



Understanding the 403(b) Compliance Landscape

Exploring the considerations and challenges facing plan sponsors in the 403(b) retirement plan space

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I. Section one: Memorandum by Groom Law

MEMORANDUM

November 9, 2018

TO: James Olson

FROM: David N. Levine
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RE: The Current 403(b) Compliance Landscape

This memorandum provides an overview of the compliance requirements for academic, governmental, and church retirement plans (“403(b) Plans”) established pursuant to section 403(b) of the Internal Revenue Code (the “Code”).¹

403(b) Plans have existed since long before the modern world of “401(k) plans”. Because of this extensive history and regulatory requirements that vary from those applicable to their more commonly used cousin, 401(k) plans, 403(b) Plans have a number of unique features that can trigger additional compliance requirements. While participants historically held significant control with respect to their participation in a 403(b) Plan, much like having an Individual Retirement Account (“IRA”), regulatory action has put more responsibility on 403(b) Plan sponsors.

The 403(b) Plan compliance landscape can be framed in three distinct parts:

- The Basics of 403(b) Plans, including the types of employers eligible to sponsor a 403(b) Plan, the general rules and distinctive Code provisions applicable to 403(b) Plans, and whether the 403(b) Plan is subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”);
- The Modern Evolution of 403(b) Plans, including responsibility for selecting service providers under the 403(b) Plan and the extent of 403(b) Plan sponsor oversight and liability; and
- Hot Compliance Topics for 403(b) Plans, including agency investigations and litigation.

¹ This memorandum is legal advice provided to FPS Group. It is not legal advice to any other person and its distribution to any third party does not constitute or create an attorney-client relationship with Groom Law Group, Chartered or function as legal advice to any other person. Any third party is recommended to consult their own counsel on matters discussed in this memorandum.

As described in more detail below, the Internal Revenue Service (the “IRS”) made major changes to the Treasury Regulations governing 403(b) Plans, generally effective January 1, 2009 (the “2007 IRS Regulations”), which led to the increased obligations and responsibilities imposed on 403(b) Plan sponsors we see today.

A. The Basics of 403(b) Plans

In operation, a 403(b) Plan functions similarly to other defined contribution plans – such as a 401(k) plan – but has a number of unique requirements and aspects that relate to: (1) what is a 403(b) Plan, (2) what type of employer can establish a 403(b) Plan, (3) who can participate in a 403(b) Plan, (4) whether a 403(b) Plan is subject to ERISA, (5) the investment choices available inside a 403(b) Plan, (6) the number of service providers involved in a 403(b) Plan, and (7) the specific Code and ERISA requirements applicable to a 403(b) Plan.

1. What is a 403(b) Plan?

A 403(b) Plan is a tax-advantaged defined contribution retirement plan established pursuant to Code section 403(b).

2. What Type of Employer Can Establish a 403(b) Plan?

In order to sponsor a 403(b) Plan, an employer must be (1) a tax-exempt organization described in Code section 501(c)(3),² (2) a public educational organization with students and faculty (such as a public school district or a public college or university),³ or (3) a self-employed minister or an employer of a minister.⁴

3. Who Can Participate in a 403(b) Plan?

Common law employees of an employer eligible to establish a 403(b) Plan can participate in a 403(b) Plan.⁵ In addition, certain self-employed ministers are eligible to participate in a 403(b) Plan.⁶

4. Whether a 403(b) Plan is Subject to ERISA?

403(b) Plans are not always subject to ERISA. Like other defined contribution plans, ERISA does not usually apply to plans sponsored by churches⁷ (unless an affirmative election has

² Code section 403(b)(1)(A)(i).

³ Code section 403(b)(1)(A)(ii).

⁴ Code section 403(b)(1)(A)(iii).

⁵ Treasury Regulation section 1.403(b)-2(b)(9).

⁶ Code section 414(e)(5); see also Code section 404(k)(10).

