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Get Familiar with the Facts

403(b) Regulations: Understanding the Changes

RETIREMENT PLANS

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New 403(b) Regulations …
The First in 40 Years

There have been many changes to pension and tax law over the last four decades, but much of what the Internal Revenue Service (IRS) has addressed dealt primarily with 401(k) retirement plans. Finally, the IRS is directing its attention to 403(b) programs and how they should be administered.

Employers, employees, insurance carriers and mutual fund companies that are involved in Section 403(b) arrangements will have until the end of 2008 to prepare for the proposed regulations. These new rules offer comprehensive, interpretive guidance for the first time since 1964, when regulations under Section 403(b) were first published, and update the current regulations by deleting provisions that no longer have legal effect due to subsequent changes in the law.

This resource will provide you with a review of the new regulations, answers to commonly asked questions and concerns, and a game plan for streamlining your compliance process.

Change is Good

As an employer, you have been offering your employees a 403(b) retirement plan without much guidance from the IRS for years. Legislation such as the Employee Retirement Income Security Act (ERISA) and the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) changed the rules for many retirement savings programs, but the legislation had little impact on schools and nonprofits. Subsequent confusion surfaced among plan employers and over time, many 403(b) programs fell out of compliance. After conducting numerous audits, the IRS recognized it was time to provide guidance to make sure that 403(b) programs operate in compliance with these laws.

The new regulations also offer insight into the shifting views of the IRS and Treasury Department. Essentially, these changes intend to align the rules governing 403(b) plans more closely with those governing salary reduction arrangements such as 401(k) or 457(b) plans.

Beginning Jan. 1, 2009, Section 403(b) plans will look different. The new rules will affect all 403(b) arrangements in terms of due diligence and compliance expectations, which will directly impact how you manage these benefits for your plan participants. By adhering to the new regulations, you will have strategic opportunities to introduce enhanced services, improve investment performance and reduce fees, which will directly benefit your employees.

We understand that change can be good, but it can also cause concern. That's why at The Standard, our goal is to extend our experience and expertise to you so you can more easily navigate through these coming months before the regulations go into effect.

Section 403(b) Requirements

The Major Changes

A Plan Document

Under the new rules, you will need to maintain a written defined contribution plan document and operate the 403(b) program according to its terms for eligibility, benefits, limits, contracts and the form of and time for benefit distributions.

The plan document may also include some optional features:

- loans
- hardship withdrawals
- transfers
- Roth contributions
- employer contributions, including post-employment contributions

If your plan includes any of these optional features, then it must adhere to the new 403(b) requirements in both form and operation.

Elective deferrals

403(b) elective deferrals must generally be made available to all employees, and other contributions must satisfy the general nondiscrimination requirements applicable to qualified plans. All elective deferrals must satisfy the section 402(g) deferral limits ($15,500 for 2007), and the overall section 415 annual addition limit.

403(b) plans also must satisfy minimum required distribution rules, incidental benefit requirements and rollover distribution rules. The new regulations explicitly state that 403(b) elective deferrals are limited to contributions made pursuant to a cash or deferred election.

The 403(b) and 401(k) elective deferral rules are similar in terms of the frequency with which a deferral election can be made, changed or revoked, including automatic enrollment. At a minimum, employees must have an annual opportunity to make, change or revoke a deferral election.

Three Major Differences Between 403(b) and 401(k) Elective Deferrals

1) Section 403(b) is limited to employees of state public schools and Section 501(c)(3) organizations, and certain ministers.
2) Unlike Section 401(k), contributions under Section 403(b) can only be made to certain funding arrangements.
3) A universal availability rule applies to Section 403(b) elective deferrals, whereas the ADP test and 410(b) coverage rules apply to 401(k) deferrals.

