Employer Guide to 415 Limit Regulations
Understanding the new 415 regulations can be a challenge.

You may not be aware of new responsibilities you have concerning the 415 limit test for your 403(b) plan. We’re here to help.

This comprehensive guide is part of Fidelity 403(b) Compliance Complete, our suite of services designed to help you understand and comply with the 403(b) regulations. Its purpose is to provide an overview of the 415 limit monitoring requirements, your responsibilities under the new regulations, as well as sample communication materials you can use to communicate these requirements to your employees.

You can be sure that whether your needs are simple or complex, Fidelity can help you navigate the ever-changing regulatory environment and make the most of the new regulations, now and in the future.

On the following pages, we’ve compiled and answered the most commonly asked questions we’ve received from our plan sponsors.

415 limit regulations have changed.

In April 2007, the IRS issued final regulations requiring every 403(b) plan sponsor to begin collecting information about retirement contributions being made through an employee’s outside, for-profit businesses for which the employee has a controlling interest. This information must be incorporated into the calculation for the annual 415 limit test of the 403(b) plan. Accordingly, your responsibility as the 403(b) plan sponsor in the administration of the 415 limit test has been significantly increased.

These regulations require all 403(b) plan sponsors of both ERISA and non-ERISA plans to calculate 415 limits. You may not have needed to calculate the 415 limit in the past; however, as a result of the regulations, this calculation is now a part of your ongoing responsibility.

Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan Sponsor Questions and Responsibilities</td>
<td>2</td>
</tr>
<tr>
<td>Additional Information for Plan Sponsors Who Use Fidelity to Perform Nondiscrimination Testing</td>
<td>6</td>
</tr>
<tr>
<td>Sample Communication Materials</td>
<td>7</td>
</tr>
</tbody>
</table>
Plan Sponsor Questions and Responsibilities

What is the plan sponsor's responsibility?
The plan sponsor has been charged by the IRS with the responsibility of ensuring that all 403(b)-eligible employees are in compliance with 415 contribution limits. Thus, the plan sponsor must do the following:

1. Identify the impacted employees
2. Collect information about retirement contributions made through an employee's outside, for-profit business if they meet certain criteria
3. Include the contribution information in the annual 415 limit test of the 403(b) plan

Due to the highly sensitive nature of this information, data privacy must be paramount in the collection and retention of this information. In the event of an audit, you may want to consider creating a data retention policy and process for storing records, that may include the following:

1. Proof that an effort was made by the plan sponsor to capture required information from employees
2. Samples and/or copies of employee communications reporting their retirement plan contributions made through an outside, for-profit business
3. List of employees notified by the plan sponsor

What is the employee's responsibility?
Any employee who meets all three of the following criteria is required to report outside contributions:

1. Is eligible for your 403(b) retirement plan
2. Owns controlling interest (over 50%) of an outside, for-profit business
3. Makes contributions to a qualified retirement plan or simplified employee pension (SEP-IRA) plan under the outside business

EXAMPLE: A doctor who works for a hospital participates in the hospital's 403(b) plan, and is also the sole owner of a private practice.

If this doctor is making contributions to both the hospital's 403(b) retirement plan and to a retirement plan through her private practice, she would need to report to her employer the details of those contributions. The hospital will then need to calculate contributions made through both plans to ensure compliance with annual IRS contribution limits.

IMPORTANT: This requirement applies only to employees who have a controlling interest in an outside, for-profit business. Employees with no controlling interest in an outside, for-profit business do not need to report contributions to that retirement plan.
When are these new requirements effective?
For most 403(b) plans, the effective date of the new 415 regulations is the 2008 calendar year. When the final 403(b) regulations were published in 2007, they established January 1, 2009 as the effective date for most changes, but they did not postpone the application of the 415 regulations to 403(b) plans in 2008. In general, the 403(b) plan sponsor’s fiscal year and the 403(b) plan’s designated plan year do not alter the 2008 effective date of the 415 regulations. 415 limit testing is based on measurement periods called “limitation years.” For assistance in defining limitation years, consult with your legal counsel or benefits advisor.

