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# PENSION ANALYST COMPLIANCE BULLETIN



**Prudential**  
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## IRS provides 403(b) plan relief for “once-in-always-in” part-time exclusion rule

On December 4, 2018, the IRS issued [Notice 2018-95](#), which announced transition relief from the “once-in-always-in” (OIAI) exclusion for excluding part-time employees from making elective deferrals under a 403(b) plan. Under the OIAI exclusion, once an employee is eligible to make elective deferrals, the employee may not be excluded from making elective deferrals in a later exclusion year on the basis that the employee is part time.

This relief does not apply to 403(b) plans maintained by churches and certain church-controlled organizations, as those plans are not subject to universal availability rules.

### Background and overview

Under the universal availability rule for 403(b) plans, all employees of an employer maintaining a plan generally must be permitted to make elective deferrals if any employee of the employer is permitted to make elective deferrals. However, certain categories of employees may generally be excluded from making elective deferrals despite the universal availability requirement, including part-time employees who normally work fewer than 20 hours per week. On July 23, 2007, the IRS issued final 403(b) rules regarding the part-time exclusion which imposed three separate conditions for an employee to be excluded from making elective deferrals under the part-time exclusion:

- A “first-year” exclusion condition, where the employer must reasonably expect the employee to work fewer than 1,000 hours during the employee’s first year of employment;
- A “preceding-year” exclusion condition, where the employee must have actually worked fewer than 1,000 hours in the preceding 12-month period; and
- The OIAI exclusion, where once an employee does not meet the part-time exclusion conditions, the employee may no longer be excluded from making elective deferrals under the part-time exclusion in subsequent years.

In response to comments that many employers were not aware that the part-time exclusion included the OIAI exclusion, the IRS provides transition relief from the OIAI exclusion in IRS Notice 2018-95. IRS Notice 2018-95 provides:

- Relief regarding plan operations for a period referred to as the “Relief Period;”
- Relief regarding plan language; and
- A fresh-start opportunity after the Relief Period ends.

### Relief Period

The Relief Period begins with the taxable years beginning after December 31, 2008 (the effective date of the final Section 403(b) rules). For plans with exclusion years based on plan year, the Relief Period ends for all employees on the last day of the last exclusion year that ends before December 31, 2019. For plans with exclusion years based on employee anniversary years, the Relief Period ends, with respect to any employee, on the last day of that employee’s last exclusion year that ends before December 31, 2019. *For example, under the second type of plan design, if Employee A began employment on April 1, 2015, and Employee B began employment on July 20, 2015, the Relief Period for Employee A would end on March 31, 2019, while the Relief Period for Employee B would end on July 19, 2019.*

### Plan operation relief

Under the relief, a 403(b) plan will not be treated as failing to satisfy the conditions of the part-time exclusion during the Relief Period merely because the plan did not comply with the OIAI exclusion. However, relief is not provided for the other conditions of the part-time exclusion (i.e., the first-year exclusion condition or the preceding-year exclusion condition).

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## Plan document relief

IRS Notice 2018-95 provides different relief for 403(b) plans using pre-approved plan documents versus individually designed plan documents. During the Relief Period, 403(b) plans that adopted an IRS pre-approved plan document will not be treated as failing to satisfy the conditions of the part-time exclusion, and the plan will not be treated as failing to follow plan terms, merely because the plan document does not match the plan's operation with respect to the OIAI exclusion during the Relief Period.

For individually designed plans that do not reflect how the plan was operating with respect to the OIAI exclusion, an employer has until March 31, 2020, to amend the plan to reflect the plan operation.

After the Relief Period ends, both pre-approved and individually designed plans that provide for the part-time exclusion must include the OIAI exclusion in the plan language. For plans that use Prudential's document services, the exclusion condition is already included in plan document language. Sponsors of plans that do not use Prudential's document services should review their plan document to determine if the document contains the OIAI exclusion.

## A fresh-start opportunity

The Notice provides a fresh-start opportunity on the administration of the OIAI exclusion. Under the fresh-start opportunity, 403(b) plans will not be treated as failing to satisfy the conditions of the part-time exclusion for periods after the Relief Period, if the OIAI exclusion is applied as if it first became effective on January 1, 2018.

Plans do not need to be amended to reflect the fresh-start opportunity.

## Next steps

Sponsors of 403(b) plans that exclude part-time employees for purposes of eligibility for elective deferrals should immediately review the rules in IRS Notice 2018-95 and determine if any changes are needed regarding plan operation or plan document language. Employers who qualify for the relief should act immediately to ensure plans are correctly administered in 2019 and, for individually designed plans, ensure any amendments needed to reflect plan operations are adopted on or before March 31, 2020.

### Compliance Bulletin by Prudential Retirement

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