⁷ There are complex rules for different types of churches depending on whether it is a “steeple church”, a church controlled organization, etc. This memorandum does not discuss these unique aspects of church 403(b) Plans.

been made to have ERISA apply⁸) and does not apply to governmental plans.⁹ However, a Code section 501(c)(3)-sponsored 403(b) Plan may also be exempt from ERISA if it satisfies each of the following four safe harbor requirements (the “DOL Safe Harbor Regulations”):¹⁰

- Voluntary Participation. Participation in a 403(b) Plan must be completely voluntary.
- Enforcement by an Employee or Beneficiary. All rights under a 403(b) Plan annuity contract or custodial account must be enforceable solely by the employee or beneficiary of such employee, or by an authorized representative of such employee or beneficiary.
- Limited Employer Involvement. The involvement of a 403(b) Plan sponsor must be limited to certain optional specified activities. For example, the 403(b) Plan sponsor may not approve hardship distributions or loans, and may not make employer contributions.¹¹
- No Compensation to 403(b) Plan Sponsor Except Reasonable Reimbursement. A 403(b) Plan sponsor must not receive direct or indirect consideration or compensation in cash or otherwise other than reasonable reimbursements to cover expenses properly and actually incurred in performing its duties pursuant to the salary reduction agreements that fund a 403(b) Plan.

Importantly, 403(b) Plans that are not subject to ERISA are subject to both state law and Code requirements. State law requirements can vary from state-to-state, thus imposing administrative complexities on 403(b) Plan sponsors. For example, in some jurisdictions, a governmental 403(b) Plan sponsor may be required to offer “open access” to more than one provider of investments, thus increasing the complexity of administering a 403(b) Plan. In addition, local laws for non-ERISA 403(b) Plans can impose additional restrictions on the types of investments and the governance process for these non-ERISA 403(b) Plans.

Because, as described below in Part I.B, it has become increasingly difficult to maintain a 403(b) Plan in compliance with the DOL Safe Harbor Regulations that keep a Code section 501(c)(3)-sponsored 403(b) Plan out of ERISA coverage, the majority of non-profit (*i.e.*, non-church and non-governmental)-sponsored 403(b) Plans are now subject to ERISA.

5. What Investment Choices Are Available Inside a 403(b) Plan?

The investment choices available inside a 403(b) Plan are significantly more restricted than those available in other defined contribution programs. Except for special rules for certain church plans¹² and certain grandfathered governmental plans,¹³ 403(b) Plans are limited to investments in (1) annuity contracts and (2) custodial accounts holding shares of regulated

⁸ Code section 410(d). Such elections are made in the manner described in Treasury Regulation section 1.410(d)-1, but are relatively rare.

⁹ ERISA section 4(b)(1).

¹⁰ DOL Regulation section 2510.3-2(f).

¹¹ See footnote 40.

¹² Code section 403(b)(9).

¹³ Treasury Regulation sections 1.403(b)-11(f) and (g).

investment companies (*i.e.*, mutual funds).¹⁴ Notably excluded are investments in collective investment trusts and separately managed accounts.

Historically, prior to the 2007 IRS Regulations, participants had more control over their investment options, as they could, in many cases, make or transfer 403(b) Plan amounts to any annuity contract or custodial account provider (an “Investment Provider”) of their choosing, even if an Investment Provider was not eligible to receive contributions directly.¹⁵ In this respect, many 403(b) Plan sponsors were not able to control the number of Investment Providers, whether through annuity contracts or custodial accounts, associated with their 403(b) Plan. However, now, 403(b) Plan sponsors have, in many cases, more control, as transfers are often limited to approved Investment Providers under the 403(b) Plan or those who have an information sharing agreement with the 403(b) Plan administrator.¹⁶

An added layer of complexity is that, unlike in most 401(k) plans, in a 403(b) Plan, it is possible that rather than having assets held in a “group” annuity contract or custodial account, there may be individual contracts between each 403(b) Plan participant and each entity that provides an annuity contract or custodial account. This relatively unique feature of 403(b) Plans can make the administrative requirements of a 403(b) Plan more complex than those in a 401(k) plan. Specifically, terms and conditions that would, in a 401(k) plan, be set by a plan sponsor in the plan document, are, in a 403(b) Plan, often subject to specific rules and requirements set by each Investment Provider. What this distinctive feature means is that a 403(b) Plan can often be subject to different rules (*e.g.*, the specific ways in benefits can be paid out – whether a lump sum, installment, or an annuity; or investment restrictions) for different pieces of the 403(b) Plan. However, as noted in Part I.A.7 below, there are a number of unique benefits to 403(b) Plans that can outweigh administrative complexity and have led to their continued adoption and use.

