

# MidAmerica 403(b)ulletin

THURSDAY, OCTOBER 14, 2010 – VOL. XIX

## UNIVERSAL AVAILABILITY NOTICE

It's that time of year again to send a notice to every eligible employee notifying them that they are eligible to contribute in the 403(b) Plan.

There are 2 versions of the Universal Availability Notice:

1. No Exclusions – this version is for plans who do not exclude any employees
2. Limited Eligibility – this version is for plans who exclude certain employees

Please follow this link, below, to access the templates that you may edit with your Employer name, logo, letterhead, etc... and distribute to all eligible employees.

<http://www.midamerica.biz/employers/retirement/403b-tpa-services/403b-general-information-and-bulletins/>

### IRS rules for providing adequate notice

Please note that there is no one given way to provide notice. Rather, compliance must be shown on a “facts and circumstances” basis. Last year, we received many questions as to how the Universal Availability Notices should be distributed. To assist for this year, following are some guidelines and best practices based on analysis provided by our outside counsel:

Under the final 403(b) Regulations, the Universal Availability requirement states that “at least once during each year, the plan provides an employee with an effective opportunity to make (or change) a cash or deferred election... between cash or a contribution to the plan.” Treas. Reg. section 1.403(b)-5(b)(2). “Whether an employee has an effective opportunity is determined based on all the facts and circumstances, including notice of the availability of the election...” Id.

Clear guidelines have not been released by the IRS, but because a failure to comply with Universal Availability could disqualify the entire plan, the “best practice” is to follow the other clearer IRS and DOL rules that have been enacted for other types of retirement programs.

The following options are acceptable for distributing the Universal Availability Notice:

1. Mailing
2. Giving by hand
3. Certain electronic means

The electronic means has a number of limitations intended to insure that the participant has actual access to the electronic version of the notice. For example, just posting on a website is not enough, nor is sending around an email if everyone does not have a computer. The regulations permit electronic delivery of materials only to participants who can access those documents at work and for whom access to the relevant electronic information system is an integral part of their job duties, and participants and beneficiaries who have consented to receipt of documents through electronic media and have not withdrawn such consent. This means that providing electronic notices has become something Employers do as back-up in addition to mailing or giving them by hand, not as a replacement for it.

In summary, there are multiple ways to give “effective notice” once a year. However, if you can't prove that everyone got it, then you may have disqualified the plan. So mailing, giving by hand, or meeting the strict electronic notice rules for other types of notices remains favored for that reason. Some Employers try to make sure that every employee who shows up to work for the first time in a year gets a notice in their box, plus puts out a notice in everyone's box at the beginning of the year, plus has them posted in the lounge as well. In addition, an email blast is sent every year on top of that. The goal is to have a system that, if followed, should not allow anyone to fall between the cracks.



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