

# 403(b) Rescue

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## Our 403(b) Fix-It Series

*403(b) Rescue, the Ekon Benefits 403(b) Fix-It Series, describes the most common mistakes in 403(b) plans as determined by the IRS. We provide explanation of common mistakes, suggested prevention methods, and options for correction.*

*Does your 403(b) Plan need to be rescued?*

### Common Mistake #2—

The opportunity to elect a salary deferral was not given to all eligible employees.

403(b) Plans are subject to the Universal Availability Rule which dictates that if one employee is allowed to make elective deferrals to the Plan, the offer must be extended to all employees. Generally, if an employee meets the eligibility requirements of the 403(b) Plan, they may begin participating at the start of their employment. Certain participants, as indicated below, are permitted be excluded from participation in 403(b) plans. Effective for 2009, employers are required to document any excluded groups by implementing a written plan provision.

- Employees who will likely contribute less than \$200 in the year
- Employees who are eligible to participate in another qualified plan sponsored by the employer
- Non-resident aliens
- Employees who normally work less than 20 hours in a week
- Students employed by the school they are enrolled in as defined in IRC § 3121(b)(10)

If a Plan excludes these participant groups without written provision or excludes other eligible participants, the mistake can be very costly, possibly leading to the loss of the plan's tax deferred status. The Universal Availability Rule also contains an effective opportunity requirement meaning that employees must be provided with an opportunity to make or change their elective deferral at least once each Plan year.

To find an error of this nature, compare a list of all employees who received a W-2 with a list of Plan participants. For all employees *not* participating in the Plan, ensure they are either properly excluded from the Plan by class or have received timely notice of their eligibility. If an error was made in this regard, corrective contributions are likely necessary. For all employees who are participating in the Plan, confirm their eligibility. If a participant should have been excluded based on written provisions, the excluded participant group may need to be included based on the Universal Availability Rule. Errors regarding Universal Availability may be corrected without sanction using the Self-Correction program as long as sufficient compliance procedures are in place and the error is considered insignificant to the Plan as a whole. Otherwise, another correction method under [EPCRS](#) should be used.

To avoid mistakes in universal availability, ensure that you understand your Plan's eligibility requirements as well as which employees can be excluded by law. If legally excluding a participant group, your Plan must contain a written provision stating the exclusion. Additionally, ensure that all eligible participants are receiving proper, timely notice of their eligibility.

For a complete listing of the most common 403(b) mistakes, please view the [IRS 403\(b\) Plan Fix-It Guide](#)  
For assistance in correcting a plan error, please contact Ekon Benefits at (314)367.6555 or [info@ekonbenefits.com](mailto:info@ekonbenefits.com)