

403(b) Regulations Frequently Asked Questions

Q. Why did the IRS/Treasury make these changes?

- A. The new final regulations represent the first comprehensive regulatory changes to 403(b) plans in more than 40 years. The Department of the Treasury has indicated in public statements that these new regulations were drafted to require employers to take a more active role in administering their plans. The new regulations effectively make employers more responsible for managing and reporting on the status of their 403(b) plans.

Q. When is the effective date of the changes?

- A. Generally, the final regulations are effective on January 1, 2009. Prior to 2009, employers may comply with either current law or the final regulations. There are a number of exceptions to the January 1, 2009 effective date, including both earlier and later effective dates for particular rules.

Q. Why was the applicability date moved back to January 1, 2009?

- A. The new 403(b) regulations were originally thought to go into effect January 1, 2008. Employers/Plan sponsors and vendors were given additional time to develop or modify plan documents and make other administrative changes.

Q. What are some of the major regulation changes?

- A. The IRS has outlined a number of changes, however, three key changes include:
- **Written plan document requirement:** All 403(b) plan sponsors are required to maintain a written plan document that details eligibility, applicable limitations and any optional provisions, such as participant loans.
 - **New rules about 90-24 asset transfers:** The new regulations now refer to these as “exchanges”. Plan participants will continue to have the ability to exchange assets within their employer’s 403(b) plan. However, after September 24, 2007 the employer must satisfy additional requirements. One of these additional requirements is that by January 1, 2009 the employer must enter into an information sharing agreement with each institution that accepts an exchange within the plan after September 24, 2007.
 - **Universal availability notification** - If an employer permits one employee to defer salary into a 403(b) plan, the employer must extend this offer to all employees/ (with certain exceptions). While universal availability has always been part of the 403(b) regulations, permissibly excluded groups have been modified with the new regulations. Meaningful notice is needed to satisfy universal availability for salary-reduction contributions.

Q. Is there a sample plan document available for 403(b) employers to adopt?

- A. The plan document need not be a single, consolidated document, but may incorporate other documents by reference, such as annuity contracts and salary reduction agreements. However, the final regulations generally anticipate that the employer will need to maintain a document that provides certain basic terms (e.g., eligibility to participate, available investment options).

In the fall, the IRS has indicated a revenue procedure will be published that outlines model plan provision language for use with public school 403(b) plans.

Q. Will MetLife assist me in meeting the plan document requirement?

- A. MetLife may offer or market a specimen document which you may choose to adopt. We expect this document to be released sometime after the IRS issues their model plan provision language in the fall.

Q. When does the employer/plan sponsor have to adopt the plan document?

- A. The written plan must be adopted and in effect by January 1, 2009.

Q. As an employer/plan sponsor, what happens if I don't meet the plan document requirement by January 1, 2009?

- A. Under the new regulations, a failure to maintain a plan document or to comply with non-discrimination and employer eligibility requirements will cause a plan to fail to be a 403(b) plan on January 1, 2009.

Q. Regarding the universal availability requirement, do employers have to make the 403(b) program available to all employees?

- A. There are limited statutory exceptions from the universal availability requirement for certain classes of employees, including employees who normally work fewer than 20 hours per week ("part-time employees"). The new regulations further clarify exceptions as follows:
- **Statutory Exceptions.** The regulations expand on the exemption from the universal availability requirement for "part-time employees," providing that employees will be deemed part-time employees if they are reasonably expected to work less than 1,000 hours in their first year of employment and, thereafter, if they did not have 1,000 hours of service in the preceding year.
 - **Administrative Exceptions.** The final regulations generally repeal the administrative exceptions under the 1989 guidance, including the exception for union employees that for existing collective bargaining agreements is repealed as of July 26, 2010 or, if sooner, the termination date of the employer's collective bargaining agreement.
 - **Special Transition Rules.** The final regulations include a number of delayed effective dates and transition rules related to changes in eligibility that employers will have to make as a result of the change made in the final regulations to the universal availability requirement. The particular effective date depends on the type of employer and the class of employees affected by the changes.

