Are Your 403(b) and 457(b) Plans Ready for an IRS Audit?

AASA National Conference
Friday, February 12, 2016
PlanConnect Disclosure

This information is provided for educational and information purposes and is not intended to be used to avoid tax penalties or render tax or legal advice. The taxpayer should seek advice from an independent tax and/or legal advisor.
Today’s Speaker and Agenda

- **Speakers**
  - Susan Alldredge – National Sales
  - Renea Dumas – Assistant Vice President of Operations

- **Agenda**
  - Plan Administration – What’s Expected
  - IRS Audit Questionnaire – First Steps
  - Compliance and Common Errors
  - Helping to Avoid Compliance Issues
Plan Administration – What’s Expected

Plan Administration for Section 403(b) and 457(b) Plans

- **Role of the Administrator**
  - Managing the benefit for your employees
  - Ensuring compliance with the IRS regulations around each plan
  - Confirming investment providers are qualified under IRC 457(b) and/or 403(b) and are complying with applicable tax laws

- **Functions of a Plan Administrator**
  - Plan and Compliance oversight
  - Payroll and Contribution Remittances
  - Employee Awareness

- **Administration Options**
  - Self Administration
  - Use a TPA
  - Jointly with Providers

- **Administration Capabilities**
  - Systems
  - Knowledge and expertise
IRS Audit Questionnaire – First Steps

- If you Receive a Questionnaire
  - Don’t ignore the questionnaire
  - Complete the questionnaire on time
  - Consider working with a tax professional, legal counsel, and/or a retirement plan professional

- Who Should be Involved?
  - Human resources
  - Payroll
  - Investment providers
  - Third Party Administrator

IRS Conference Questionnaire

Form 4564
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
INFORMATION DOCUMENT REQUEST

TO: Name of Taxpayer

Subject: Examination of IRC 403(b) & 457 Plans Opening Interview

Date(s) of Request: 11-1-14

The attached is an opening conference questionnaire to be discussed with the person(s) who has responsibility for the retirement plan(s) under audit. The conference allows the service to get a general understanding of your business procedures and who is responsible for the operation of this plan.

Please provide that any person(s) who is responsible for the operation other than your Vendor(s) of the plan is available for the date of the opening conference.

For IRC 403(b) Plans only

1. What is your procedure for keeping track of the multiple contribution limits under IRC 403(b):
   - 20.1 Regular Limit
   - 20.2 Years of Service Catch-up 15 year Service
   - 20.3 Catch-up Lifetime limit of $16,000
   - 20.4 15 year Service Catch-up limit for 5,000 times years of service rule
   - 20.5 15 year Service Catch-up limitation $5,000 times years of service rule when a 401(k) plan is also involved or a 457(b) plan is involved for years prior to 2002.
   - 20.6 Applying Service catch-up prior to age catch-up for the 15 years of service rule
   - 20.7 Age Catch-up Limit

2. Describe your capabilities for the following:
   - 2.1 Monitoring contribution limits for deferred and catch-up contributions (i.e., IRC 402(g), IRC 415, over age 50 Code section 414(v) catch-up contributions)
   - 2.2 Monitoring compensation limits
   - 2.3 Counting years of Service for permanent part-time employees (.75, .50
Plan Compliance and Common Errors

Contributions

Responsibilities

- Plan Documents
  - Types of contributions permitted

- Knowing the Regulations
  - Annual limits, including catch-ups
  - Applying years of service
  - Ordering rules
  - Excess contributions

- Monitoring Procedures
  - Roles
  - Process
  - Timing

- Record Retention
  - Maintaining copies of agreements
  - Payroll records

Common Errors

- Failure to Follow the Terms of the Plan
- Calculating Years of Service
- Excess Contributions
  - Employee limit includes Roth
  - 15 year of service catch-up calculation
  - Ordering rules when using both catch-ups
  - Includible compensation – post retirement

- Post-employment
  - Exceeding Five Years

- Distributing Excess Contributions
  - Identifying and disbursing timely

- Retaining Records
Plan Compliance and Common Errors

Distributions & Loans

**Responsibilities**

- **Plan Documents**
  - Types of distributions permitted
  - Eligibility rules

- **Knowing the Regulations**
  - Loans
  - Hardships
  - Unforeseen emergency withdrawals

