

New Fiduciary Responsibilities for 403(b) Sponsors

Is your plan ready to comply with the new IRS regulations?

OVERVIEW

After 40 years, the IRS issued final 403(b) regulations on July 26, 2007. These rules regulate the way 403(b) plans are managed and are designed to help improve the retirement savings process for employees in the tax-exempt/non-profit sector. For plan sponsors, this means greater fiduciary responsibility. The regulations apply to all types of 403(b) plans, including governmental, higher education, health care, church, tax-exempt associations and ERISA and non-ERISA plans. The new regulations mean that 403(b) plans will be subject to similar rules applicable to 401(k) plans. Outlined below are some of the major provisions of these new regulations and what they may mean to you as a plan sponsor.

WRITTEN PLAN DOCUMENT REQUIREMENT (EFFECTIVE FOR MOST PLANS JANUARY 1, 2009)

One of the biggest changes plan sponsors face is the requirement to have a written plan document. This is especially true for plan sponsors whose primary involvement in the past was only handling payroll deductions. The provisions in the final regulations are effective January 1, 2009, unless otherwise noted. Sponsors of ERISA and non-ERISA plans are required to have a written plan document specifying:

- Available investments
- Participating employers
- Eligibility requirements
- Basic plan features (i.e. benefits, limitations, distributions and optional features)

It is important to note that the written plan document does not have to be a single document. Instead,

multiple documents such as contracts, salary reduction agreements, custodial accounts and service agreements may comprise the plan document. However, plan sponsors will be responsible for preventing inconsistencies within all documentation.

Plan sponsors still have the right to offer multiple investment providers. However, a plan sponsor will have fiduciary responsibility under applicable law for any provider or investment the plan makes available to participants. Due to this requirement, many plan sponsors are considering reducing the number of investment providers they offer their participants.

Also plan sponsors will be responsible for coordinating compliance with all IRS plan limitations, including loans and distribution rules, among all providers. In the past, plan sponsors simply had to ensure compliance with contribution limits.

As a 403(b) plan sponsor, in addition to the written plan, it may be in your best interest to develop an investment policy statement with guidelines for selecting, monitoring and evaluating plan investment options, as well as form an investment committee that meets regularly to review investment performance, plan expenses and employee education. This will help you to meet your fiduciary responsibilities under the new regulations.

Note: The Department of Labor has confirmed that for non-ERISA plans, a written plan document won't necessarily confer ERISA plan status

NEW PLAN TRANSFER RULES (EFFECTIVE SEPTEMBER 25, 2007)

Traditional 90-24 transfers are no longer available after September 24, 2007. Transfers now can only be made to providers the plan sponsor has approved. You will need to enter into an "Information Sharing



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Agreement” with each provider. The agreement concerns the sharing of participants’ employment, severance, hardship withdrawals, and loan activity data between the plan sponsor and the provider(s) to ensure compliance with 403(b) rules. Under the new regulations only three types of transfers will be allowed:

1. Transfer/exchanges of investments within the same plan;
2. Transfers to another 403(b) that is sponsored by a new or former employer and;
3. Transfers to purchase permissive service credits in a defined benefit pension plan maintained by a government

UNIVERSAL AVAILABILITY RULE

Universal availability is the right that a participant has to make elective deferrals. The new regulations eliminate previously permitted exclusions. For example, visiting professors, governmental employees who make a one time election to participate in another plan, and union employees may no longer be excluded. Special transition rules do apply. However, certain individuals may be excluded including nonresident aliens, employees participating in a 457(b) or 401(k) or another 403(b) plan of the employer, certain students and employees who normally work fewer than 20 hours per week.

Note: When hired, all new employees must be notified of their opportunity to save in your 403(b) plan. Those who don't enroll need to be notified again, at least once a year.

TIMING OF CONTRIBUTIONS

Participant contributions must be sent to providers as soon as administratively possible. The regulations present an example in which contributions are

delivered to providers within 15 business days after the end of the month. This rule applies to employers of all sizes, including small organizations. This will help to minimize the time participant money is not invested-improving potential for growth.

Note: ERISA 403(b) plans are already subject to stricter standards under the Department of Labor regulations.

COORDINATED CATCH-UP RULES

When employees are eligible for both kinds of catch-up contributions, the special 15-year catch-up contributions must be exhausted before using the age-50 catch-up rule. For example, an employee over age 50 who is eligible for the maximum 15-year catch-up contribution in 2011 may contribute \$16,500 as a basic contribution: \$3000 as a 15-year catch-up contribution and \$5,500 as age-50 catch-up, for a one year total of \$25,000.

PLAN TERMINATION PERMISSIBLE

There will be guidelines in place effective January 1, 2009 for terminating a 403(b) plan. Employers can terminate both active and frozen 403(b) plans. All participants must be 100% vested and all assets must be distributed with full rollover ability as soon as administratively feasible after the plan is terminated.

Note: The employer is generally precluded from establishing another 403(b) for the 12 months after distribution of all of the assets in the terminated plan.

ACTION ITEMS FOR PLAN SPONSORS

- Review your current plan;
- Determine which retirement plan providers you will offer;
- Establish a written document or review your current written document; and
- Document Information Sharing Agreements with providers.

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HOW WE CAN HELP?

As your Financial Advisor, we can help you to comply with the new IRS 403(b) regulations by helping you to review your current plan and make recommendations to help you build a better retirement plan for you and your employees.

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