Acceptable 403(b) Funding Arrangements

- Annuity contracts issued by an insurance company
- Custodial accounts invested solely in mutual funds
- Retirement income accounts (permitted for church employees only)

Universal availability rule

In general, universal availability now applies separately to each entity employing a 403(b) program (in public schools, for example, where there is not a common payroll). If any employee who could be excluded from participating in the 403(b) program is able to participate, then all employees within that excludable category must be allowed to participate.

The nondiscrimination and universal availability requirements do not apply to a Section 403(b) contract purchased by a church.

Additionally, the new regulations state that the following categories of employees are exempt from the universal availability rule:

- nonresident aliens
- students performing services described in section 3121(b)(10)
- employees who normally work fewer than 20 hours per week
- employees who can participate in an eligible governmental plan under Section 457(b) permitting contributions or deferrals, or a plan offering 401(k) deferrals

The nondiscrimination and universal availability rules are in addition to other legal requirements. For example, employers who are subject to Title I of ERISA would not be able to exclude employees who work fewer than 20 hours per week.

Employers also must provide employees with an annual notice explaining the "effective opportunity" to make or change their contribution to the plan. For many plan sponsors, this means assuming a more active role in communicating with employees.

Universal Availability Notice

Make employees aware of:

- the availability of a cash or deferral election
- the time period during which the election can be made
- their right to contribute up to the maximum allowed
- any other conditions on elections

Catch-up contributions

A 403(b) program may provide additional catch-up contributions for participants who are age 50 by the end of a calendar year (up to $5,000 for 2007). Additionally, employees of a qualified organization who have at least 15 years of service are entitled to a special 403(b) catch-up limit of up to $3,000. A participant who is eligible for both types of contributions must first satisfy the special 403(b) catch-up limit before using the age 50 catch-up provision.

Timing of distributions

Neither employer contributions nor elective deferrals may be paid to a participant from a 403(b) custodial account before the participant has a severance from employment, becomes disabled or turns age 59½. Hardship distributions may not include earnings.

Amounts attributable to elective deferrals may not be paid to a participant from a group annuity contract before he or she has a severance from employment, becomes disabled, experiences a hardship or turns age 59½.

Distributions of amounts other than elective deferrals or after tax amounts may not be made to a participant from an annuity contract before he or she has a severance from employment or a stated event occurs. The regulations also include a number of exceptions to the timing of distributions. Specifically, the rule for elective deferrals does not apply to those deferrals made before Jan. 1, 1989.

Transfers and exchanges

The new transfer rule brings the 403(b) plan in line with the way transfers occur in 401(k) plans. Plan employers are allowed to direct or authorize the transfer, and the employer must enter into an agreement with the issuer of the other contract under which the employer and the issuer will provide each other with certain information. This includes information concerning the participant's employment as well as information that takes into account other Section 403(b) contracts or qualified employer plans, such as whether a severance from employment has occurred and whether the hardship withdrawal rules in the regulations are satisfied or loan rules are followed.

Two types of transfers are permitted:

Plan-to-Plan Transfers	Contract Exchanges
• The participant whose assets are being transferred is an employee or former employee of the employer that sponsors the receiving plan. • The plans respectively provide for the transfer and the receipt. • The participant's benefit after the transfer at least equals the benefit before the transfer.	• The exchange occurs within the same Section 403(b) plan. • The plan permits the exchange. • The participant's benefit after the exchange at least equals the benefit before the exchange.

In either case, the amounts transferred must be subject to distribution rules at least as restrictive as those of the transferring contract.

Plan termination

The new regulations now allow 403(b) plans to be terminated. All accumulated benefits under the plan must be distributed to participants and beneficiaries as soon as administratively possible after termination of the plan.

Taxation

The new regulations state that, generally, amounts actually distributed from a Section 403(b) contract are included in the gross income of a participant for the year in which the distribution is made.

A payment that is considered an eligible rollover distribution is not taxed in the year it is distributed as long as the payment is directly rolled over or transferred to an eligible retirement plan. However, 20 percent federal income tax withholding applies if the distribution is not directly rolled over.