6. Who Are the Service Providers to a 403(b) Plan?

A 403(b) Plan will often have the same service providers you see in a 401(k) plan – such as an advisor, an accountant, a lawyer, etc. – but (1) because 403(b) Plans evolved over decades from an individual-employee based structure to an employer-based structure and (2) because of the combined use of annuity contracts and custodial accounts in both individual and group forms and the need for coordination of these various providers, there are often many more service providers involved in a 403(b) Plan. These unique service providers can often be categorized as follows:

- Investment Providers.
 - Annuity Contract Providers. These service providers issue annuity contracts on either a plan-wide basis (*i.e.*, a group contract) or to individuals (*i.e.*, an individual contract). There can be multiple types of contracts provided by a single annuity provider. In addition, an annuity contract provider (or a

¹⁴ Code sections 403(b)(1) and 403(b)(7).

¹⁵ Rev. Rul. 90-24, applicable before Sept. 24, 2007, declared obsolete by Rev. Rul. 2009-18.

¹⁶ Treasury Regulation section 1.403(b)-10(b)(2).

contractor with the annuity contract provider) may administer the contract to address distributions, loans, and contribution limits – but that may, in some situations, be only with respect to its own contracts and not any other annuity contracts or custodial accounts in a 403(b) Plan.

- Custodial Account Providers. These service providers (who may also be annuity providers) provide mutual funds to 403(b) Plan participants through individual or group custodial accounts. There can be multiple types of custodial accounts provided by a single custodial account provider. As is the case with annuity contract providers, a custodial account provider will also often administer (again through their own systems or through a contractor) the custodial account's distributions, loans, and contribution limits, subject to the limits on working with other Investment Providers.
- Third Party Administrators and Coordinators. These service providers (which may also be annuity contract or custodial account providers or their affiliates) will often take some or all of the responsibility for coordinating the multiple providers to a 403(b) Plan – both with respect to money flows and legal compliance requirements (such as limitations on loans).

7. Specific Code and ERISA Requirements Applicable to a 403(b) Plan

403(b) Plans are subject to many of the same requirements that apply to 401(k) plans, including the following:

- Rollover Distributions. Amounts distributed from a 403(b) Plan are generally subject to the same rollover rules as tax-qualified defined contribution plans.¹⁷
- Distribution Reporting. Amounts distributed from a 403(b) Plan should be reported on a Form 1099-R or Form 1042-S, as applicable.
- Plan Document. A 403(b) Plan must be maintained pursuant to a formal plan document.¹⁸
- Roth Contributions. Employees may designate an elective deferral as a Roth contribution rather than a pre-tax deferral.¹⁹
- Elective Deferrals. Employee deferrals contributed to a 403(b) Plan must satisfy Code limits on contributions (including maximum contributions) and benefits.²⁰
- Annual Additions. Total contributions to a 403(b) Plan may not exceed Code limits on contributions.²¹
- Required Minimum Distributions. Amounts distributed from a 403(b) Plan must meet the required minimum distribution (“RMD”) requirements of Code section 401(a)(9). However, unlike a 401(a) or 401(k) plan, the 403(b) Plan RMD requirements are the

¹⁷ Code section 401(a)(31) and Treasury Regulation section 1.403(b)-3(a)(7).

¹⁸ Code section 401(a)(1) and Treasury Regulation section 1.403(b)-3(b)(3).

¹⁹ Treasury Regulation section 1.403(b)-3(c).

²⁰ Code section 402(g) and Treasury Regulation section 1.403(b)-3(a)(4).

