



### **Summary**

On July 23, 2007, the IRS issued new 403(b) regulations. The general effective date of these regulations is January 1, 2009, with a later effective date for certain collective bargaining agreements. Delayed effectives may be permitted if the 403(b) plan is maintained pursuant to a collective bargaining agreement in place on July 26, 2007 the effective date is the earlier of the expiration of contract or July 26, 2010. Delayed effective dates are also permitted for governmental plans if authority to amend plans is held by legislative body, the effective date is the earlier of the close of the first legislative session that begins after December 31, 2009 or January 1, 2011.

Under the new regulations, each employer will be required to implement and maintain a written plan document. There are two main compliance requirements for written plan documents.

1. Written documentation is required for all 403(b) plans which includes all material terms and conditions for:
  - Eligibility
  - Applicable limitations (Contributions)
  - Benefits
  - Distributions
  - “Contracts” available under the plan
2. The plan must adhere to the 403(b) requirements in both “form and operation”

The new regulations shift 403(b)’s from an individual employee controlled account to an employer controlled plan. This means that many of the options will now be determined by the employer in its plan. Optional features under a plan include:

- Employer contributions
- Roth contributions
- Hardship withdrawals
- Loans
- Acceptance of rollovers
- In service withdrawals
- “Exchanges” to 403(b) products approved within the plan
- Plan to plan transfers (in or out)

### **Transfers, Exchanges and Rollovers**

There is also new terminology after September 24, 2007. After that date, a “transfer” is considered moving a 403(b) account under one employer’s plan into investment products permitted under another employer’s 403(b) plan. An “exchange” becomes the change of investment products among investment options under the current employer’s 403(b) plan. A “rollover” is removal of account from employer’s 403(b) plan into any other “eligible retirement plan”. Rollovers are generally available after the employee severs service with employer sponsoring the plan or is aged 59½. **One important change is that the current rules allowing participants to transfer funds**

**from one TSA account to another without risk will end on September 24, 2007.**

Please see [Rules Governing Transfers](#) for more information.

### ***Contribution Ordering***

Under the new regulations, there have been changes to contribution ordering. Any amounts over the annual deferral limit are first viewed as part of the 15 years of service catch-up if the employee is eligible. The age 50+ catch-up is then considered.

### ***Life Insurance***

Additional investment restrictions have also been listed in the new regulations. Life Insurance contracts issued after September 24, 2007 are NOT permitted.

### ***Employer Contributions after Death***

Effective under the new regulations, there are no post employment (retiree) employer contributions after the month of retiree's death. The regulations allocate final compensation by month, with the monthly compensation to be determined based on 1/12 of the annualized compensation. Contributions must be paid by the end of the month in which the participant dies.

### ***Universal Eligibility***

The regulations include clarifications to "universal eligibility" requirements. The 20 hour per week exclusion is now determined based on actual hours worked. If there is a reasonable expectation that employee will not work 1000 hours in year of hire, the employee can be excluded during the first year of employment. Thereafter, the employer will have to look back to count hours to determine if employee actually worked at least 1,000 hours. This change effectively requires schools to count actual hours of service for all employees if they want to exclude employees with fewer than 20 hrs/week.

The universal eligibility requirements call for "meaningful" written notice to employees of their eligibility to participate at least annually. Employees must have "reasonable opportunity" to make deferral elections at least once per year.

### ***Contribution Remittance***

The regulations require that elective deferral contributions be remitted to the insurance company or custodian as soon as administratively possible. The regulations suggest a standard of no later than 15 business days of the month following reduction of salary. Some individual states may have stricter standards for deposits.

Please contact our Employer Plans Department at (800) 433-1828, ext 3 for more information.

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