How and when should you obtain this information from your employees?
To ensure that your impacted employees are prepared to provide you with this information in time for nondiscrimination testing, we recommend that you reach out to employees with a proactive communication. For your convenience, sample communications can be found beginning on page 7 of this guide. You can modify them as appropriate to communicate with your employees.

What if you offer both a 403(b) plan and a qualified plan?
Separate 415 limits apply to a 403(b) plan and a qualified plan maintained by the same plan sponsor. Contributions to these plans are never aggregated for 415 testing.

What if an employee worked for a different employer in the limitation year and made contributions to that employer’s 401(k) or 403(b)?
Employees who participate in 401(k) or 403(b) plans with more than one unrelated employer, either concurrently or sequentially, may make elective deferrals to both plans. The employee’s total elective deferrals to all plans are limited for the calendar year ($15,500 in 2008, excluding lifetime catch-up and age 50 catch-up contribu-

Definition of Contributions
When we refer to “contributions” for the purpose of 415 testing, it is important to remember that this term has a very broad definition – more than just employee salary reduction contributions. Other types of contributions (technically called “annual additions” in the regulations) also count for 415 testing purposes. In general, all employee pretax or after-tax contributions are included, except age 50 catch-up contributions. Employer contributions or reallocated forfeitures credited to the participant’s account during the testing year are also included. It may be necessary to include other amounts. For assistance with determining 415 testing annual additions, consult with your legal counsel or benefits advisor.
In these situations it is the employee’s responsibility to limit total elective deferrals and to initiate corrections if the limit is exceeded. If the employee has no ownership interests in their employers, separate 415 limits will apply to those plans. The plan sponsors are responsible for 415 limit monitoring.

From whom can plan sponsors obtain more information about how the new 415 limit monitoring will impact calculations for nondiscrimination testing?

It depends on who calculates the nondiscrimination testing:

- If you perform the calculations internally, within your organization, you should contact your certified public accountant or attorney.
- If your calculations are performed externally (not by Fidelity), you should contact that organization or provider.
- If your calculations are performed by Fidelity, please contact your Fidelity Testing and Reporting Consultant.

Limit on Annual Additions and the 415 Limit Aggregation Rule

The following is an excerpt taken from IRS Publication 571, “Tax-Sheltered Annuity Plans (403(b) Plans)” which details the limit on annual additions and the rules for 415 limit aggregation.

The first component of MAC (maximum amount contributable) is the limit on annual additions. This is a limit on the total contributions (elective deferrals, nonelective contributions, and after-tax contributions) that can be made to your 403(b) account. The limit on annual additions generally is the lesser of:

- $45,000 ($46,000 for 2008), or
- 100% of your includible compensation for your most recent year of service.

More than one 403(b) account.

If you contributed to more than one 403(b) account, you must combine the contributions made to all 403(b) accounts on your behalf by your employer.

Participation in a qualified plan.

If you participated in a 403(b) plan and a qualified plan, you must combine contributions made to your 403(b) account with contributions to a qualified plan and simplified employee pensions of all corporations, partnerships, and sole proprietorships in which you have more than 50% control.

For the full text, refer to the March 2008 edition of Publication 571, which covers these topics in Chapter 3, “Limit on Annual Additions.”
What is the process for providing this new outside business contribution information to Fidelity for nondiscrimination testing?

• Once you have received the outside business contribution information from your employees, you will need to include this information in your submission to Fidelity.
• If you use Fidelity’s file specifications layout, any additional contributions should be classified as “Other” in the data file to Fidelity. Please note that you should not include this information in the general “Contributions” column.

What if the employee’s total compensation is less than the annual compensation limit?