²¹ Code section 415(c) and Treasury Regulation section 1.403(b)-3(a)(9). In the case of a 403(b) Plan, the limitation year for Code section 415 purposes must be the calendar year in most cases. Treasury Regulation section 1.415(j)-1(e).

same as the IRA rules, and can generally be satisfied out of selected contracts, rather than at a plan level.²²

If a 403(b) Plan is subject to ERISA, the following requirements will also apply:

- **Spousal Benefit Requirements.** Generally, qualified joint and survivor annuities to a participant's spouse must be the default form of benefit unless the spouse is the default beneficiary (and spousal consent to change beneficiaries is required) and no annuities are offered or, if offered, selected.²³ (Some 403(b) Plans have an annuity as the normal form of benefit and may apply the same qualified joint and survivor and qualified preretirement survivor benefit rules as a qualified ERISA defined benefit plan.)
- **Nondiscrimination Testing.** A 403(b) Plan must usually satisfy certain nondiscrimination requirements of Code section 403(b).²⁴ (Church plans of non-qualified church controlled organizations are also subject to nondiscrimination rules, even though not subject to ERISA.²⁵)
- **Claims Procedures.** Employers must comply with ERISA's claims procedures.²⁶
- **Fee Disclosures.** A 403(b) Plan must provide detailed fee disclosures to participants.²⁷

Lastly, the following are unique features of a 403(b) Plan:

- **Universal Availability Requirements.** Unlike 401(k) plans, which are subject to complicated "actual deferral percentage" ("ADP") rules, 403(b) Plans are subject to a unique "universal availability" rule, under which elective deferrals generally must be offered to any employee normally working 20 or more hours per week that is typically simpler and easier to satisfy than ADP testing.²⁸
- **Definition of Compensation.** 403(b) Plans have a unique definition of compensation that applies for maximum contribution purposes.²⁹
- **Former Employees.** A former employee is deemed to have monthly compensation for the purposes of non-elective employer contributions to a 403(b) Plan for five years following a termination of employment. (Such contributions would be subject to nondiscrimination requirements where those rules apply to the 403(b) Plan, as described above.)³⁰

²² Treasury Regulation section 1.403(b)-6(e)(2). This is a holdover from the treatment of 403(b) Plans like IRAs.

²³ ERISA section 205.

²⁴ Code section 403(b)(12) and Treasury Regulation section 1.403(b)-3(a)(3).

²⁵ Code section 403(b)(1)(D).

²⁶ DOL Regulation section 2560.503-1.

²⁷ DOL Regulation section 2550.404a-5.

²⁸ Code section 403(b)(12)(A)(ii).

²⁹ Code section 403(b)(3) and Treasury Regulation section 1.415(c)-2(g).

³⁰ Treasury Regulation section 1.403(b)-4(d)(1).

- Years of Service. 403(b) Plans have unique rules for determining an employee's years of service under a 403(b) Plan.³¹
- Severance from Employment. 403(b) Plans have unique rules for determining when an employee has experienced a severance from employment.³²
- Special Catch Up Contributions. 403(b) Plans have complicated rules that permit certain employees to make additional catch up contributions.³³

B. The Modern Evolution of 403(b) Plans

1. The 2007 Code Section 403(b) Regulations

Until the early 2000s, many 403(b) Plans operated with limited 403(b) Plan sponsor administrative obligations for two key reasons:

- Non-ERISA Status of 403(b) Plans. Many 403(b) Plan sponsors took the position that their 403(b) Plans were not subject to ERISA under the DOL Safe Harbor Regulations.³⁴
- New IRS Regulations. Prior to the regulations first proposed in 2004 and finalized as the 2007 IRS Regulations,³⁵ the IRS rules governing 403(b) Plans and their operations were limited and reflected the more historical nature of 403(b) Plans as being individual arrangements between participants and beneficiaries.