Q. What is the requirement for communicating universal availability to eligible employees?

- A. Eligible employees must receive notice of the right to begin or change salary reduction contributions to their employer's 403(b) plan at least once during each year.

Q. What's the big change happening concerning 90-24 transfers?

- A. Revenue Ruling 90-24 will be superseded once the new regulations go into effect. Exchanges from one 403(b) vendor to another within the plan must comply with the following new restrictions to avoid being taxed:
- On or after January 1, 2009, the exchange must be permitted by the employer's plan.
 - For exchanges after September 24, 2007, the employer must enter into an information sharing agreement with the receiving 403(b) vendor by January 1, 2009 or, if the exchange occurs on or after January 1, 2009, by the date of the exchange.

The information sharing agreements are intended to assist the employer and the employee to comply with 403(b) requirements. The industry is still investigating the full implications of these changes on 403(b) providers, employers and participants. More information will be shared once details have been clarified.

Q. Can you give me any more detail on the transfers and exchanges?

- A. The final regulations permit investment exchanges between accounts and contracts (called “exchanges”) only if the accounts and contracts are part of the employer’s plan and certain requirements are satisfied:
- *Information Sharing Requirement.* The information sharing agreement must specify that the employer will share information sufficient for the institution providing the account or contract to satisfy the applicable requirements, including administering loans and hardship distributions and determining whether an employee has had a severance from employment.
 - *Effective Date for Information Sharing Requirement.* Accounts or contracts that receive amounts from another account or contract after September 24, 2007 will be subject to the new exchange requirements as of January 1, 2009. As a result, an information sharing agreement with any institution that receives an exchange after September 24, 2007 will generally be needed by January 1, 2009 in order for the account or contract to remain a 403(b) account or contract.

Q. What happens if an employer doesn’t enter into an information sharing agreement with the 403(b) vendor that receives an exchange within a plan after September 24, 2007?

- A. If an information exchange agreement is not entered into between the employer and the vendor by January 1, 2009, the value of the participant’s account or contract as of January 1, 2009 will become income that is taxable to the participant. If the participant has more than one contract, the value of all the participant’s contracts will become income that is taxable to the participant. The value of the participant’s account, contract or contracts will be classified as income to the participant and subject to ordinary income taxes and possibly a 10% Federal tax penalty. In many cases, this income will also be subject to state income tax.

Q. Is there a standard format or language for the information sharing agreement?

- A. The IRS has indicated that it does not plan to publish sample language or requirements to be included in this agreement. Industry leaders are currently digesting the impact of this agreement requirement to determine if a standard form of agreement can be adopted for use by 403(b) employers.

Q. Will loans and hardship distributions continue to be available under 403(b) plans?

- A. Yes. The final 403(b) regulations retain the provisions from the proposed rules that require 403(b) plan loans and hardship distributions to satisfy the same rules as those followed under 401(k) plans.

For example, plan loans may not be made if the participant’s total amount of outstanding plan loans exceeds certain limits. Hardship distributions may only be made from the participant’s elective deferrals when there is a deemed financial hardship, and salary deferrals must be suspended for the sixth-month period following the date the hardship distribution request is processed.

The final rules provide that 403(b) participants may no longer self-certify that these requirements are met. Therefore, by January 1, 2009, there must be a coordination procedure in place between the employer, the 403(b) provider and any other third party to ensure that the loan and hardship distribution rules are satisfied.

Lastly, an employer’s plan must specifically provide for loans or hardship distributions for them to be available under the 403(b) funding contract or account.

Q. Can an employer terminate its 403(b) plan?

- A. The final 403(b) regulations permit employers to terminate their 403(b) plans and distribute plan assets to participants. This means that employers are no longer required to freeze their plans and then delay distributing assets until each participant becomes eligible for a distribution.

Employers should be aware of the following important requirements with respect to termination:

- An employer terminating either a 403(b) custodial account plan or a 403(b) plan with participant elective deferrals cannot make contributions to a new 403(b) plan for a period of 12 months after the distribution of the former plan's assets.
- Except for the adoption of a written plan document, the terminating plan must comply with the final regulations at the time of termination. This applies even if the plan is terminated before the January 1, 2009 effective date of the final regulations.