• If the compensation under the 403(b) plan is less than the annual compensation limit, you should include the 403(b) contribution in the “Gross Compensation” or “Test Compensation” field.
• The combination of all contributions (403(b) plan plus outside business contributions) should be indicated in the “415 Compensation” field.

When is the data due to Fidelity for nondiscrimination testing?

• Files must be received at Fidelity by February 15 or the date indicated in your Service Agreement.
• All data required to perform nondiscrimination testing must be sent in one file.

What should a plan sponsor do if a participant submits information about outside business retirement plan contributions after Fidelity has performed nondiscrimination testing?

• Consult your Fidelity Testing and Reporting Consultant.
• Retest (applicable fees will apply for additional testing).

Where can plan sponsors obtain additional information on nondiscrimination testing?

• You will receive more specific information regarding nondiscrimination testing from your Fidelity Testing and Reporting Consultant or your Relationship Manager.
Sample Employee Communication Materials

Communications Best Practices and Recommendations

• The information you are requesting is highly sensitive and confidential in nature, and should be handled appropriately. Worksheets completed by employees should be returned to you through a secure channel or delivered in person.

• Provide employees with complete information and details in the initial communication. Incomplete communications may result in confusion and additional questions directed to your Human Resources group.

• It is important to include a deadline for completed worksheets. Deadlines should allow enough time for employees to seek the assistance of their financial advisor and/or tax counsel, but not be too long. Longer lead times can result in low response. Fidelity recommends 4 to 6 weeks.

• You may consider adding this information to your Human Resources policy or new-hire curriculum to provide awareness to all new employees of their obligation to report retirement contributions made through outside, for-profit businesses for which they have a controlling interest.

Sample Communications Included in This Guide

1. Cover letter—This letter will help employees understand the 415 limit monitoring regulations at a high level. It will also help employees identify if the regulations apply to their personal situations.

2. Information sheet—This one-page overview of the 415 limit monitoring regulations outlines how to be compliant, and the implications of noncompliance. This fact sheet is designed to work in conjunction with the cover letter.

3. Worksheet—This form provides the specific data needed from eligible employees. This worksheet should be completed by the employee; however, the employee can enlist the help of a tax attorney if necessary, or may call your Human Resources group for assistance.

4. Reminder letter—If needed, an additional communication can be sent to remind eligible participants to complete the form by the provided deadline. It can be used with or without the worksheet.

Recommended 415 limit communications schedule

<table>
<thead>
<tr>
<th>Day 1</th>
<th>Day 20</th>
<th>Day 30-40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Resources sends a cover letter, an information sheet, and a worksheet to all employees who participate in their employer-provided retirement savings plan. Communications should include the deadline (recommend 4 to 6 weeks) to return completed worksheets and indicate whom to contact for questions.</td>
<td>If needed, Human Resources may send reminder communications. A sample worksheet may be distributed as well.</td>
<td>Plan sponsors should collect all completed worksheets, consolidate all of the 415 limit information, and provide to the plan administrator or testing service.</td>
</tr>
</tbody>
</table>
<Date> <Action may be required>

{Name>
{Street>
{City, State Zip>

{Dear Name}:

There are new IRS regulations that may require you to report to your employer any retirement plan contributions made through an outside business. This notice will help determine if you need to take action regarding the regulations.

If you meet all three of the following criteria, there are requirements you need to be aware of and be prepared to act on:

- You are eligible to participate in the {institution name} 403(b) retirement plan
- You own controlling interest (over 50%) of an outside, for-profit business
- You make contributions to a qualified retirement plan or SEP-IRA through that outside business

If you do not meet all three of the above criteria, this notice does not apply to you, and you may disregard it.

If you meet all three of the above criteria, please read the provided information sheet explaining the requirement to report these contributions, fill out the supplied contribution worksheet, and return it to {your Human Resources group} by {date}. Your certified public accountant or tax advisor can help answer any questions as well as assist you with completing the required form. {You may also call your Human Resources group with any questions or concerns at xxx-xxx-xxxx.}

Thank you for your attention and cooperation regarding these new regulations.