Qualified Domestic Relations Orders

The new regulations clarify that Section 414(p) QDRO rules apply to 403(b) plans.

Making Your 403(b) Program More Competitive

A thoughtful investment policy and competitive RFP process, together with service provider accountability, constitute a powerful combination of tools you can use to select and maintain quality providers and investment options.

Although these regulatory changes may appear challenging to many 403(b) plan employers, the new rules intend to strengthen 403(b) plans by initiating:

- improved performance of investment options
- new, enhanced participant services
- reduced fees

These new rules present a strategic opportunity for you to reposition and enhance your 403(b) program, transforming it into a powerful recruitment and retention tool. How? Begin by bringing your plan in line with those offered by the most successful employers.

Fewer Service Providers and Investment Options: Less Means More

Consolidation of providers through a competitive request for proposal (RFP) process enables you to use your combined plan assets to reduce fund fees and administrative expenses. RFPs can provide you with a way to effectively reduce the number of providers you're using. Employers with a single provider can view RFPs as an effective means to renegotiate their contract, thereby paving the way for maximizing investment returns for participants.

Many defined contribution plan sponsors also utilize investment policies to describe, in detail, their fund options: their characteristics; the basis upon which they are selected; benchmarks against which they will be evaluated; and the process by which they will be monitored, evaluated and, if necessary, replaced.

Good fiduciary behavior means regularly evaluating fund options. Therefore, by reducing the number of fund options available to participants, you reduce your administrative responsibility as well. More and more plan sponsors are beginning to recognize this and are steering clear of the increased complexity, confusion and oversight responsibility that offering many funds creates.

Regardless, plan sponsors who use any professional third-party or consulting services to assist them with their retirement programs are expected to act prudently and ensure all other parties are likewise acting prudently, thereby requiring a closer scrutiny of plan providers. This can be accomplished through the incorporation of specific performance standards delivered by plan providers via contractual service guarantees. Plan providers who fail to deliver promised services must then face financial consequences.

A thoughtful investment policy and competitive RFP process, together with service provider accountability, constitute a powerful combination of tools you can use to select and maintain top performing providers and investment options.

Increased Employer Responsibilities: More Means More

When you enter the world of fiduciary due diligence — a world that 401(k) plan providers have grown to embrace over the last several decades — you'll see that the benefits come with a price. The more you actively manage your 403(b) program, the more costly the plan becomes. However, the new regulations require that Section 403(b) programs be "maintained pursuant to the plan." This means you'll also have greater responsibilities in assuring that your plan documents accurately reflect the operation of your plan while complying with IRS requirements.

Additional costs associated with increased oversight, plan compliance and regular investment reviews can be incorporated into the provider estimates in RFP responses. In this way, most 403(b) plans can remain competitive on both a fee and expense basis despite the higher costs that your increased role generates.

403(b) FAQs

Separating Fact from Fiction

Why did the IRS issue new regulations for 403(b) plans?

While the law has undergone many changes over the years, no comprehensive changes had been made to the 403(b) regulations since the 1960s. The IRS also wanted to make 403(b) regulations more consistent with other defined contribution plans, such as 401(k) plans, offered by businesses and corporations. The new regulations are intended to simplify the body of existing rules and other guidance for both participating employees and plan employers.

What is the effective date of these changes?

The regulations are generally effective on Jan. 1, 2009.

What are the changes that are included in the new regulations?

The new regulations offer clarification regarding contribution limits, post-severance contributions, hardship distribution rules and the availability of salary deferrals. Among the additional changes:

- Contracts or accounts must be maintained in accordance with a written plan document.
- Employers must designate approved investment providers and products under the plan.
- Contract exchanges must be restricted to approved investment providers and products under the plan.
- No new incidental life insurance is allowed.

What is meant by a "written plan"?

A written plan sets forth all material terms governing the 403(b) plan, including those relating to eligibility to participate, benefits under the plan, applicable contribution limits and restrictions on distributions.

How will transfers be affected?