- **Required Documentation**

- **Monitoring Procedures**
  - Roles
  - Process

- **Record Retention**
  - Maintaining all supporting documents

**Common Errors**

- Failure to Follow the Terms of the Plan
- **Excess Loans**
  - Not aggregating outstanding loan balances across all plans and providers
- **Not Obtaining Supporting Documents**
  - Residential loan
  - Hardship
  - Unforeseen emergency
- Invalid Reason for Hardship and Unforeseen Emergency Withdrawals
- Failure to Suspend and Restart Contributions
Plan Compliance and Common Errors

403(b) Universal Availability

**Responsibilities**

- **Eligibility to Participate (Elective Deferrals)**
  - Follow plan document provisions
  - Recommend allowing all employees (keep it simple)
  - Only certain exclusions permitted under 403(b) regulations

- **Effective Opportunity to Participate**
  - Notify employees at least annually of their ability to participate and make changes
  - New employee welcome kit
  - Informational website
  - Group meetings or workshops
  - Periodic communications

**Common Errors**

- **No Supporting Documentation**
  - Who received the annual notice and copy of the notice delivered, date, etc.
  - Proof new employee received notice (IRS is suggesting within thirty days of hire and an additional thirty days to enroll)

- **Exclusion of Certain Classifications of Employees**
  - Substitutes
  - Lower paid employees – not making them aware of their ability to participate

- **Entry and Election Changes**
  - New employee entry (giving adequate time for new employees to enter)
  - Failure to process SRAs timely
Helping to Avoid Compliance Issues

What Can a TPA Do?

- **Provide and Maintain Plan Documents**
- **Compliance Oversight for Transactions**
  - Compliance review and sign-off
  - Historical repository of supporting documents
- **Contribution Limit Testing**
  - Standard limits & Catch-ups
- **Manage Salary Reduction Agreements**
  - Retain SRA changes and track and report all salary reduction changes
- **Remittance Management and Tracking**
  - Timely remittance of contributions
  - Provide common remitter services
  - Historical reporting
- **Help to Manage Investment Providers**
  - Information sharing across all providers

- **Universal Availability**
  - Annual notice and tracking
  - New employee notification and tracking
  - Participant education
- **Technical Support**
  - Answer regulation questions
  - Inform on regulation changes
- **Employee and Advisor Services**
  - One-on-one customer service support (bilingual in some cases)
  - Regulation and plan education
  - Website and online tools/calculators
- **Audit Support**
  - Provide supporting documentation
  - Procedures and work with vendors
- **State-of-the-Art Systems**
Appendix: 2016 Limits

The Internal Revenue Service announced cost of living adjustments affecting dollar limitations for retirement-related items for tax year 2016. In general, the pension plan limitations will not change for 2016 because the increase in the cost-of-living index did not meet the statutory thresholds that trigger their adjustment. Here is a comparison of the 2015 limits and the new limits effective January 1, 2016:

<table>
<thead>
<tr>
<th>LIMIT</th>
<th>2015</th>
<th>2016</th>
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</thead>
<tbody>
<tr>
<td>Defined Contribution Plans</td>
<td>$53,000</td>
<td>$53,000</td>
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<tr>
<td>(contributions including deferral &amp; match)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401(k) and 403(b) Elective Deferrals</td>
<td>$18,000</td>
<td>$18,000</td>
</tr>
<tr>
<td>(always on calendar-year basis)</td>
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<td></td>
</tr>
<tr>
<td>457(b) Plans</td>
<td>$18,000</td>
<td>$18,000</td>
</tr>
<tr>
<td>(includes salary reduction contributions and any employer contributions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15-Year of Service Catch-Up for 403(b) Plans</td>
<td>$3,000</td>
<td>$3,000</td>
</tr>
<tr>
<td>(maximum $15,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3-Year Catch-Up for 457(b) Governmental Plans</td>
<td>$18,000</td>
<td>$18,000</td>
</tr>
<tr>
<td>Catch-up Contribution</td>
<td>$8,000</td>
<td>$8,000</td>
</tr>
<tr>
<td>(age 50 or over) Not available in non-governmental 457(b) plans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Compensation Limit</td>
<td>$265,000</td>
<td>$265,000</td>
</tr>
<tr>
<td>(100% of compensation if less than dollar limit - limits different for Puerto Rico)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Highly Compensated Employee</td>
<td>$120,000</td>
<td>$120,000</td>
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