Three Common 'Universal Availability' Errors and How to Correct Them

4/19/2012

About TDS

- ❖ **California's largest independent Third Party Administrator**

- ❖ **Our priority is education and compliance**

- ❖ **The only TPA recommended by CSBA**

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Who will be audited?

- **A District that received a questionnaire from the IRS and did not respond.**

- **A District that received a questionnaire and sent responses that indicated compliance issues.**

- **W-2's reported by employee differ from employer.**

- **Completely random.**

- **Districts and Offices of Education selected to meet the quota within that particular area.**

80% of plans audited by the IRS FAILED!

IRS Audit Red Flags:

- **Written Plan Document**
- **Excess Contributions**
- **Universal Availability**
- **Operational Failures**

Are you confident that your plan will meet IRS guidelines?

!

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The Letter You Don't Want
(but might receive)

- **Only 2-weeks to prepare**

- **8-page letter**

- **38 individual items to provide**

Internal Revenue Service
Tax Exempt and Government Entities Division
TEGE Employee Plans
9350 Flair Dr. 2nd Floor, El Monte, Ca. 91731

Date: 01/27/2012

Department of the Treasury
95-6000777

Name of Plan:
403(b) & 457 Plan
Plan Year(s) Ended:
12/31/2010
Date of Appointment:
Will call you to set up a date in March 2012.
Time of Appointment:
N/A
Place of Appointment:

Person to Contact/ID Number:
Ann Jitpatima/02-35904
Contact Telephone Number:

818-274-0799

Plan Year 2010!

2 weeks to prepare!

Dear Sir:

We are examining your Internal Revenue Code section 403(b) and 457 plan for the above year(s) and have arranged the appointment shown. The attachment lists documents and information needed to conduct our examination. To help make the examination as brief as possible, please have these items mailed to me by 02/17/2012.

If you would like someone else to represent the plan during this examination, you must submit a written power of attorney. Form 2848, *Power of Attorney and Declaration of Representative*, may be used for this purpose.

If you have any questions, please contact me at the telephone number shown above.

Thank you for your cooperation.

Sincerely,

CSBA Webinar Series

- ✓ **How to Survive an Audit of Your 403(b) Plan – Part I**

- ✓ **How to Survive an Audit of Your 403(b) Plan – Part II**

- **Three Common 'Universal Availability' Errors and How to Fix Them.**

- **Plan Participation – Why should you care? Because the IRS does.**

- **Red Flags regarding contribution amounts and limits.**

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CSBA Webinar Series
Review: Surviving a 403(b) Plan Audit - Part I & II

Part I

- **Universal Availability**
- **Contribution Limits**
- **Loans**

Part II

- **Hardships**
- **Early retirement incentives**
- **Separation of contributions**
- **Timeliness of contributions**

Three Common 'Universal Availability' Errors and How to Correct Them

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Universal Availability Operational Errors

This has appeared in <u>100%</u> of the 403(b) audits.

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First, let's look at what the IRS Regulations say:

"Meaningful notice is needed to satisfy universal availability for salary reduction contributions."

Source: http://www.irs.gov/retirement/article/0,,id=172431,00.html

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Universal Availability Error #1
The Notice is Not Meaningful

Question...

Do you remember the mailer you received in 2009 that notified you of your eligibility to participate in your employers 403(b)?

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Universal Availability Error #1
The Notice is Not Meaningful

Who Would?

- **How many pieces of mail do you receive each week?**

- **How many emails do you receive each week?**

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Universal Availability Error #1
The Notice is Not Meaningful

Clues Your Notice Might Not Be Meaningful Enough

- It's not a separate piece.

- It does not look important.

- It looks the same every time.

- It's delivered the same way every time.

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Universal Availability Error #1
The Notice is Not Meaningful

Clues Your Notice Might Not Be Meaningful Enough

- **A blurb on a paycheck is not enough.**

- **Only electronic is not enough.**

- **It's annual.**

- **You can't remember the piece.**

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Universal Availability Error #1
The Notice is Not Meaningful

Ideas on how to make the notice more meaningful

1. **Alternate the method of delivery**
   a) Switch between print and email.
   b) Use over-sized paper, use colors and images in an e-mail.

2. **Do it more than once per year**
   a) We recommend quarterly (the IRS certainly would not argue if it were more often than annual).
   b) Alternate delivery methods each quarter.