Revenue Ruling 90-24 transfers will no longer be allowed as they are today.

If a participant wants to exchange an account or contract within a plan, the investment provider and product must be approved. Transfers outside of the plan will be allowed to a contract or account under another employer-sponsored 403(b) plan in which the employee is eligible to participate.

Will the investment options offered in my 403(b) plan have to change as a result of the new regulations?

No. The regulations do not require employers or investment providers to make changes to their investment options or the type of investment products offered under the plan, other than to discontinue stand-alone incidental life insurance benefits. Providers, however, can develop products containing death benefit features within an annuity contract configuration, if desired.

Are Roth contributions permitted under the new regulations?

Yes, on an optional basis. If the employer wishes to permit Roth contributions, the written plan must provide for them.

How are distributions affected?

The regulations retain the restrictions on distributions for custodial accounts and for elective deferrals in annuity contracts. Distributions from custodial accounts may be made only upon severance from employment, disability, attainment of age 59½ or death.

Elective deferrals may be distributed from an annuity contract only upon severance from employment, disability hardship, attainment of age 59½ or death.

Distributions of amounts other than elective deferrals and after tax contributions from an annuity contract may only be made to participants upon severance from employment or the occurrence of an event such as a fixed number of years of service, the attainment of a specified age or disability. Therefore, the regulations restrict distributions of employer contributions from 403(b) annuities. Hardship distributions will continue to be permitted under a 403(b) plan and must follow the same rules that apply to 401(k) plans.

Can I terminate my 403(b) plan?

Yes. The new regulations state that an employer may terminate a 403(b) plan and then distribute assets to the employees.

Am I required to notify my employees about the availability of the plan?

Yes. Employers must notify employees annually about the availability of salary deferrals under the plan, and employees must have an opportunity at least annually to make, revoke or modify a deferral election.

The information above is not intended to be an exhaustive list of all issues pertaining to the new 403(b) regulations. The information presented here is intended to provide answers to some of the most commonly asked questions.

403(b) Audit Requirements at a Glance

The requirements for operating your 403(b) retirement plan should be reviewed annually. Use this checklist to help keep your plan in compliance with many important tax rules.

- ☐ Your organization must qualify as a public educational institution or as a charitable organization exempt from tax under Internal Revenue Code 501(c)(3).
- ☐ All employees (with very few exceptions) who normally work 20 hours or more per week must be given the opportunity to make a salary deferral.
- ☐ Elective deferrals, including any designated Roth contributions, must be limited to the amounts under IRC 402(g) for a calendar year.
- ☐ The total employer and employee contributions must not exceed the IRC 415(c) limits.
- ☐ If IRC 402(g) "15 years of service catch-up" contributions are being made, the employee must have the required 15 years of full-time service with the same employer.
- ☐ If age 50+ catch-up contributions are permitted, each of your employees age 50 or older must be informed of their rights to make catch-up deferrals.
- ☐ The 403(b) annuity contract or custodial account must contain the nontransferability provisions (annuity contract only), state the limits under IRC 402(g) and contain the direct rollover provisions of IRC 401(a)(31).
- ☐ If your plan offers a five-year post-severance provision, the amounts must be contributed through a nonelective method.
- ☐ You and your plan provider(s) must enforce participant loan repayments and limit aggregate loan amounts as required under IRC 72(p).
- ☐ You and your plan provider(s) must require documentation that hardship distributions meet the definitions and requirements for hardship under the IRC 401(k) regulations.

The information above is not intended to be an exhaustive list of all issues pertaining to the new 403(b) regulations. The information presented here is intended to provide answers to some of the most commonly asked questions.

Get Prepared Now

In anticipation of the forthcoming effective date for the new regulations, you should take several steps to ease plan administration while addressing the new fiduciary responsibilities and due diligence requirements.

