

## 403(b) Vendor Compliance Questionnaire Score Card Instructions

To assist plan sponsors evaluating their 403(b) programs in light of existing rules as well as new requirements under the final 403(b) regulations, this worksheet contains a 403(b) vendor compliance questionnaire score card. This is a tool which can be used and modified by an Employer according to the Employer's specific situation and objectives. The 403(b) vendor compliance questionnaire score card includes questions that an Employer may choose to ask of prospective 403(b) investment product providers, both regarding their proposed products and, importantly, the related plan and compliance services. Along with the sample scoring, the worksheet also provides some background with regard to each question. Of course, neither the questions nor the background or scoring can or should be considered as tax or legal advice. Rather, they are samples which a plan sponsor may choose to use, modify, or disregard.

The sample scoring would permit the Employer to assign a weight, or level of importance, to each question, and assumes a scale of the following.

- 0 = Excluded
- 1 = Less important
- 2 = Average importance
- 3 = Very important

The Employer can set this score, and choose to either disclose or not disclose this scoring to prospective providers. As a general matter the worksheet assumes, and we would encourage, the uniform treatment of providers with respect to such information. The sample scoring format can be used to provide an Employer significant control over scoring, with the following options among others:

1. Give all chosen questions an equal weight, or give varying weights to each selected question.
2. Give full available points for a "yes" response to an individual question.
3. Each prospective provider is scored based upon the available points for each question (as determined by the Employer in establishing the weighting factors) and the Employer's decision to give either full or partial points for a "yes" answer to a question.

A score should be calculated for each 403(b) vendor compliance questionnaire score card that is received so you can rank vendor performance based on the total summary results. Your total results can be summarized on the 403(b) vendor compliance questionnaire score card total document located in the **AIG Retirement Manager<sup>®</sup> Compliance Essential Kit**.

# 403(b) Vendor Compliance Questionnaire Score Card

Vendor Name \_\_\_\_\_

Date Questionnaire Received \_\_\_\_\_

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Weight Assigned by Plan Sponsor (0-3)	Vendor Questionnaire Score Results	Total Question Result
Choose one of the following: 0=Excluded 1=Less Important 2=Average Importance 3=Very Important  (write answer below)	Choose one of the following: 0 - No 1 - Yes  (write answer below)	Weight Assigned (column A) x Vendor Questionnaire (column B) = Total Question Result (column C) (write answer below)

**Q1:** Does every 403(b) contract or account your organization would offer under the plan contain the required provisions governing deferral and contribution limitations, distribution restrictions and requirements, nontransferability rules, and direct rollover requirements?

**Why Important?**

A 403(b) contract or account must meet the requirements of the Internal Revenue Code, and this starts with locating a service provider whose product complies in form with the requirements. A failure to satisfy form requirements can subject the entire contract and account to taxation.


**Q2:** Is your 403(b) contract or account available to any employee who is otherwise eligible to participate? For example: if the contract or account imposes a minimum annual contribution, is that minimum less than or equal to \$200?

**Why Important?**

With limited exceptions, if any employee can choose to make elective deferrals to the 403(b) plan, all employees must be given that opportunity. This includes substitute teachers, adjunct faculty and other groups of employees if they normally work at least 20 hours per week (based on a 1,000-hour annual standard which generally becomes effective January 1, 2009). A failure to satisfy this nondiscrimination rule can cause the entire plan to fail under Code Section 403(b). If a contract or account excludes someone who should be includible, and if no other contract or account is available to them, it can trigger this failure. If this failure occurs it can also apply to Employer contributions to the plan, if any, thus also triggering employment taxes as well as income taxes.


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**Q3:** Are contribution limits monitored by your organization on a periodic basis (including at least upon initial contribution, nonautomatic changes, and upon request) for each employee who participates in your 403(b) contract or account, and does such monitoring include catch-ups for employees with at least 15 years of service with the Employer, and catch-ups for individuals age 50 and older?

