

The Scoop on the 403(b) Written Plan Requirements

The final IRS 403(b) regulations require most 403(b) plan sponsors (including public schools) to have a written 403(b) plan.

The written plan:

Must include the following:	May also include these optional features:
Eligibility	Roth 403(b) and employer contributions
Benefits	Loans
Applicable limits	Hardships
Timing and form of distribution options	Rollovers In
Contracts available under plan	Contract Exchanges
Delegation of roles and responsibilities	Plan to Plan Transfers

There are two forms the written 403(b) plan can take:

Option 1: Having a formal plan document from:

- Vendors (e.g., ING)
- Third party administrators
- IRS model plan language
- Individually drafted

Option 2: The "Binder Clip" approach, where a collection of materials related to the 403(b) plan may together meet the requirements of a "written plan":

- Employee handbooks and communications
- Salary reduction agreements
- 403(b) contracts and custodial account agreements
- Administrative procedures
- Services agreements
- Collective bargaining agreements
- State and local rules

IRS Guidance on Written Plan Requirement

The IRS has issued three items in addition to the regulations providing guidance about the written plan requirement.

November 2007

IRS Revenue Procedure 2007-71 provided:

- Model 403(b) plan language for public schools only
- Intended to satisfy "written plan" requirement of the final 403(b) regulations
- If adopt word-for-word or on a "substantially similar" basis, the plan sponsor can be assured that the form of the plan meets the 403(b) requirements

ING can help! Our specimen documents are substantially similar to the IRS model plan language, and can be found on our website - www.ing.com/us/403bregs



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December 2008

IRS Notice 2009-9 provided an extension for adopting a written 403(b) plan:

- Deadline for written 403(b) plan extended to December 31, 2009
- To qualify for this extension, 403(b) plan sponsor must:
 - operate plan with a "reasonable interpretation" of the final 403(b) regs during 2009; and
 - make "best efforts" to retroactively correct any operational defects before December 31, 2009

And hot off the presses! April 2009

IRS Announcement 2009-34:

- Contains draft sample plan language and draft revenue procedure on an IRS soon-to-be-announced 403(b) prototype program to give 403(b) prototype plan sponsors a favorable IRS opinion letter to give adopters of their written plan.
- Got comments? Tell the IRS no later than June 1, 2009
- Watch for vendors' prototype plan availability in early 2010. A prototype plan program allows eligible employers to adopt a pre-approved 403(b) plan and have assurance that the form of the plan meets the 403(b) requirements.

ING has already notified the IRS of our intention to file as a 403(b) prototype plan sponsor as soon as the 403(b) prototype plan program opens. We will be here to continue helping you with your 403(b) plan needs.

Please contact our Technical Services Team at 866-420-0667 for more information about the specimen plan documents we have available, and our plans to file a 403(b) prototype plan.

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