1. Review existing provider contracts for the current sales and servicing performance requirements, as well as current investment performance and expenses. Determine benchmarks for periodic due diligence reviews of the plan.
2. Consider initiating a competitive RFP process that will allow for a formal comparison of investment services and fund performance. If you're equipped with this information, you'll be well positioned to decide whether to transition to or remain with a single provider.
3. Develop an investment policy statement to specifically outline what investment options will be included in the plan and how they will be selected, evaluated, and if necessary, removed and replaced.
4. Consider renegotiating provider contracts. Remember, plan providers are usually more inclined to reduce fund expenses and improve service performance standards than to allow existing participant accounts to be subjected to the competitive marketplace.

403(b) Due Diligence and Fiduciary Responsibilities Checklist

- ☐ Form a 403(b) advisory board of five to seven members.
- ☐ Review existing provider(s) for investment performance, investment options, fees, expenses, service standards, etc.
- ☐ Develop an investment policy statement.
- ☐ Develop the 403(b) plan document(s).
- ☐ Create standards for the ongoing monitoring of the plan.
- ☐ Establish fiduciary criteria.
- ☐ Develop and issue an RFP.
- ☐ Assess the need for outside advisory experience.

Because we're a single-source provider, you benefit from the lower expense ratios that our aggregate buying power can generate.

The Standard's Solution: The Power of One

The Standard is uniquely positioned to partner with you as you strive to comply with all of these new 403(b) regulations. Our comprehensive service offering will provide you with the plan administration, investment options, investment guidance and employer support you need to meet the Jan. 1, 2009, effective date for these new rules.

The Standard offers a wide range of investment options to help develop a complete and diversified portfolio. And because we're a single-source provider, our aggregate buying power can generate lower expense ratios than individual fund providers.

Additionally, StanCorp Investment Advisers, Inc. can assume fiduciary responsibility for investment selection and monitoring as well as the advice we provide to you.

- **Monitor investment performance.** We use stringent selection and monitoring criteria for our investment offerings. If a fund doesn't meet our standards, we consider it for termination. We may be able to offer registered investment advisor services to you at no additional cost.
- **Enhance participant services.** Your participants have full access to support systems for online enrollment, loan processing, account information and investment option changes. We also offer asset allocation portfolios to help them select an appropriate asset allocation for their own investment styles in minutes.
- **Monitor fund fees.** As your plan's single provider, we can offer investments at lower expense ratios than individual fund providers. Revenue sharing from funds is passed directly to your plan to reduce expenses and ensure that decisions and advice are unbiased.
- **Written plan document.** Our experienced staff can help you create a plan document and administer your plan accordingly.

We view our partnership with you as a true union — one which allows you to assume more responsibility through the comprehensive solutions we offer. The result will be an improved, more competitive 403(b) program that will deliver the best net return to your plan participants.

For more information about The Standard's comprehensive 403(b) solutions, call us today at 877.805.1127.