**Why Important?**

The 403(b) rules impose limits on both Employer and employee contributions. For 2007, the limit on elective deferrals is \$15,500 and could be increased for employees age 50 or older (\$5,000), or for employees with 15 years of service or more with the Employer (up to a possible maximum of \$3,000). The limit on combined employee and Employer contributions is the lesser of 100% of includible compensation, or \$45,000, and also may be increased for employees age 50 or older. If the limits are not monitored by plan providers, they must be monitored by the Employer or another party designated by the provider. It is important for monitoring to consider all deferrals, including deferrals to multiple providers, thus also requiring coordination of information across providers. Excess contributions can cause the entire contract to fail to satisfy the requirements of Code Section 403(b), and can result in additional withholding obligations as well as employment taxes on Employer contributions to the plan, if any. In addition, procedures for monitoring and enforcing contribution limits, whether maintained by providers or plan sponsors (or both), can help qualify the plan for self-correction, when failures are identified, under applicable IRS guidance.

**Q4:** If you learn that contributions are made in excess of contribution limits, will your organization correct the excess in accordance with the requirements of the regulations and notify the employee and Employer as appropriate?

**Why Important?**

The IRS has provided specific guidelines for correction of excess amounts. The treatment of such excesses varies depending on the nature of the excess amount, such as is it a result of an employee elective deferral or an Employer contribution, as well as the timing of the excess. In the case of employee elective deferral contributions the excess amount should be returned directly to the employee. For example, excess elective deferral contributions may be returned to the participant while excess Employer contributions should normally remain in the plan in a segregated account. In addition, new rules governing contributions in excess of the Code Section 415(c) limits may require separate accounting of the excess amount from the outset to avoid taxation of the entire account in the event of an undiscovered defect. In any event, timely correction is required in order to maintain the tax-favored status of your plan. The employee should be notified to facilitate their tax planning. You may choose to be notified as well.

<b>Weight Assigned by Plan Sponsor (0-3)</b> Choose one of the following: 0=Excluded 1=Less Important 2=Average Importance 3=Very Important (write answer below)	<b>Vendor Questionnaire Score Results</b> Choose one of the following: 0 - No 1 - Yes (write answer below)	<b>Total Question Result</b> Weight Assigned (column A) x Vendor Questionnaire (column B) = Total Question Result (column C) (write answer below)

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**Q5:** Are after-tax Roth contributions permitted under your 403(b) contract or account, are they separately accounted for and, combined with pretax deferrals, monitored for compliance with deferral limitations?

**Why Important?**

After-tax Roth contributions can be a valuable tax and retirement planning tool for your employees. Whether pretax or after-tax elective contributions, or a combination of the two, are the best option is a decision each employee would make after consulting with their tax or financial advisor. If the plan permits Roth 403(b) contributions but one or more available contracts or accounts do not permit them, it will be important to ensure that participants know which accounts accept these contributions. Roth contributions must be separately accounted for on the recordkeeping system in order to maintain qualification of the 403(b) contract, ensure proper tax treatment (i.e., pretax or after-tax) as well as to facilitate proper contribution limit monitoring.

**Q6:** Does your contract permit transfers from other 403(b) plans and/or contracts and rollovers to or from other plan types [i.e., governmental 457(b), 401(k), etc.], and if so are incoming rollovers separately accounted for to the extent required by the Code or for the plan?

**Why Important?**

All contracts and accounts are required to permit outgoing rollovers of eligible rollover distributions (ERDs). If the plan also permits incoming rollovers, and if the contract or account does not permit them, or does not properly account for them, this can create problems for a plan sponsor. At a minimum participants would need to be made aware of which contracts and accounts available under the plan permit and properly account for such rollovers. In addition, the failure by a provider to accept or properly account for such rollovers could give rise to additional Employer obligations.

**Q7:** Are loans permitted under an employee's 403(b) account?

**Why Important?**

If the plan provides that all contracts and accounts permit loans, then it is important to confirm that each contract and account does so. If the plan does not require every product to offer loans, a plan sponsor might elect to place a lesser value on a response to this question.

