

SPECIAL ALERT FOR EDUCATORS

THE TOP 10 THINGS YOU NEED TO KNOW ABOUT THE NEW 403(B) REGULATIONS

1. Effective date is January 1, 2009 (some exceptions)

Published in the Federal Register July 26, 2007

2. Written plan document will be required

- May incorporate other documents by reference
- IRS intends for a plan document to be used for multi-vendor plans
- IRS will release model plan language designed for schools
- Plan must allocate responsibility of administrative functions and compliance

3. Transfers and exchanges

New rules substituted for former Rev. Rul. 90-24
Tax-free transfers can occur with:

- Mere changes of investment within same plan
- Plan to plan transfer, another employer plan must receive the exchange
- Transfer to purchase permissive service credits
- Effective for exchanges after September 24, 2007

4. ERISA safe harbor

The Department of Labor has maintained "safe harbor" exemption from ERISA exclusively for 501(c)(3) tax-sheltered annuity programs that are funded solely by salary deferrals. Because of employer discretion in some areas, plans may be evaluated on a case-by-case basis.

5. Universal availability

- Eliminates non-statutory exclusions for collective bargaining unit, visiting professors, etc.
- Now includes Roth 403(b) (if any participant is permitted to make Roth 403(b) contributions)
- Standards set for determining employees who "normally work fewer than 20 hours per week"
- IRS audits will continue to look at compliance
- Meaningful notice to eligible employees is required

6. Information sharing

- No longer rely solely on participant certification
- Employer must agree to provide verification of certain information needed for compliance

7. Contributions

- If a person qualifies for both the over age 50 catch up and the special section 403(b) catch up (15 years of

service), the special section 403(b) catch up must be taken into account first

- Employer must forward to contract provider within reasonable time

8. Post-severance contributions

- Employer contributions permitted for five years after employment ends, subject to section 415 limits on average monthly compensation for final year of service so long as former employee is alive
- Salary deferrals permitted for final pay period for compensation paid within 2 1/2 months after employment ends if such compensation would have been paid if employee continued
- Salary deferrals permitted for accrued sick leave or vacation time paid within 2 1/2 months after employment ends only if could have used that time off if employment continued
- No salary deferrals for severance pay or for payments under a 457 plan or other non-qualified deferred compensation plan

9. 403(b) life insurance coverage

- No new 403(b) life insurance contracts may be issued on or after September 24, 2007
- 403(b) annuity contracts may continue to include death and disability benefits within limits of incidental benefit rule

10. Miscellaneous rules

- Taxation of distribution remains the same
- Required minimum distribution rules remain the same
- Contribution rules remain the same,
- Hardship withdrawals will follow rules in place for 401(k)
- New distribution restrictions for employer contributions, with exception of contracts issued before January 1, 2009
- New plan termination rules

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