



Universal Availability - Is Your 403(b) Plan Compliant?

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The IRS has recently identified compliance with the universal availability requirement as a recurring problem during its audits of Code Section 403(b) tax deferred annuity plans. The universal availability rule states that if any employee of an organization is permitted to make salary deferrals to a Code Section 403(b) plan, the same deferral opportunity must be afforded to all employees of the organization (except in limited circumstances).

In an effort to address this issue, the IRS, through its Employee Plans Compliance Unit (EPCU), has begun sending letters to a national sample of over 300 higher education organizations, including academies, universities, colleges, seminaries, institutes of technology and other college level organizations. The letter instructs the recipient organization to complete and return Form 886-A, which raises a series of questions to determine whether the organization's 403(b) plan is compliant in operation with the universal availability requirement. Based on the organization's response to Form 886-A, the EPCU will either issue a closing letter if the plan appears to be compliant or request further information and offer correction assistance if the plan appears to be non-compliant.

Your organization's complete response is required if your organization receives a letter from the IRS with instructions to complete and return Form 886-A. Failure to respond to the questionnaire or to provide complete information could result in further action or examination of the organization's 403(b) plan.

Please contact your employee benefits counsel if your organization is a recipient of the IRS EPCU letter or you have questions regarding the completion of Form 886-A.