Sincerely,

{Human Resources>
The IRS issued final regulations in April 2007 that require every employer who sponsors a 403(b) plan to collect detailed information about employee outside business interests and, more specifically, any contributions being made to retirement plans through these outside businesses. This information must be collected and used for IRS contribution limit testing by <institution name> in order to monitor compliance with applicable limitations, which is required by the IRS of every 403(b) retirement plan.

<For example, a doctor works for a hospital and participates in the hospital's 403(b) plan, and is also the sole owner of a private practice. If this doctor is making contributions to both the hospital's 403(b) retirement plan and to a retirement plan through his private practice, he would need to report the details of those outside business interests and contributions to the hospital. The hospital will then need to calculate contributions made through both plans to ensure compliance with annual IRS contribution limits.>

What do you need to do?

You will be sent a communication outlining the information that you need to provide to your Human Resources group on an annual basis regarding your contributions to qualified retirement plans or SEP-IRAs through any outside business for which you have a controlling interest.

What will happen if you don’t report this information to your employer?

The tax consequences of noncompliance are potentially very severe for both you and your employer, and may include civil and criminal penalties.

When do you need to report this information to your employer?

You will receive this communication, which requests information about the prior year's contributions, before your plan sponsor completes nondiscrimination testing for the previous year's contributions. This information will need to be reported to your Human Resources group no later than <date>. Should you make any contributions to your outside business qualified retirement plan or SEP-IRA for the prior year after reporting that year's total contributions to your plan sponsor, please be aware that you will need to report these additional contributions to your plan sponsor.

<In general, you will receive this communication, which requests information about the prior year’s contributions, at approximately the same time each year. This will be an annual request.>

Where can you obtain more information?

This notice is a brief summary of very complicated new regulations. Please contact your certified public accountant or attorney to ensure that you understand what is required of you.
Outside Retirement Plan Contributions Worksheet

You are completing this worksheet because you meet all of the following criteria:

- You are eligible to participate in the *<institution name>* 403(b) retirement plan
- You own controlling interest (over 50%) of an outside, for-profit business
- You make contributions to a qualified retirement plan or SEP-IRA through that outside business

**Employee Information**

Name

Employee ID

Phone Number

E-mail Address

**Please answer the following about your outside business activities in *<insert year>*.**

1. What is the limitation year of the qualified plan or SEP-IRA? ______
   
   *A limitation year is the 12 month cycle for which contribution testing is performed.*

2. What was the total annual addition to the qualified plan or SEP-IRA during the limitation year (excluding age 50 catch-up contributions)? ______

3. What was your 415 total compensation during the limitation year? ______

**Signatures**

If this form is being completed by someone other than the participant, please provide the following information in the event that there is follow-up required.

<table>
<thead>
<tr>
<th>Signature of Person Completing This Form</th>
<th>Title / Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Participant Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please complete and return this form to *<name / address / e-mail address>* no later than *<date>*.
<Date> <Action may be required>

<Name>

<Street>

<City, State Zip>

<Dear Name>:

You recently received a communication making you aware of new IRS regulations that may require you to report to your employer any retirement plan contribution made through an outside business.

This notification is a reminder that if you meet all three of the following criteria, you need to complete the enclosed contribution form and return it to your benefits office by <date>.

- You are eligible to participate in the <institution name> 403(b) retirement plan
- You own controlling interest (over 50%) of an outside, for-profit business
- You make contributions to a qualified retirement plan or SEP-IRA through that outside business

If you do not meet all three of the above criteria, this notice does not apply to you and you may disregard it.

Your certified public accountant or tax advisor can help answer any questions as well as assist you with completing the required form. <You may also call your Human Resources group with any questions or concerns at xxx-xxx-xxxx.>

Sincerely,

<Human Resources>
If you have any questions about the information in this guide, please contact your Fidelity Representative.