

# Making Sense of the New 403(b) Changes

## **Your At-a-Glance Guide to Final 403(b) Regulations**

On Jan. 1, 2009, new 403(b) regulations will go into effect—the first major regulatory change in 40 years. What follows is an employer guide not just for meeting your obligations, but for capitalizing on this opportunity to create an even better retirement program for your employees.

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## What are the Final 403(b) Regulations?

In July 2007, the Treasury Department and the IRS released final regulations for retirement savings arrangements sponsored by public schools and charitable organizations, often referred to as “Section 403(b) plans.” These changes represent the first significant overhaul of 403(b) regulations since 1964.

The Final 403(b) Regulations include updates to the Tax Reform Act of 1986, the Small Business Job Protection Act of 1996 (SBJPA), the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and the Pension Protection Act of 2006 (PPA).

### The Bottom Line

**The goal of these changes is to simplify plan administration and to bring 403(b)s in much closer alignment with other deferred salary reduction arrangements, such as 401(k) and 457(b) plans.**

## When do the new rules take effect?

The regulations generally apply for taxable years beginning Jan. 1, 2009. Until then, employers may continue to comply with current rules or voluntarily choose to apply the new regulations. There are some exceptions to this timeline, however:

1. **Collective bargaining agreements (CBAs).** For 403(b) plans maintained pursuant to a CBA that was in effect on July 26, 2007, the regulations do not apply before either the termination date of the CBA or July 26, 2010, whichever occurs first (assuming the 403(b) plan is a significant bargaining chip within the CBA).
2. **Church plans.** If the authority to amend a church plan is held by a church convention, the effective date of these regulations is the first day of the first plan year after Dec. 31, 2009.
3. **Some provisions.** There are transitional deadlines for certain other provisions such as 90-24 transfers, life insurance in 403(b) contracts and exclusions from participation under IRS Notice 89-23. In some instances, those deadlines are sooner than the general Jan. 1, 2009, deadline.

### The Bottom Line

**For most employers, Jan. 1, 2009, is the key date to remember.**

## What will change?

The information in this document provides only a high-level review of the new 403(b) rules and your obligations under these new rules. Not only can your Symetra team help you navigate the new rules, we'll make sure you have a simple plan for full compliance.

### ***You must maintain a written plan.***

All 403(b)s, including non-ERISA plans, must maintain and follow a written plan document that explains the material terms of the arrangement. Among other things, this includes:

- Eligibility
- Benefits
- Contribution Limits
- Investments
- Time and Form of Benefit Distributions

Optional plan features might also include specifics on loans, hardship withdrawals, transfers, Roth contributions and employer contributions (including post-employment).

Employers with multiple 403(b) investment products are encouraged to incorporate and coordinate various vendor contracts under a single plan (although it's important to note that your plan may be made up of a collection of documents). The plan document should address any conflicting provisions between underlying annuity contracts and custodial accounts.

Although it may sound intimidating, your written plan requires a one-time adoption with occasional updates as laws change. To lessen the burden, both the IRS and Symetra will offer compliant model language free of charge. Symetra's team of 403(b) experts will also be available to provide one-on-one assistance.

The Bottom Line

**Plan documentation must spell out the rules of plan, giving employees access to transparent employer-created plan information for the first time.**

***Employee transfers and exchanges are more limited.***

Along with much-needed improvements come a few new restrictions. Most notably, the new rules permanently slam the door on 90-24 transfers (effective Sept. 24, 2007). Previously, workers were allowed to easily transfer retirement savings from one 403(b) company to another as desired.

*Only two types of transfers are now allowed:*

1. Transfers to other investments within the same plan.
2. Exchanges to another 403(b) provider outside the approved list, but only if there is an information-sharing agreement between the employer sponsor and the new provider.

Additionally, exchanges must not diminish the accumulated benefit or have less stringent distribution restrictions.

The Bottom Line

**Not only are there more restrictions on transfers, 90-24 transfers enacted by the plan participant ended on Sept. 24, 2007.**

***You must have "information sharing agreements" in place, in certain cases.***

After Sept. 24, 2007, exchanges to funding vehicles issued by providers not approved to receive contributions under the sponsor's plan will not be permitted unless both parties agree to enter into an information sharing agreement by Jan. 1, 2009. An information sharing agreement is not required for approved vendors — those with payroll slots — or if your plan already limits transfers to approved vendors only.

Designed to ensure compliance to the tax code and final regulations, information sharing agreements include such things as the participant's employment status, eligibility for hardship distributions and plan loan limits (these details may no longer be collected from participants).

Exchanges made after Sept. 24, 2007 to an unapproved provider may become fully taxable. However, to correct, employees may re-direct money, without penalty, to an approved vendor if the exchange is completed by July 1, 2009.

The Bottom Line

**If exchanges are permitted to unapproved providers — those without payroll slots — an information sharing agreement must be in place by Jan. 1, 2009.**

### ***Orphaned accounts may also require an information sharing agreement.***

Orphan accounts are those not associated with a current or former employer's plan on January 1, 2009, or after. If the vendor is "de-selected" from the plan, employers may be required to make a good faith effort to enter into an information sharing agreement with the de-selected vendor. Exception is for contracts created by exchanges of former employees that did not accept any contributions after Dec. 31, 2004. They are grandfathered in and not subject to the plan sponsor's plan.