However, when the IRS finalized its first complete rewrite of the Code section 403(b) regulations in 2007,³⁶ the regulatory environment for 403(b) Plans changed dramatically in the following ways:

- Administration. 403(b) Plans and their sponsors were now officially (1) required to coordinate and manage the operation of their plans among multiple Investment Providers – even if the providers did significant administration on their own – directly or through a third party and (2) have a written plan document.³⁷
- ERISA Exemption. Many 501(c)(3) entities sponsoring 403(b) Plans that previously took the position that they were not subject to ERISA under the DOL Safe Harbor Regulations were no longer able to support that stance. 403(b) Plans were now generally subject to ERISA unless the 403(b) Plan sponsor was (1) a governmental or educational employer or (2) a non-electing church employer.

³¹ Treasury Regulation section 1.403(b)-4(e).

³² Treasury Regulation section 1.403(b)-6(h).

³³ Treasury Regulation section 1.403(b)-4(c)(2). See also Code section 415(c)(7)(A) and (C) for some special church plan rules.

³⁴ DOL Regulation section 2510.3-2(f).

³⁵ Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts, 69 Fed. Reg. 67,075 (proposed Nov. 16, 2004) (to be codified at 26 C.F.R. pts. 1 and 31).

³⁶ T.D. 9340, 2007-2 C.B. 487.

³⁷ Treasury Regulation section 1.403(b)-3(b)(3).

When the IRS issued the 2007 IRS Regulations, they created a number of questions for 403(b) Plan sponsors, including the following:

- Guidance On The DOL Safe Harbor Regulations. Because of the additional requirements (such as creating a written plan document) imposed on 403(b) Plan sponsors, the Department of Labor (“DOL”) clarified that the new IRS requirements did not require non-ERISA plans to become ERISA plans.³⁸
- Form 5500 Annual Reports. Because 403(b) Plans had not previously been subject to the “full” Form 5500 annual report requirements and their audit requirements, auditors needed guidance on how to handle legacy annuity contracts and custodial accounts that were no longer receiving contributions after the 2007 IRS Regulations went into effect.³⁹
- Continued Limited Involvement. Because a 403(b) Plan sponsor may only have limited involvement with its 403(b) Plan,⁴⁰ the DOL clarified in 2010 that 403(b) Plans may refuse contracts with certain optional features (e.g., loans) that might increase employer involvement. The DOL also clarified that a third party administrator retained by an employer to provide 403(b) Plan administrative services will remove the 403(b) Plan from the DOL Safe Harbor Regulations.⁴¹
- Participant Choice. The DOL also clarified in 2010 that a DOL safe harbor 403(b) Plan must offer participants a reasonable choice of both 403(b) contract providers and investment products.⁴²
- No Alternative Plan Designs. 403(b) Plan sponsors may not make employer matching contributions into a safe harbor 403(b) Plan as it would then fail the limitation on employer involvement. The DOL clarified in 2012 that matching contributions may also not be made to a separate 401(a) qualified plan to hold contributions that match contributions made to a 403(b) Plan.⁴³

Because of the limited nature of this relief from the DOL, as 501(c)(3) 403(b) Plan sponsors began to review their compliance, a number realized that it would be difficult for their 403(b) Plans to satisfy the 2007 IRS Regulations and the DOL Safe Harbor Regulations at the same time, thus adding ERISA compliance obligations where, in the past, there had been none.

2. The New Challenges Facing 403(b) Plan Sponsors

³⁸ Field Assistance Bulletin 2007-02 (Jul. 24, 2007).

³⁹ Field Assistance Bulletin 2009-02 (Jul. 20, 2009).

⁴⁰ For example, an employer may not authorize plan-to-plan transfers, process distributions, make determinations regarding hardship distributions or loans, qualified domestic relations orders, and eligibility for or enforcement of loans. Advisory Opinion Nos. 94-30A, 83-23A, and 80-11A.

⁴¹ Field Assistance Bulletin 2010-01 (Feb. 17, 2010).

⁴² *Id.*

⁴³ Advisory Opinion No. 2012-02A (May 25, 2012).

