

403(b) Plan Awareness and Contact information, Attachment #1

403(b) Plan Document Compliance

IRC 403(b) Tax-Sheltered Annuity Plans - Written Program

403(b) final regulations required a written program by January 1, 2009. Notice 2009-3 extended the deadline to December 31, 2009, if the plan sponsor:

- adopted a written plan intended to satisfy the requirements of §403(b) (including the final regulations) effective as of January 1, 2009;
- operated the plan in accordance with a reasonable interpretation of §403(b), considering the final regulations during 2009; and
- corrected the plan operation to match the written program before the end of 2009, placing the participants in the same position they would have been in if the program had been adopted on January 1. The correction should be based on the general principles in §6 of Rev. Proc. 2008-50.

A 403(b) written program does not need to be a single plan document, but may bundle several documents that may include mandatory and optional provisions.

The employer is responsible for ensuring it operates the plan according to the written program. The employer should establish information sharing procedures with all plan vendors so the plan meets all legal requirements.

Also see:

Revenue Procedure 2007-71: Contains model language public schools may use to adopt or amend their 403(b) plans for the final 403(b) regulations requirements.

Announcement 2009-34: Draft revenue procedure explaining the proposed 403(b) plan prototype program for issuing opinion letters and sample plan language for drafting 403(b) prototype plans.

Non-Discrimination-Employer Contributions

Nondiscrimination Testing:

403(b) plans may need to conduct annual nondiscrimination testing of eligibility and benefits depending on the type of organization sponsoring the plan and/or the type of 403(b) plan.

Section 403(b)(12)(A)(i) requires that employer contributions, other than elective deferrals, made under a section 403(b) contract satisfy a specified series of requirements (the nondiscrimination requirements) in the same manner as a qualified plan under section 401(a). These nondiscrimination requirements include rules relating to nondiscrimination in contributions, benefits, and coverage (sections 401(a)(4) and 410(b)), a limitation on the amount of compensation that can be taken into account (section 401(a)(17)).

Notice 89-23 discusses these requirements and provides a good faith reasonable standard for satisfying these requirements. The Notice 89-23 good faith reasonable standard will continue to apply to State and local public schools. Although the general nondiscrimination requirements do not apply to governmental plans (within the meaning of section 414(d)), these plans are required to limit the amount of compensation to the amount permitted under section 401(a)(17) for all purposes under the plan, including, for example the amount of compensation taken into account for employer contributions, and are required to satisfy the universal availability rule of section 403(b)(12)(A)(ii).

Loans and Hardship Withdrawals in 403(b) Plans

Compliance issues with properly documented plan loans and plan hardship distributions are some of the most common issues we see when we are reviewing plan operations. In general:

- Loans - Must limit the maximum amount that can be borrowed to the lesser of:
 - 50% of vested account balance or \$10,000 (whichever is greater); or
 - \$50,000.

If the plan allows loans, employers must provide plan vendors with adequate information to administer the loans properly.

- Hardship distributions - Allows distribution of elective deferrals if stated criteria are met. Employers must provide plan vendors with adequate information to administer the distributions properly, including the criteria for making the hardship distributions.

Timely Deposit of 403(b) Plan Salary Deferrals

The 403(b) plan sponsor is ultimately responsible for providing participant salary deferrals are deposited timely within a reasonable time period and into the financial products the participant has designated them for. See regulation§ 1.403(b)-8 Funding.

Contributions to the plan. Contributions to a section 403 (b) plan must be transferred to the insurance company issuing the annuity contract (or the entity holding assets of any custodial or retirement income account that is treated as an annuity contract) within a period that is not longer than is reasonable for the proper administration of the plan. For purposes of this requirement, the plan may provide for section 403 (b) elective deferrals for a participant under the plan to be transferred to the annuity contract within a specified period after the date the amounts would otherwise have been paid to the participant. For example, the plan could provide for section 403 (b) elective deferrals under the plan to be contributed within 15 business days following the month in which these amounts would otherwise have been paid to the participant.

We note that for 403(b) plans covered by ERISA Title I there maybe a more restrictive requirement.

Contact Information:

For more information regarding the 403(b) plan and other requirements taxpayers can e-mail questions to our Ruling and Agreements Branch at RetirementPlanQuestions@irs.gov.

In addition taxpayers can also call our Rulings and Agreements hotline number at 202-283-9634 and speak with a representative or leave questions regarding the 403(b) plan and other requirements.

To Contact our Voluntary Compliance area regarding the correction of plan errors, taxpayers can e-mail questions to RetirementPlanQuestions@irs.gov. Alternatively you can go to www.irs.gov/ep and then click on “Contact EP Services” then click on retirementplanquestions@irs.gov

Also you can go to our IRS web link at <http://www.irs.gov/retirement/article/0,,id=172430,00.html> for additional information on 403(b) plans.