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**Q8:** If loans are permitted, are they subject to applicable Code limitations including: (a) limitation of the amounts of the loan consistent with the 50%/\$50,000 limitations; (b) tax reported as a deemed distribution upon default consistent with applicable tax regulations; and (c) limited to repayment by payroll deduction if a participant maintains a defaulted loan balance?

**Why Important?**

The Internal Revenue Code permits loans from 403(b) accounts if the plan and the underlying investment product permit. Such loans in the aggregate are limited, generally, to the lesser of \$50,000 or 50% of the vested balance in the plan, subject to certain adjustments. Payments must be made at least quarterly, over a period not to exceed five years. (A longer term may be available for loans used to purchase a primary residence.) If a participant has an outstanding loan that is in default, that participant may only take a new loan under the plan (across investment products) if that new loan is repaid by payroll deduction.

**Q9:** Generally, assets contributed to your 403(b) program may not be distributed to an employee absent a distributable event such as death, disability, separation from service, attainment of age 59½, or hardship (if the contract permits) or plan termination (beginning the earlier of the date the Employer adopts the Regulations or January 1, 2009). Will your organization monitor the distributions from contracts and/or accounts under the 403(b) program consistent with those restrictions, including (a) confirming an employee's severance of employment with the Employer, (b) obtaining sufficient documentation regarding hardship distributions as may be required under applicable regulations, and (c) coordinating with the Employer and/or other providers, as agreed between the Employer and providers, information necessary to comply with these requirements at the plan level?

**Why Important?**

As a general rule, contributions are only eligible for distribution at attainment of age 59½, at severance of employment, or in the event of death, disability or financial hardship. Hardship distributions must meet prescribed rules regarding the amount and reason for the distribution. Violation of these distribution limitations, either through distributions from a single contract or account or through distributions from multiple contracts and/or accounts, can cause a participant's contract or account to fail to qualify as a 403(b) contract, resulting in taxation of the account and potential application of employment taxes to Employer contributions. As with other compliance areas, the IRS may permit self-correction of defects if processes and procedures are in place designed to permit a failure. Such procedures should also ensure compliance in the case of participants with multiple contracts or accounts across vendors. Generally, employee certification of certain information, such as information outside of the knowledge of the plan, may be relied upon, while information such as the purpose of the hardship withdrawal may require documentation. In reviewing such procedures, you must balance your business needs with compliance.

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**Q10:** In accordance with Section 401(a)(9) of the Internal Revenue Code, are participants required to take distributions beginning with the later of (i) the April 1st of the calendar year following the calendar year in which an employee attains the age of 70½, or (ii) the April 1st of the calendar year following the calendar year in which the employee terminates employment, unless the employee is taking the required distributions from another qualifying 403(b) account? Are participants notified of these requirements upon reaching age 70½ and each year thereafter if applicable?

**Why Important?**

Unless still working for the sponsoring Employer, when a participant reaches age 70½, he or she will generally need to begin receiving distributions from their 403(b) account. The first such minimum distribution must begin by April 1 of the calendar year following the year after attainment of age 70½, or severance of employment. A participant with multiple 403(b) accounts may choose to take the minimum payment from one account or a combination of accounts. Because a participant may choose which account or accounts from which to take their minimum distributions, distributions from a contract or account may not be required in a given year. Providing information to participants can be an important step to help avoid the adverse consequences of failures under this rule, including income and penalty taxes to participants, and additional consequences if contributions have also been made to the participant's account in the year of the defect.

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**Q11:** Does your contract permit distributions required by Domestic Relations Order?

**Why Important?**

Various events in an employee's life may lead to a Domestic Relations Order. Such an order by the court may require that a portion of a participant's 403(b) account be payable to another person. An investment product and plan may require that such beneficiary only have access to the account upon the participant's attainment of a distributable event. On the other hand, the product and plan may permit immediate access to such amounts. A provider's ability to address the requirements of a Domestic Relations Order is important to reduce a plan sponsor's administrative burden.