After the 2007 IRS Regulations went into effect, 403(b) Plan sponsors,⁴⁴ regardless of whether their 403(b) Plans were or were not subject to ERISA, faced, and still continue to face, a number of challenges, including the following:

- **Administrative Duties.** With the formalization of the 403(b) Plan document requirements, 403(b) Plan sponsors are now more often engaged in the participant enrollment, contribution, and distribution process. This increased involvement can be challenging when a 403(b) Plan has multiple Investment Providers.
- **Reporting Requirements.** For plan years after 2008, ERISA-covered 403(b) Plans became subject to the full Form 5500 annual reporting requirements that did not previously apply to 403(b) Plans. Whether in a single or multi-Investment Provider environment, the need for 403(b) Plan sponsors to gather and provide more data now often requires significantly more resources and efforts than in the past.
- **Monitoring of Service Providers.** The focus on fees, expenses, and services provided by service providers has continued to grow over the past decade. 403(b) Plan sponsors with multiple service providers can often face significant expenditures of time and expense to ensure that they are properly monitoring their service providers.
- **Regulatory Oversight.** The IRS and DOL are more focused on 403(b) Plans and their compliance efforts than ever. This increased focus has led to increased audits, investigations and other outreach that review a 403(b) Plan's administrative and notice processes. Tracking compliance with these activities can be a significant challenge for some 403(b) Plan sponsors.
- **Participant Disclosures.** 403(b) Plans can be subject to Code and ERISA disclosure requirements. 403(b) Plan sponsors are responsible for coordinating these notices and disclosures with their single or multiple Investment Providers.

C. Hot Compliance Topics for 403(b) Plans

403(b) Plans are not immune from the ongoing compliance topics facing sponsors of 401(k)s and other plans. Two key current areas of focus are (1) DOL investigations and (2) 403(b) Plan fee litigation.

1. Department of Labor Investigations

403(b) Plan sponsors and their plans continue to be the focus of significant DOL investigations. These investigations focus on numerous issues – from fiduciary compliance to locating missing participants. With the multi-Investment Provider structure of many 403(b) Plans, gathering information and coordinating with the DOL can trigger significant compliance burdens, especially when it is difficult to identify which service provider (or the

⁴⁴ Throughout this memorandum we refer to 403(b) Plan sponsors as having both “plan sponsor” or “settlor” activities as well as fiduciary obligations (whether governed by ERISA or other laws). Although some 403(b) Plans may have a separate plan fiduciary, such as a fiduciary committee, for simplicity, we have utilized the single term “403(b) Plan sponsor” throughout this memorandum.

403(b) Plan sponsor themselves) is responsible for holding data and managing 403(b) Plan operations.

2. 403(b) Plan Fee Litigation

After a long period of quiet, starting in 2016, fee litigation came in force to the 403(b) Plan area. These fee litigation cases bring many of the same claims that have been brought in 401(k) plan lawsuits including the following:

- Excessive Fees. The fees charged for 403(b) Plan services are too high.
- Wrong Share Class. The funds utilized were not the cheapest share class possible.
- Active Versus Passive Funds. Passive funds should have been used instead of active funds.
- Poor Investment Performance. The investment performance was poor compared to benchmarks.
- Too Many Investment Funds. There were too many investment funds offered in the 403(b) Plan.
- Too Many Providers. There were too many recordkeepers and Investment Providers.
- Lock-In Arrangements. Participants were “locked-in” to certain arrangements and could not exit the arrangements.

These claims can be complex to handle and may have different responses when made against a 403(b) Plan given the reality of individual contracts, multiple providers, individualized expense structures, individualized contract terms, different provisions from 401(k) plans, the different nature of the sponsors, and, in some cases, limited powers vested in 403(b) Plan sponsors. What can sometimes be challenging is overseeing and coordinating these multi-service provider situations to assist the 403(b) Plan sponsor in overseeing its plan in the new world of 403(b) Plans resulting from the 2007 IRS Regulations.

The following is FPS Group/IPX's response to the Groom Law memorandum. Prepared December 2018.

II. Section two: Recordkeeping Solutions for 403(b) Plans: How IPX Can Support 403(b) Stakeholders

At the Investment Provider Xchange (IPX), we agree with the Groom Law 403(b) plan overview memorandum which was prepared at our request. IPX is designed to address the challenges faced by 403(b) plan sponsors, investment providers and their distributors to the benefit of plan participants as well as these service providers. Please read below about the solutions inherent in our platform and how we can help.