Accounts of active employees issued between 2005 and 2008 by a vendor who is not on the approved list and the account has had no further contributions ("transfer only accounts") after the year the contract was issued will not be disqualified 403(b) accounts if either of the following occurs:

- The employer makes a reasonable good faith effort to obtain information about the vendor and provides that vendor with contact information on the party responsible for coordinating necessary 403(b) compliance information.
- Before making any loan or distribution to a participant, the 403(b) vendor makes a reasonable good faith effort to contact the employer and to exchange necessary information for purposes of satisfying compliance requirements.

For 403(b) contracts issued between 2005 and 2008 held for former employees or beneficiaries that no longer receive 403(b) contributions after Dec. 31, 2008, continue to be subject to the requirements of the annuity contract or custodial accounts holding those 403(b) assets, but are generally not included under any employer's plan. However, if the former employee or retiree requests a loan, the vendor holding the 403(b) contract must verify incidence of other loans, if any, and outstanding loan balances prior to granting the loan request, but may not rely on information provided by a former employee except as to employment status.

#### The Bottom Line

**Employers are not responsible for all account activity that has occurred within the Plan, only the most recent activity. The IRS has approved some grandfathering. Plan sponsors may be required to enter into an information sharing agreement with deselected vendors that are not grandfathered in (and therefore excluded from the new rules).**

### ***Contributions must be made in a reasonable amount of time.***

A new rule requires plan sponsors to transmit all contributions to plan providers as soon as administratively reasonable. Reasonable is specifically defined as 15 business days following the month in which these amounts would otherwise have been paid to the participant.

#### The Bottom Line

**Employers that currently take longer than 15 business days to remit employee contributions will have to conform to the new timing rule.**

### ***Nondiscrimination testing may be required.***

Since the final regulations repeal IRS Notice 89-23 — the good faith reasonable standard regarding nondiscrimination requirements — employer contributions and employee after-tax contributions must both satisfy nondiscrimination requirements in the same manner as a qualified plan.

#### The Bottom Line

**If you currently rely on the safe harbor disparity rule (IRS Notice 89-23), you may need to update your plan design to ensure compliance.**

### ***Plans may be terminated.***

Neither the IRS nor the DOL had regulations that allowed a plan sponsor to terminate a 403(b). That is no longer the case. Under the new rules, plans may be terminated if all accumulated benefits are distributed to participants and beneficiaries as soon as administratively possible after termination. Distributing all assets may create some challenge in that 403(b) accounts are typically owned and controlled by the individual and may be subject to surrender charges.

The Bottom Line

**403(b) plan documents may now be amended to add a termination clause.**

### ***Life insurance is no longer allowed.***

Effective Sept. 24, 2007, separate life insurance contracts may no longer be purchased with 403(b) dollars (although existing policies were grandfathered in).

The Bottom Line

**A death benefit may only be purchased within an annuity contract. But as before, must be incidental to the retirement benefits of the plan.**

### **Summary: What steps do I need to take?**

What follows is a quick review of the most important steps you'll need to take. Keep in mind that this is not meant to be a comprehensive list of your obligations under the new rules. Look to your Symetra 403(b) team to provide you with the expertise, tools and support you need to be fully compliant.

- **Gather current plan details.** Start gathering information about your current providers, including contracts, forms, investment options, investment performance, fees and expenses, and service agreements. Identify all vendors who have received contributions on behalf of your plan beginning Jan. 1, 2005, and later.
- **Purchase or create a plan document.** Documents are available from a variety of sources, including Symetra. Obtain a document and determine what additional elements will be included as part of the 403(b) written plan; list of approved vendors for contributions, list of approved vendors for exchanges, a procedural manual, forms that will be used in the administration of your plan, contracts offered under the plan, etc.
- **Determine who will be responsible for administration of the plan.**
- **Select vendors.** Determine the number of vendors that will be offered within your plan, effective Jan. 1, 2009.
- **Pinpoint your effective date.** Determine which effective date applies to your plan. Then take steps to ensure plan documents, service agreements, investment updates, and Plan procedures are all ready to go by that date.
- **Plan for universal availability.** Start thinking about how you will publicize your plan. You'll need to make employees aware of the availability of deferral, the time period during which they can make an election, their right to contribute up to the maximum allowed, and any other conditions of the plan. Maintain a copy of this annual employee communication.
- **Review remittance timing issues.** If you currently take longer than 15 business days to remit employee contributions to the plan provider, you'll need to speed things up.

- **Determine how you'll satisfy nondiscrimination rules.** If your plan provides an employer contribution and you have relied upon IRS Notice 89-23 safe harbors, you'll now need to determine how to satisfy the nondiscrimination rules.
- **Discontinue life insurance purchases.** Make certain no life insurance contracts are being offered within the plan or that any were purchased after Sept. 24, 2007.
- **Put "information sharing agreements" in place.** If exchanges are allowed to unapproved vendors — those without payroll slots — an information sharing agreement must be in place by Jan. 1, 2009. Assets directed to accounts without this agreement will become fully taxable. However, employees may correct the error by redirecting assets to an approved vendor before July 1, 2009.
- **Assess the need for outside advisory expertise.** The 403(b) experts at Symetra can talk with you about model plan language and administrative support. Contact your advisor or the Symetra Sales Center at [invest@symetra.com](mailto:invest@symetra.com) or 1-800-706-0700.

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