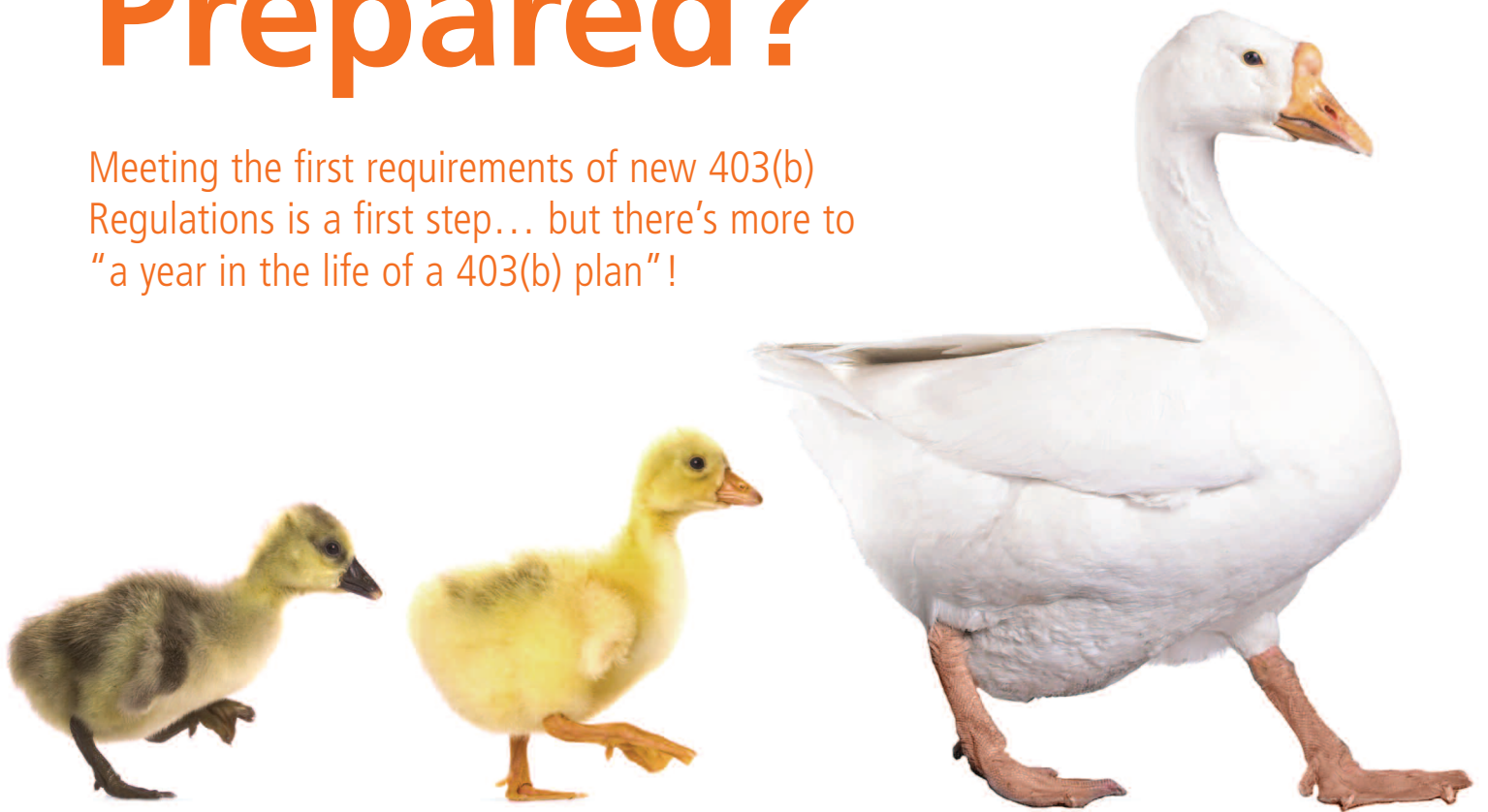


403(b)“e” Prepared?

Meeting the first requirements of new 403(b) Regulations is a first step... but there's more to “a year in the life of a 403(b) plan”!