Highlights of the Final 403(b) Regulations

Generally Effective Jan. 1, 2009

Feature/Requirement	Before	After
Written plan	A written plan document was not required except for 403(b) plans that are subject to Title I of ERISA.	All 403(b) plans must be maintained pursuant to a written plan that includes provisions regarding eligibility, benefits, applicable limitations, the contracts available under the plan, and the time and form under which benefit distributions would be made. The rule does not require a single plan document.
Nondiscrimination rules	IRS Notice 89-23 provided guidance for applying nondiscrimination rules under Section 403(b)(12) to 403(b) programs with respect to employee salary deferrals and employer contributions. Three special safe harbors for nondiscrimination testing were permitted for nonelective contributions to 403(b) plans.	Notice 89-23 no longer applies. 403(b) programs must generally satisfy the nondiscrimination testing rules of Sections 401(a) (4), 401(a)(17), 401(m), and 410(b) with respect to employer contributions, similar to 401(k) plans.
Catch-up contribution provisions	There was an ordering requirement for catch-up contributions in 403(b) plans. The "special" 403(b) catch-up provision increased the 402(g) limit. Therefore, the new "age 50" catch-up rules were implemented after the employee had maximized all amounts under the 402(g) limit (or after any plan limit or after any other discrimination test). If an employee was utilizing the new age 50 catch-up provision and then decided to elect the "15-year" catch-up provision, the age-50 catch-up contributions must have been recharacterized in the 15-year catch-up calculations.	The final regulations clarify the "ordering requirement" for catch-up contributions as follows: Any catch-up contribution for an employee who is eligible for both an age 50 catch-up and the 403(b) catch-up is treated first as a Section 403(b) catch-up contribution, to the extent permitted, and then as an age 50 catch-up contribution to the extent the catch-up amount exceeds the 403(b) catch-up.
Universal Availability Rule	If any employee of an eligible employer could elect to have the organization make Section 403(b) elective deferrals on his behalf, *all* employees of that employer needed to have that right. Also, age and service conditions were not permitted for the salary reduction portion of a 403(b) plan, but those conditions were permitted for employer contributions. ***(more)***	The Universal Availability Rule will be applied separately to each separate common-law entity, and it also can be applied separately to geographically distinct and independent operating units. Also, if any employee listed in any excludable category under 403(b)(12) has the right to have 403(b) elective deferrals made on his or her behalf, then no employees in that category may be excluded. ***(more)***

Highlights of the Final 403(b) Regulations

Generally Effective Jan. 1, 2009

Feature/Requirement	Before	After
Universal Availability Rule (cont'd)	Exclusion of certain employees was permitted under Section 403(b)(12)(ii) and IRS Notice 89-23. IRS Notice 89-23 allowed the exclusion of employees who: • participated in other deferred compensation plans • had less than $200 in contributions • normally worked fewer than 20 hours per week • made a one-time election to participate in a government plan instead of a 403(b) plan It also allowed the exclusion of employees who were: • students performing services for a school, college or university • nonresident aliens with no U.S.-source income • professors providing temporary services to a similar organization but were receiving contributions from their original employer • religious members who had taken a vow of poverty • covered by a collective bargaining agreement	The excludable categories added in Notice 89-23 are eliminated, but other rules may provide relief for some university professors and people who have taken a vow of poverty.
Controlled group rules	IRS Notice 89-23 and Treas. Reg. §1.512(b)-1 (1)(4)(i)(b) offered some guidance on determining whether certain employers are part of a controlled group.	A tax-exempt organization can be part of a controlled group even though no one has an ownership interest in that organization. A controlling interest exists if at least 80 percent of the directors or trustees of a tax-exempt organization are representatives of the controlling entity or are directly or indirectly controlled by the controlling entity. These provisions apply for 403(b) purposes and also under 414(b), (c), (m) and (o).
Plan terminations	403(b) plans were allowed to terminate but the plan termination was not considered a distributable event.	403(b) plan terminations are now considered a distributable event.

Highlights of the Final 403(b) Regulations

Generally Effective Jan. 1, 2009

Feature/Requirement	Before	After
Separation from service	A *separation from service* occured only upon a participant's death, retirement, resignation or discharge, and not when the employee continues the same job for a different employer as a result of the liquidation, merger, consolidation or other similar corporate transaction.	A *severance from employment* (which permits distribution of 403(b) assets) means no longer being employed by the employer maintaining the 403(b) plan, even if the employee remains employed by another employer in the controlled group, or ceasing to be employed by an eligible employer. An example is an employee ceasing to work for a public school, but continuing to work for the same state employer.
Roth contributions	EGTRRA authorized 403(b) plans to treat post-2005 elective deferrals as after-tax Roth contributions. But no formal guidance was issued for 403(b) plans.	The employee's right to make elective deferrals also includes the right to designate Section 403(b) elective deferrals as designated Roth contributions (if any employee of the eligible employer may elect to have the organization make Section 403(b) elective deferrals as designated Roth contributions). The rules are generally the same as the rules for 401(k) plans.
Separate accounting	Separate accounting was required for after-tax contributions and pre-1989 contributions for hardship purposes.	In addition to after-tax contributions and pre-1989 contributions for hardship purposes, separate accounting is now required for sources of money subject to a vesting schedule, amounts in excess of the IRS Code Section 415 limit and designated Roth contributions.
Distributions	Although distributions from 403(b) plans were required to comply with the rules relating to direct rollovers, 20 percent tax withholding on eligible distributions and required minimum distributions, these requirements were never reflected in the 403(b) regulations.	403(b) plans must comply with the direct rollover, 20 percent tax withholding on eligible distributions and required minimum distribution requirements.
Qualified Domestic Relations Orders (QDROs)	Although QDROs from 403(b) plans followed the same rules as qualified plans under Section 414(p)(9), these rules were never reflected in the 403(b) regulations, and questions lingered if QDRO distributions violated 403(b) distribution restrictions.	The final regulations clarify the distribution rules pertaining to QDROs – permitting distributions to an alternate payee without violating the 403(b) distribution rules.