We believe that IPX has supports 403(b) plan stakeholders in multiple ways:

- Employers With 403(b) Plans. Employers providing 403(b) plans to their employees have more responsibilities than ever because of the IRS' 403(b) regulations. Also, 403(b) plan lawsuits are leading many plan sponsors to focus on their 403(b) plans due to concerns about getting sued. We have designed IPX to provide tools to 403(b) plan sponsors to help them meet their compliance and plan oversight obligations.
- 403(b) Plan Service Providers. Service providers of all kinds are under a constant compliance microscope. Service providers are often responsible for reporting to and coordinating with 403(b) plan sponsors, for disclosures, communications and distributions to 403(b) plan participants, and for compliance activities. We have designed IPX to provide a consolidated platform option that can provide a consistent structure for engaging 403(b) plan sponsors, participants, and beneficiaries with a 403(b) plan's service providers. Notably, we are not a provider or recordkeeper. IPX is open to providers of all types – including both annuity and custodial account providers and does not pick “winners” or “losers” in the industry.
- 403(b) Plan Participants. Participants can often have multiple 403(b) plan accounts with multiple vendors. When participants have multiple 403(b) accounts, it may be hard for them to understand the complete picture of their holdings and benefits. We have designed IPX to bridge this gap and to help provide a consolidated platform for a participant and their advisors to understand their retirement benefits.

A. IPX Benefits for Plan Sponsors

- The IRS' 403(b) Coordination Rules. 403(b) plan sponsors are required coordinate amongst multiple investment providers. We recognize that few 403(b) plan sponsors have the time or resources to be 403(b) plan experts themselves and that this coordination process can often be challenging at best. IPX provides

a more streamlined solution that is intended to address these coordination challenges.

- Consolidated Oversight Vehicle for Investments. 403(b) plan sponsors continue to have more and more oversight responsibility (whether due to regulations or litigation) for their plans. In response, we designed IPX to help consolidate investment information and coordination to help make the administrative process easier and more efficient.
- Strengthens Monitoring Process of Service Providers. While investments are often the first thing that 403(b) plan sponsors often think about, there are other important things to consider. With more 403(b) litigation, employers need to focus on more than just investments. They also need to focus on service provider fees and services. IPX provides a unified platform that can help with the review and monitoring of providers of all types.
- Missing Participants. Administrative duties do not just include the monitoring of investment providers – they need to be able to track and find their participants. Having multiple investment providers in a 403(b) plan can be even more challenging. IPX consolidates participant management that can help enhance oversight of participant accounts and help stakeholders locate “missing” participants.
- Investment Provider Changes. 403(b) plans often have multiple providers who offer annuities and mutual funds. Recently, it has become more and more common to “freeze” a prior provider (or specific investments at a provider) but leave already existing investments with the frozen provider. IPX is built to allow for a continuing data exchange between current and legacy investment providers. This exchange helps make required information sharing processes more seamless and easier to manage than has often been the case in the past.
- Management by Outside Advisers. More and more participants have independent advisers helping them manage their retirement accounts on a day-to-day basis. We built IPX to allow independent advisor involvement while still giving 403(b) plan sponsors the ability to control access to account information in their plans.
- Annual Reporting. Since 2009, larger 403(b) plan sponsors have been required to complete the full, complex version of the “Form 5500” annual report that is filed and used by the DOL and IRS. Preparing an annual report can require significant coordination with service providers of all types. IPX, having information in one place, helps dramatically simplify this process.
- Single Data Feed Processing. Historically, when multiple investment providers have been receiving contributions as part of a 403(b) plan, multiple data feeds from a 403(b) plan sponsor’s payroll processor were required. With IPX, a 403(b) Plan sponsor provides IPX with a single data feed for contribution processing. From there, IPX coordinates contributions among the various providers participating in the 403(b) plan.
- Centralized Enrollment. If there are multiple vendors for a 403(b) plan, the participant enrollment and contribution selection process can sometimes be a messy process with a separate enrollment required for each vendor. We have

built IPX to address this challenge by providing a web-based enrollment tool that can coordinate a participant's payroll deduction and account creation process across multiple vendors.