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It's 2009 and, because of the Internal Revenue Service's final 403(b) regulations, employers offering a 403(b) tax deferred annuity plan will be assuming the role of a "Plan Sponsor." To meet the new IRS rules, many of these public school and 501(c)(3) organization employers have (for the first time):

- ☑ **Identified** the vendors who are authorized to receive ongoing contributions under their 403(b) plan;
- ☑ **Established** information sharing arrangements with those vendors who are approved to receive amounts transferred from other vendors under the plan ("contract exchanges" under the final 403(b) regulations);
- ☑ **Determined** who – whether it is a plan administrative service provider or the employer – will be responsible for the day-to-day administration of the 403(b) plan to keep it operating in accordance with the final 403(b) regulations;
- ☑ **Recorded** the IRS rules and plan features (such as Roth 403(b) contributions, employer contributions, loans, hardships, rollovers in, plan-to-plan transfers, etc.) in a written plan documents that, according to the latest guidance from the IRS, must be adopted no later than December 31, 2009; and
- ☑ **Ensured** that the individual responsible for adopting the 403(b) plan has the authority to do so on behalf of the employer

If these steps have been checked off of the to-do list, a school or 501(c)(3) organization is all set and has satisfied its regulatory obligations, right?

Possibly. But some 403(b) sponsors have been so busy thinking about getting ready for Day One that they have not necessarily thought through what they need to do to meet the regulations' requirements for the rest of the year.

So, what should an employer be ready for in "a year in the life of a 403(b) plan?" Some considerations...

Reminding Employees About the 403(b) Plan

Let's suppose that an individual starts employment with the organization on January 2. The final 403(b) regulations provide that if any employee has the opportunity to contribute at least \$200 a year to the 403(b) plan, then all other employees (with very limited exceptions) must also have the opportunity to contribute to the 403(b) plan.

One of the new IRS rules requires that, at least once a year, employers notify eligible employees (whether or not they are currently participating) that they have the opportunity to participate, and to tell them how to make or change, including change their contribution, to the plan. The IRS calls this the "universal availability"

rule and a 403(b) plan must comply for employee deferrals to the 403(b) plan to be considered nondiscriminatory. The "Universal availability" rule applies to existing employees as well as newly hired employees.

How would an employee know if she is immediately eligible to contribute? As noted, the IRS rules provide for only limited exceptions, namely (1) a nonresident alien with no U.S. source income, (2) certain student employees, (3) employees who participate in another 403(b), 401(k) or governmental 457(b) plan sponsored by the employer, or (4) employees who normally work less than 20 hours a week. Keep in mind that these are the permissible exceptions according to the IRS – it is possible that the employer will decide, as a matter of plan design,

to not incorporate some or all of those exceptions into its plan document. So, the plan document should also be consulted to determine whether a new or existing employee is eligible to contribute to the 403(b) plan.

According to the IRS, the employer should provide "meaningful notice" to eligible employees as proof that they were informed about this opportunity to save for retirement. Meaningful notice would be a method likely to be received by the employee – for example, an email or payroll stuffer. *Posting a notice on a bulletin board or intranet site would not likely be considered meaningful as an employee's attention would not be called to this notice.*

Consolidating Retirement Accounts into a 403(b) Plan

Suppose that an employee has a 403(b) account with his former employer. Can this 403(b) plan accept the funds?

According to the IRS, there are two ways that a 403(b) plan can accommodate this:

1. **Plan-to-plan transfer.** Because amounts are transferred, the receiving 403(b) plan will need to know characteristics of the former plan, including the amounts attributable to employee deferrals, Roth 403(b) contributions, and employer contributions. In addition, any amounts that were subject to spousal consent as a prerequisite for distribution retain that requirement when transferred to another 403(b) plan.
2. **Rollover.** In order to roll over amounts to the 403(b) plan, an individual must have a distributable event from the former employer's retirement plan and that plan must be a 401, 403(b), or a governmental 457(b) plan or a traditional IRA. Unlike a plan-to-plan transfer, rollovers do not retain the characteristics of their former plan and (unless the plan has a more restrictive provision) are immediately accessible from the receiving plan without the employee incurring another distributable event.

While the IRS rules describe what is possible, the employer will need to check the 403(b) plan document to confirm what this particular plan allows. Since the ability to make a plan-to-plan transfer or to roll amounts into the 403(b) plan is an optional feature, the 403(b) plan document will need to have a provision permitting such a transaction.

