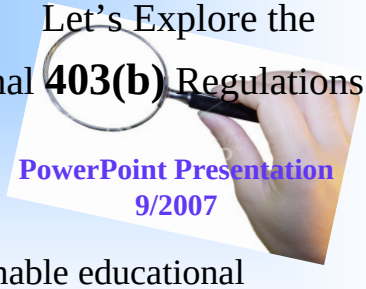
Let's Explore the

Final **403(b)** Regulations…



PowerPoint Presentation
9/2007

…to enable educational institutions to do their jobs

www.irs.gov/ep

403(b) Regulations Published 7/26/2007

General Effective Date [1]

- Taxable years beginning after **December 31, 2008**
- Notable exceptions

www.irs.gov/ep

Delayed Effective Dates [2]

- Collective bargaining situations
- Removal of certain permissively excluded groups for universal availability purposes
- Certain governmental 403(b)s
  - For limited universal availability exclusions

www.irs.gov/ep

Grandfathered Items

3

- Annuities – In-service distributions
- Incidental life insurance contracts
- Post Rev. Rul. 90-24 contract exchanges
  - Prior 90-24s grandfathered

www.irs.gov/ep

Regulation Highlights

4

- First and Foremost
  - A 403(b) program must be maintained pursuant to a written DC plan
  - Both form and operation satisfy 403(b) and contain all terms and conditions for eligibility, limitations and benefits under the plan
  - See model plan provisions revenue procedure

www.irs.gov/ep

Regulation Highlights

4

Referenced model plan provisions revenue procedure has not been issued as of the date of the release of this video. Consult www.irs.gov/ep as to the current status.

www.irs.gov/ep

ERISA Implications

- Non-ERISA 403(b)s
  - Written plan – Not automatically ERISA
  - See www.dol.gov/ebsa for guidance
- Governments not subject to ERISA

www.irs.gov/ep

ERISA Implications

See DOL Field Advisory Bulletin 2007-2 issued 7/24/2007

www.irs.gov/ep

Regulation Highlights

5

- Underlying annuities/custodial accounts
  - In addition to language on 401(a)(30), 401(a)(31), and 401(g) (annuities only):

Funding contract must also have language satisfying 401(a)(9) and the incidental benefit requirements.

www.irs.gov/ep

Regulation Highlights

- Vesting is recognized – non-electives only [6]
- Elective deferral ordering – 402(g)(1), 402(g)(7), 414(v) [7]
  - 402(g)(7) – formula required
  - See examples [8]
- Disaggregation 401(a)/403(b) [9]
- Post-severance elective deferrals [10]
  - Regular, sick and vacation pay

www.irs.gov/ep

Regulation Highlights [11, 12]

- Determining years of service
  - 402(g)(7) – 15 year catch-up
  - Includible compensation for contribution limit (lesser of 100% of includible compensation or overall limit)
- Years of service = Employee's annual work period/not taxable year

www.irs.gov/ep

Regulation Highlights

- Non-elective contributions for the 5 taxable years after employment plus end-of-taxable year when employment ceases [13]
- No additional contributions after death [14]

See examples cited in Addendum

www.irs.gov/ep

Regulation Highlights

- For 403(b) and 402(g) purposes, elective deferrals are limited to contributions under a cash or deferred election as defined under 401(k) [15]
- Hardship distributions follow 401(k) rules and safe harbors [16]

www.irs.gov/ep

Regulation Highlights

Elective Non-Discrimination/ Universal Availability [17]

- Effective opportunity needed to satisfy universal availability [18]
  - Meaningful notice
  - Election timing
- Universal availability generally applies separately to each common law entity [19]

www.irs.gov/ep

Regulation Highlights

Effective opportunity to make cash or deferred election to a 403(b) in order to satisfy the universal availability requirement embraces a 401(k) anti-conditioning approach

www.irs.gov/ep

Regulation Highlights
Universal Availability
Permissive Exclusions

- Employees eligible under other deferral plans [20]
- Non-resident aliens
- Students
- Those who normally work less than 20 hours per week [21]

www.irs.gov/ep

Regulation Highlights [22]

- For determining if an employee works < 20 hours/week so that they can be permissively excluded from universal eligibility:
  - On date of hire, employer must reasonably expect employee to work < 1000 hours for ensuing 12-month period

AND...

www.irs.gov/ep

Regulation Highlights

- For determining if an employee works < 20 hours/week so that they can be permissively excluded from universal eligibility:

AND...

  - For every subsequent plan year or 12-month period the employee actually worked < 1000 hours in the preceding 12-month period

www.irs.gov/ep

Regulation Highlights

- So, a 1000 hour standard…
- If subject to ERISA see 1.403(b)-5(b)(4)(iii)(B)(2) of the regulations

www.irs.gov/ep

Regulation Highlights

23

Regulations DO NOT adopt permissive exclusions for universal availability concerning:

- Collective bargaining employees
- Visiting professors
- Employees who have taken a vow of poverty
- Employees who make a one-time election to participate in a governmental non-403(b) plan.

www.irs.gov/ep

Regulation Highlights

24

Contribution amounts must be transferred to providers within a period no longer than is reasonable for proper plan administration.