- Adoption of "Automatic" Design Features. 403(b) plans with multiple providers have sometimes been reluctant to add more cutting edge 403(b) Plan features such as automatic enrollment and automatic escalation. IPX makes implementing and monitoring of these features easier.

B. IPX Benefits for Service Providers

- Abandoned Accounts. As the 403(b) market has evolved, it has become more and more common for an investment provider to get "disconnected" from a 403(b) plan sponsor and unable to get direction from the sponsor. In the most extreme cases, participant accounts with disconnected providers can become abandoned accounts with no easy answers. IPX helps resolve this problem because it creates a centralized portal for 403(b) plan sponsors and participants. IPX can tie in disconnected investment providers to ongoing plans to help protect vendors, employers and participants from errors or lost accounts.
- Protection From Litigation and Regulatory Enforcement. As 403(b) plan litigation and enforcement from regulators has increased, detailed compliance records are more important than ever. IPX creates an additional compliance platform at low cost for service providers that can support their existing compliance programs.
- Operational Enhancements. IPX provides a single gateway for 403(b) plan service providers to coordinate their relationships with 403(b) plan sponsors and participants. Instead of individual coordination on a client-by-client basis, IPX provides a standardized framework that is designed to help ensure consistent compliance in a verifiable framework.

C. IPX Benefits for 403(b) Plan Participants

- Notice Delivery. There is more and more focus on delivering the many required notices for 403(b) plans than ever before. IPX helps solve this challenge by verifying participant email addresses so that notices can be delivered by legally compliant electronic disclosure methods. In addition, in the event of a future regulatory or legal activity, IPX stores these notices for easy retrieval.
- Easier "Apples to Apples" Comparison of Vendors. In a multi-vendor 403(b) plan, each vendor often has its own model for presenting the features of its investment product, whether an annuity contract or custodial account. IPX helps harmonize and consolidate information into a single location and present each vendor in a similar manner and make it easier for participants in selecting the investments for their plan account.
- Financial Advisor Access. More and more participants want to provide outside advisors the ability to manage their 403(b) plan accounts. IPX makes this happen.



- Multiple 403(b) Plan Accounts. When a person participates in more than one 403(b) plan utilizing IPX, the participant can have a consolidated portal to view and manage all of these retirement accounts in one place – on the IPX platform – and look at their retirement as a big picture, not a series of separate buckets.
- Reducing “Abandoned Accounts”. Participants entitled to benefits are the ones most impacted by abandoned accounts. In a multi-vendor 403(b) plan, a participant might, in some cases, have to reach out to multiple vendors to verify whether they have an account. With IPX, there is a single point of contact for participants to look to. Even better, an individual with multiple plans running through IPX can more easily track his or her accounts on a consolidated basis. This consolidated approach can help decrease the risk of “lost” or “abandoned” accounts.

About IPX

Investment Provider Xchange (“IPX”) is a single-source end-to-end solution for providers in the 403(b) and 457(b) plan markets, offering the benefits of a multiple provider approach with the simplicity of single provider. IPX combines a technology platform for fund trading, recordkeeping and online account access with a custom plan design and consulting from a third-party administrator. Features include transaction processing for contributions, distributions, and participant loans, aggregated participant data accessed via a single, robust web portal and the ability to access mutual funds and annuities on one platform. For more information, please visit www.ipxplatform.com.

About FPS Group

FPS Group, LLC develops products and services designed to offer retirement planning industry stakeholders innovative and efficient ways to streamline processes, cut costs and improve their bottom line. FPS Group offers the Investment Provider Xchange (“IPX”), providing RIAs with a renewed entry point to the 403(b) market. The firm also specializes in Paying Agent Services, Automatic IRA Rollover Services, HSA Custodial Services, and provides custody and safekeeping, recordkeeping, tax reporting, income collection, investment of cash balances and other non-fiduciary activities. As a result, FPS clients are more efficient and can offer improved functionality and responsiveness to their clients. For more information, please visit www.fpsgrouppllc.com.