How does the document handle loans and hardships and what are my responsibilities as the administrator?

- The Compliance Essential documents are designed to maximize flexibility with these programs and to allow both the plan sponsor and the approved vendors reasonable choice and accommodation in their roles supporting the plan.

Loans and hardships may be included or excluded on a plan level (i.e., no loans or hardships under the plan; or, loans and hardships are available under all products that otherwise permit them) or may be restricted to a subset of "loan or hardship" approved vendors inside the plan (i.e., only three of the five approved vendors are permitted to offer loans and hardship withdrawals, because the remaining two vendors did not agree to administer those transactions as required under the plan). The document, Service Provider Agreement and approved vendor lists are all designed to support both the plan's election here and the vendors preferred position inside the plan.

#### Will a vendor that doesn't allow loans and hardships be excluded from the plan?

That is up to the plan sponsor. Plan sponsors have the ability, subject to any additional legal restrictions, to set reasonable compliance administrative requirements for all providers in the plan. A plan sponsor may allow or disallow providers that don't make loans or hardships available for administrative, operational or other reasons. Such vendors can be included in the plan together with any other population of loan or hardship approved vendors.

It should be noted that there is no additional direct fee layering to participants for these services as they are delegated to providers at no cost in the Qualified Service Provider Agreement.

#### What changes should I make to my plan as circumstances change? Will an updated document be available?

- Compliance Essential Kit includes both current documents and ongoing document availability through our dedicated Web site, 403bUniversity.com. Plan sponsors also have access to a self-audit checklist and compliance manual which can help with technical questions. Additionally, the 403(b) regulations resource center stands available to answer questions at 877-403B-REG. We offer ongoing support and guidance to plan administrators using the Compliance Essential Kit.
- We encourage plan sponsors to meet with all providers in the plan at least annually to review administrative procedures and operations.

## STEP 3: Review and Finalize Ongoing Administrative Procedures

- The last point is to finalize ongoing administrative procedures for your plan including day-to-day operational issues, universal availability communication plan, completion of a plan self-audit checklist and other items.
  - Finalize operational issues: Make sure that your payroll and benefits staff have a record of salary reduction agreements and are storing them for future reference.
  - When your Universal Availability policy is set, make sure you are using the included materials, or alternate materials that you might develop for your employees, to communicate the plan availability to all eligible employees. Use payroll stuffers, building mailbox stuffers, posters, and e-mail blasts for effective notification. Also, you will want to maintain records of the notifications provided, as well as of the distribution list for those notifications, for future reference in the event of a review or audit.
  - You will want to know how contribution limits are being monitored for compliance. *Example: Many employers will incorporate the basic participant deferral limit (\$16,500 for 2009), across providers, into their system, and require providers to supply completed calculations to support any additional contributions.* In addition, you will want to have a procedure to ask employees about outside employment that they control, to identify possible plan contributions that may need to be aggregated with contributions to your plan in applying the overall dollar limit under Code Section 415(c).
  - Review loan and hardship administration with each vendor on an ongoing basis. The Qualified Service Provider Agreement and document delegate specific responsibilities and work flow to providers in the plan using loans and hardships.

- The Compliance Essential Kit includes both a self-audit checklist and compliance manual for use with your benefits and payroll staff. This is a sample checklist, and you may identify additional items for review as well as desired changes to the sample checklist. Encourage a periodic meeting to review your organization's checklist and document those efforts. Also, document and keep communications with providers and participants for future reference.

### Q&A: Ongoing administrative procedures

#### What administrative procedures should we include in our plan?

Key procedures include operational items such as payroll dates, approved vendor lists, etc., as well as decisions on universal availability, contribution limit monitoring, loans and hardships, and self-audits.

#### What if we make a mistake?

The IRS has provided favorable guidance recognizing an employer's ability to self correct certain identified plan defects, or to request IRS review of certain corrections. An important requirement for relying upon such guidance is the employer having important compliance procedures in place. As a general matter, that does not require that the procedures be perfect. After all, if they were perfect, there likely would be no defects. The Compliance Essential Kit provides many tools that you can use, in consultation with your organization's counsel as appropriate, to help document those key compliance procedures.

#### Is a self-audit checklist a positive for us even if our plan is not audited?

Yes. Performing your own review can help you confirm the areas that are already in good shape, and identify areas that may need additional attention.

UPDATE: The IRS extended the deadline for employers to adopt a written plan until December 31, 2009, subject to specific requirements which include general compliance with the final 403(b) regulations on and after January 1, 2009.

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