EXAMPLE ⇒ **Transferring elective deferrals within 15 business days following the month in which these amounts would have been paid to the participant**

ERISA – tighter standards

www.irs.gov/ep

Regulation Highlights

- No more separate contracts of incidental life insurance with 403(b) [25]
  - Exception – contracts issued up to 60 days after publication of the regulations are grandfathered
  - Incidental benefits permitted
    - Death
    - Disability [26]

www.irs.gov/ep

Regulation Highlights [27]

Old

Revenue Ruling 90-24 –

annuity-to-annuity transfers

with no employer involvement

www.irs.gov/ep

Regulation Highlights

The New Transfer Regime [28]

- Exchanges Within same plan
  - Plan permits
  - Benefit not diminished
  - Undiminished distribution restrictions
  - Employer and issuer enter into information sharing agreement

www.irs.gov/ep

Regulation Highlights
The New Transfer Regime

29

- Plan-to-plan Transfers
  - Participant is employee or former employee of employer for receiving plan
  - Transferor and receiving plans permit
  - Benefit not diminished
  - Undiminished distribution restrictions

www.irs.gov/ep

Addendum
Links to Regulation Citations

1. 1.403(b)-11(a)
2. 1.403(b)-11(b)-(d)
3. 1.403(b)-11(e)-(g)
4. 1.403(b)-3(b)(3) and 1.403(b)-3(d)(1)(i)&(ii)
5. 1.403(b)-3(a)(4)-(8)
6. 1.403(b)-3(d)(2)
7. 1.403(b)-4(c)(3)(iv)
8. 1.403(b)-4(c)(5) examples 4, 11 and 12
9. 1.403(b)-4(b)(2)
10. 1.403(b)-3(b)(4)(ii)

(Right click and select "Open Hyperlink" to go to regulation cite)

www.irs.gov/ep

Addendum
Links to Regulation Citations

11. 1.403(b)-4(e)(2)
12. 1.403(b)- 4(e)(5) & 1.403(b)- 4(e)(9) examples 1&2
13. 1.403(b)-4(d)(1)
14. 1.403(b)-4(d)(2) examples 1, 2, and 3
15. 1.402(g)(3)-1(b)
16. 1.403(b)-6(d)(2)
17. 1.403(b)-5(b)(1)
18. 1.403(b)-5(b)(2)
19. 1.403(b)-5(b)(3)
20. 1.403(b)-5(b)(4)(ii)(A)

(Right click and select "Open Hyperlink" to go to regulation cite)

www.irs.gov/ep

Addendum
Links to Regulation Citations

21. 1.403(b)-5(b)(4)(ii)(E)
22. 1.403(b)-5(b)(4)(iii)(B)
23. 1.403(b)-11(d)(1)&(2)
24. 1.403(b)-8(b)
25. 1.403(b)-8(c)(2)
26. 1.403(b)-6(g)
27. 1.403(b)-10(b)(1)
28. 1.403(b)-10(b)(2)
29. 1.403(b)-10(b)(3)

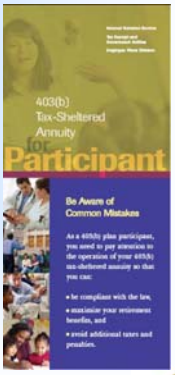
(Right click and select "Open Hyperlink" to go to regulation cite)

www.irs.gov/ep

Visit Our Website!

www.irs.gov/ep

Request Publication 4482

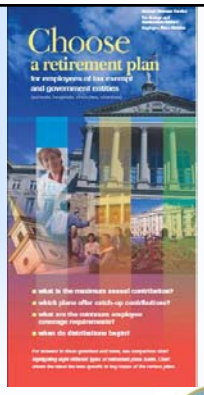


www.irs.gov/ep

Request
Publication
4483

www.irs.gov/ep

Request
Publication
4484



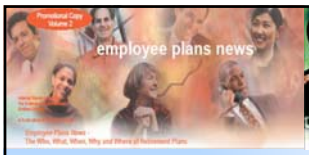
www.irs.gov/ep

Request
Publication
4484

PLAN FEATURE COMPARISON CHART – easy, quick-glance format to help you pick the plan that's good for you and your employees!

PLAN	KEY ADVANTAGE	SPONSOR/ELIGIBLE EMPLOYER	EMPLOYER'S ROLE	CONTRIBUTORS TO THE PLAN
Payroll Deduction IRA	easy to set up and maintain	any employer	- arrange for employees to make payroll deduction contributions - transmit contributions for employees to IRA - no annual filing requirement	employee can decide how much to contribute any time
SEP	easy to set up and maintain	any employer	- set up plan - employer may use Form 5305-SEP - transmit contributions for employees to IRA - generally, no annual filing requirement - bank or financial institution handles most of the paperwork	employer can decide whether to make contributions year-to-year

www.irs.gov/ep



Find out the latest!

Subscribe today!

www.irs.gov/ep