Contributing to the 403(b) Plan

If an employee wants to join the 403(b) plan, she must complete a salary reduction agreement with the employer to begin contribution to one of the vendors that the employer has authorized. If the plan document permits Roth 403(b) contributions, the employee will also need to determine how much of the contribution will be made on a pre-tax basis or as a Roth 403(b) contribution. Longer service employees may also be able to contribute more as retirement savings under the "15-Years-of-Service" and/or "Age 50+" catch-up contributions, if the plan document permits such catch-up features.

Changing Investments under the 403(b) Plan

What does an employee who is participating under the employer's 403(b) plan need to do if he wants to move his account to another vendor under the plan? Under the final regulations, the employee cannot simply select any vendor to receive these amounts. Instead, the plan document will identify those vendors that the employer has authorized to receive contract exchanges.

Suppose an employee inadvertently moves his account to a vendor that has not been approved by his employer? According to the latest IRS guidance, this defective contract exchange can be corrected without adverse impact to the plan if – no later than June 30, 2009 – the amounts were either moved either to a vendor authorized to receive ongoing contributions to the 403(b) plan or to a vendor that has entered into an information sharing agreement with the employer.

What happens if the defective exchange is discovered after June 30, 2009? The IRS expects to update its correction programs under the Employee Plans Compliance Resolution System to reflect the final 403(b) regulations. It is likely that these programs will also include a correction mechanism for defective exchanges.

Accessing 403(b) Accounts

While 403(b) plans are intended mainly to provide benefits during retirement, the IRS recognizes that there may be times when an employee may need amounts in his 403(b) account while still working. Accordingly, the IRS rules permit an employee to access his account if he has a financial hardship, reaches age 59½, or takes a loan from the plan.

These reasons for access are not required to be in a 403(b) plan. Rather, they are considered optional features as a matter of plan design. As a result, the first step must always be to check the plan document to determine whether and under what circumstances access to the 403(b) account are permitted.

If the plan does allow such withdrawals, the employer (either directly or through a plan administrative service provider) must coordinate with its vendors to share information about requests for hardship withdrawals and loans. Information sharing is necessary to ensure that a participant has not already requested that particular hardship from another vendor under the plan. Similarly, information sharing is needed to ensure that any pending loan request, together with any outstanding plan loans a participant has, does not exceed the IRS limits on the maximum amount that can be loaned.

Even if access to funds is required by the IRS, information sharing may be needed. For example, a 403(b) plan must give a participant the ability to withdraw amounts when he terminates employment. And here, too, vendors will look to employers to share information to ensure that an individual previously listed as terminated has not since been rehired by the employer (a scenario that occurs with some frequency in public school systems). Once an individual has been rehired, he is no longer able to take a distribution from the plan due to severance of employment until he has again stopped working for that employer.

Going forward, both employers sponsoring 403(b) plans and their employees will be adjusting to a "new normal." Because the IRS expects employers to play more of a "Plan Sponsor" role in order to preserve the tax-deferred nature of the 403(b) plan, employer involvement will be heightened. Employees, too, will notice this involvement as their day-to-day transactions will now be subject to the terms of a written 403(b) plan, to employer oversight of the funding vehicles permitted, and approval of various disbursement requests.

As employers adjust to this "new normal," remember that they do not need to learn these IRS rules by themselves. ING, a leader in the 403(b) marketplace, is available to share its resident expertise, whether face-to-face with its local presence or online at www.ing.com/us/403bregs.

For 403(b)(1) fixed or variable annuities, employee deferrals (including earnings) may generally be distributed only upon your: attainment of age 59½, severance from employment, death, disability, or hardship. Note: Hardship withdrawals are limited to employee deferrals made after 12/31/88. Exceptions to the distribution rules: No Internal Revenue Code withdrawal restrictions apply to '88 cash value (employee deferrals (including earnings) as of 12/31/88) and employer contributions (including earnings). However, employer contributions made to an annuity contract issued after December 31, 2008 may not be paid or made available before a distributable event occurs. Such amounts may be distributed to a participant or if applicable, the beneficiary: upon the participant's severance from employment or upon the occurrence of an event, such as after a fixed number of years, the attainment of a stated age, or disability. For 403(b)(7) custodial accounts, Employee deferrals and employer contributions (including earnings) may only be distributed upon your: attainment of age 59½, severance from employment, death, disability, or hardship. Note: hardship withdrawals are limited to: employee deferrals and '88 cash value (earnings on employee deferrals and employer contributions (including earnings) as of 12/31/88).

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