Plan termination means that the entire plan must be terminated. Partial terminations are not permitted.

Q. What is MetLife doing to help clients comply with the new regulations?

- A. MetLife is working with other industry leaders to develop and recommend tools and resources that will help employers comply with the new rules. We will continue to offer assistance to our clients as more information becomes available.

Q. Can employees who have separated from service 'Rollover' their 403(b) contracts to IRAs?

- A. Yes. In addition, former employees may be able to rollover their 403(b) contracts to their new employer's retirement plan, including 401(k), 403(b) and governmental 457(b) plans, if the employer's plan accepts rollovers. Former employees may also be able to exchange their 403(b) contracts within their former employer's plan. After September 24, 2007 but before January 1, 2009, former employees may exchange their 403(b) contracts for the 403(b) contracts of another issuer without the exchange being subject to tax if the new issuer enters into an information sharing agreement with the former employer by January 1, 2009. Beginning on January 1, 2009, a former employee may exchange his or her current 403(b) contract for the 403(b) contract of another issuer without the exchange being subject to tax if the former employer's plan permits such an exchange and the new issuer first enters into an information sharing agreement with the former employer.

Q. If an employee is still employed for the employer that provides the 403(b) plan, is the employee limited to exchanging his or her 403(b) contract for another 403(b) contract offered under that same employer's plan if the new 403(b) contract issuer maintains a relationship with that employer?

- A. Yes; however, there are some exceptions. The most common is that an employee who has reached age 59½ and, as a result, is eligible for a distribution without leaving employment, may rollover his or her 403(b) contract to an IRA while still employed. Otherwise, after September 24, 2007 but before January 1, 2009, an employee may only exchange his or her current 403(b) contract for the 403(b) contract of another issuer without the exchange being subject to tax if the new issuer enters into an information sharing agreement with the employer by January 1, 2009. Beginning on January 1, 2009, an employee may only exchange his or her current 403(b) contract for the 403(b) contract of another issuer without the exchange being subject to tax if the employer's plan permits such an exchange and the new issuer first enters into an information sharing agreement with the employer.

Q. Is an employee required to have a 403(b) contract that the employee has contributed to while employed in order to have sick and vacation pay deposited into a the 403(b) contract after they retire or terminate employment?

- A. No. If the employer permits sick and vacation pay to be contributed to the 403(b) contracts of retiring or terminating employees, the retiring or terminating employee can designate the contract issuer at the time the employee retires or terminates employment.

Q. When will the IRS release model language for public schools?

- A. While it is by no means certain, the IRS has informally indicated that model language for public schools will be released around Labor Day.

Q. How will religious and other private schools be affected by the final 403(b) regulations?

- A. Religious and other private schools will generally be treated in the same manner as public schools under the final 403(b) regulations. By January 1, 2009, religious and private schools must adopt a 403(b) plan document and begin administering contributions, distributions and employee eligibility in accordance with the plan document. In addition, beginning January 1, 2009, religious and private schools must aggregate participant 403(b) contracts for the purpose of complying with contribution, distribution and loan limitations. After September 24, 2007 but before January 1, 2009, for 403(b) contract exchanges to avoid being subject to tax, religious and private schools must only permit an employee to exchange his or her current 403(b) contract for the 403(b) contract of another issuer if the new issuer will enter into an information sharing agreement with the religious or private school by January 1, 2009. Beginning on January 1, 2009, for 403(b) contract exchanges to avoid being subject to tax, religious and private schools must only permit an employee to exchange his or her current 403(b) contract for the 403(b) contract of another issuer if the religious or private school's plan permits such an exchange and the new issuer first enters into an information sharing agreement with the religious or private school. Religious schools are exempt from ERISA requirements, unless a religious school has elected to be covered by ERISA. Private schools that have limited involvement with the 403(b) contracts of their employees are not subject to ERISA requirements. Limited involvement generally means that the employer only collects and forwards employee elective salary deferral contributions to the employee's 403(b) contract issuer. Complying with these new requirements generally will not cause a private school 403(b) plan to become subject to ERISA requirements.

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