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Universal Availability Error #1
The Notice is Not Meaningful

Ideas on how to make the notice more meaningful

3. **Get Creative**

   a) **Lunch & Learn**

   b) **Compliance Clinics**

   c) **Welcome Back to School Meeting**

   d) **New Hire Packet**

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Universal Availability Error #2
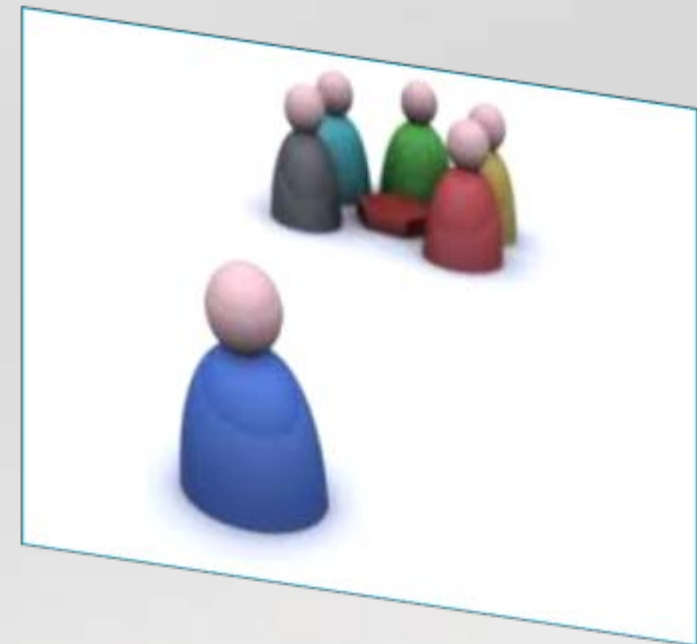## Excluding Employees from the Notice

This has come up in 100% of the 403(b) Plan Audits.

Universal Availability Error #2
Excluding Employees from the Notice

Reasons why employees are excluded:

1. Because employers think they are not eligible.

2. On accident.

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Universal Availability Error #2
Excluding Employees from the Notice

Must include

- Nurses
- Substitute teachers
- Bus drivers
- Maintenance workers
- Employees who are not full-time, not permanent, and/or non-contract.

May be excluded

- Employees who will contribute $200 annually or less.
- Those employees who participate in a 401(k) or 457 plan, or in another 403(b) plan.
- Non-resident aliens.
- Employees who normally work less than 20 hours per week.
- Students performing services described in Code section 3121(b)(10).

Source: http://www.irs.gov/retirement/article/0,,id=171020,00.html

Universal Availability Error #2
Excluding Employees from the Notice

Employees that are not eligible

1. The IRS must be OK with it <u>AND</u>

2. Employer must list them in the Plan Document.

Even if the IRS says it's OK to exclude a certain group, if you do not list the specific group(s) in your Plan Document, that qualifies as an operational failure.

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Universal Availability Error #2
Omitting Employees from the Notice

Omission by accident

This IRS does not care about system limitations or budget issues.

Universal Availability Error #2
Omitting Employees from the Notice

How to correct this potential Operational Failure

- **Include everyone.**

- **Maintain exclusions.**

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Receive A Free Copy of our Report, *"The 403(b) Audit Survival Guide"*

Special Offer . . .

At the conclusion of this webinar you will receive a link to a brief survey. Please take a few minutes to tell us what you thought of today's webinar.

As a way of saying thank you, everyone who completes the survey today will receive our free report full of valuable information as well as a link to register for the next webinar.

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Universal Availability Error #3
Tracking the Meaningful Notice

The IRS will look for:

1. Mistakes

2. Negative Election

3. Confirmation of Receipt

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Universal Availability Error #3
Tracking the Meaningful Notice

Mistakes

During an audit, the IRS has asked for:

1. Documentation of how you sent out the Meaningful Notice.

2. A copy of the Meaningful Notice.

3. The complete list of people you sent it to so they can drill down on 20 of the people on the list.

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Universal Availability Error #3
Tracking the Meaningful Notice

Negative Election

"I got it __and__ I am declining enrollment."

The IRS is not requiring it but they are recommending it verbally during an audit. Sign of things to come?

Universal Availability Error #3
Tracking the Meaningful Notice

Confirmation of Receipt

It comes up in every audit.

The IRS is not requiring it but they are asking for it during an audit. Here's what to say.

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Universal Availability Error #3
Tracking the Meaningful Notice

How to correct tracking errors

1. Have a written procedure.

2. Test your procedure – is it fool proof?

3. List of all employees who received the notice.

4. Copy of the notice(s).

Universal Availability Errors Review

1. The Notice is not meaningful.

2. Excluding employees.

3. Tracking the Meaningful Notice.

Universal Availability Errors
Questions?

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The End?

Nope . . .

In two weeks we will present Part 4 of this series where we will address more operational errors along with corrective ideas.

Please mark your calendars for Tuesday May 1st, 10 am