Highlights of the Final 403(b) Regulations

Generally Effective Jan. 1, 2009

Feature/Requirement	Before	After
Revenue Ruling 90-24 (Transfers)	Section 403(b) contracts (annuities or custodial accounts) were allowed to be exchanged without income inclusion (not a distribution), as long as the successor contract included distribution restrictions that were the same or more stringent than the distribution restrictions in the contract being exchanged.	Specific requirements must be satisfied for an exchange or transfer to be tax-free: • The employee/beneficiary must be an employee of the receiving plan • The transferring plan must provide for such transfers • The receiving plan must provide for the receipt of transfers • The benefit immediately after the transfer is at least equal to the benefit immediately before the transfer or exchange • The receiving plan must impose restrictions on distributions of transferred assets that are not less stringent than the transferring plan. A non-taxable exchange or transfer is permitted for a Section 403(b) contract if it is a mere change of investment within the same plan, if it constitutes a plan-to-plan transfer so another employer plan receives the exchange, or it is a transfer to purchase permissive service credit or a repayment to a defined benefit governmental plan. However, certain conditions must be satisfied. The other contract must include distribution restrictions that are not less stringent than those imposed by the contract being exchanged, and the employer must enter into an agreement with the issuer of the other contract under which the employer and the issuer will from time to time in the future provide each other with certain information. This includes information concerning the participant's employment and information that takes into account other section 403(b) contracts or qualified employer plans, such as whether a severance from employment has occurred for purposes of the distribution restrictions and whether the hardship withdrawal rules in the regulations are satisfied or loan rules are followed. These regulations also authorize the IRS to issue guidance of general applicability allowing exchanges in other cases. Also the new law does not provide for direct transfers between 403(b) plans and other types of plans such as 401(k) and 457(b) plans.

Highlights of the Final 403(b) Regulations

Generally Effective Jan. 1, 2009

Feature/Requirement	Before	After
Life insurance, etc.	A life insurance contract, an endowment contract, a health or accident insurance contract or a property, casualty or liability insurance contract could be purchased as part of the annuity contract.	The contracts mentioned at left no longer can constitute an annuity contract for purposes of Section 403(b). This rule does not apply for contracts issued before Sept. 24, 2007.
ERISA interaction	**ERISA Opinion Letter 94-30A , Aug. 19, 1994** This advisory letter was addressed to an individual employer regarding whether specific employer functions were compatible with the provisions listed in ERISA that would exempt the 403(b) plan from ERISA requirements.	**DOL Field Assistance Bulletin – FAB 2007-02, July 24, 2007** The DOL has commented on ERISA issues related to the new 403(b) regulations with the release of FAB 2007-02, dated July 24, 2007. The new regulations allow significant flexibility regarding the employer's functions in the structure and operation of the arrangement. Thus, compliance with the new regulations will not necessarily cause a TSA program to become covered by Title I of ERISA. However, because of the new flexibility, each 403(b) plan must be analyzed on a case-by-case basis.

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