**Q12:** Will your organization agree to enter into the attached Qualified Service Provider Agreement, and as referenced in that Agreement, provide reasonable support to the Employer in the event of an IRS audit of the 403(b) plan?

**Why Important?**

Support from providers can assist a plan sponsor in needed steps to maintain the tax-favored status of the plan and the underlying contracts and accounts. The IRS maintains an active examination of retirement plans, including 403(b) plans of educational institutions. A provider's commitment of support to your plan, especially in the event of an audit, can help you in being responsive to IRS requests while reducing the administrative burden of an audit on your staff.

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**Q13:** Does your recordkeeping system include functions which can assist with compliance among multiple vendors [i.e., for purposes of monitoring contribution limits, loans (if applicable), and hardship withdrawals (if applicable)]?

**Why Important?**

Many 403(b) requirements apply to the 403(b) plan as a whole, regardless of the number of vendors, thus across vendors.

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**Q14:** Is your organization willing to share information at the plan sponsor level to facilitate compliance with Section 403(b) of the Code and the regulations thereunder in a general file format?

**Why Important?**

As the sponsor of a 403(b) plan, it is important that you have the information and data to effectively monitor your program, while at the same time protecting participant privacy.

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**Q15:** Is your organization willing to share information at the plan sponsor level pertaining to both active and inactive vendor data necessary to facilitate compliance with Section 403(b) of the Code and the regulations thereunder?

**Why Important?**

If you have chosen or intend to choose more than one vendor, you will retain responsibility for the plan as a whole. Depending on the number of approved vendors, the review of multiple data sources may be time consuming and require additional data manipulation on your part to monitor the plan. The ability to access data at an aggregate level can ease the administrative burden on you and your staff. You may want to identify vendors that can provide vendor-neutral plan level reporting electronically.

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**Q16:** If your contract permits hardship withdrawals (please see question 9), is your program capable of reviewing and making determinations on hardship distributions, and making available information on such withdrawals to the Employer or another party?

**Why Important?**

As noted above, the ability to make withdrawals in the event of financial hardship can be an important benefit for your employees, and can provide comfort needed to increase retirement savings. In order to effectively administer such distributions in accordance with the Code requirements, you may decide that your vendor(s) should have procedures to assist in hardship determinations, and to make available information as needed to you, your legal counsel, or other parties.

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Q17: If your contract permits hardship withdrawals (please see question 9), does your system facilitate cessation of deferrals for a period of six months for any employee who received a hardship distribution?

**Why Important?**

One of the requirements for receiving hardship distribution is an immediate and heavy financial need. One potential requirement is that the employee cease elective deferrals for six months after receiving a hardship distribution. If this process is adopted, procedures should be in place to be aware of such distributions, and subsequently stop payroll deductions.

Q18: If your contract permits hardship withdrawals (please see question 9), does your system assist the sponsor by facilitating recommencement of deferrals for any participant who received a hardship distribution upon the satisfaction of the six-month suspension period?

**Why Important?**

Once the six-month suspension period has ended, a participant may resume contributions. Automatic recommencement of deferrals can reduce the administrative burden on the participant and avoid unnecessary delays in retirement savings.

Q19: Are your organization's participant records maintained at the Employer group level?

**Why Important?**

Participant accounts may be funded either with individual contracts or accounts, or with group contracts or accounts. In either case, it can be very important for a provider to maintain records tying all such contracts together under the Employer's plan, in order to ensure compliance with applicable rules.

Q20: Is your organization able to provide plan-level reports to the plan sponsor online, including information regarding loans, hardship withdrawals and other withdrawals?

**Why Important?**

Various Code requirements require Employer oversight at a plan level. In addition, such data may be of valuable assistance in your evaluation of the effectiveness of the retirement program as a whole. In the event of an IRS audit, data may be requested at a plan level. For these reasons and others, it is important for you to have access to plan level information.

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