



Association of School Business Officials International

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October 28, 2008

Thomas W. Reeder
Office of Benefits Tax Counsel
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20020

Dear Mr. Reeder:

The Association of School Business Officials International (ASBO) is an organization of school and community college business managers with members in the public school district segment of the market who are in a position to understand the issues surrounding the effort to achieve compliance with the final 403(b) regulations created by the absence of (a) clear-cut guidance regarding non-grandfathered accounts, (b) concrete instruction from Treasury and the Internal Revenue Service in preparing compliant written plans, and (c) published correction programs specific to the final regulations and the guidance posted in Revenue Procedure 2007-71.

We have reviewed, with great interest, the letter addressed to you by David W. Powell and G. Daniel Miller and would like to supply additional support for a delay in the final effective date in the regulations by helping Treasury and the Internal Revenue Service understand the difficulties faced by our constituents as they attempt to comply with the new requirements. We understand that the economic impact of these regulations has been negative for the insurance companies offering 403(b) annuity products and the mutual fund companies offering custodial accounts (with some exiting the market because of the inability to develop extensive systems necessary to tie individual accounts to a specific employer); however, it is important to note that the budget impacts on public school districts are also negative, since the typical school district or community college has neither the expertise nor the budget to hire employees with that expertise or, alternatively, contract with a Third Party Plan Administrator or Service Provider in order to address regulations and guidance that cry out for clarity and amendment. Our members have signified their very real concern about the status of the accounts held with de-selected or exiting providers and are left in the position of not knowing what to communicate to their employees.

- Many 403(b) plan participants have been notified that they run the risk of disqualification of their accounts unless properly exchanged to an approved provider in the plan – this, due to unfortunate wording in Rev. Proc. 2007-71.
- While IRS and Treasury spokespeople have verbally provided reassurance on this issue, it is a fact that written guidance is needed to address it once and for all.

There is already a significant impact on participants who, due to the economic downturn, need to access their accounts because of very real hardship – either through withdrawals or loans. Those transactions have already been substantially delayed as ASBO members struggle to deal with an entirely new environment. We are told by members that it will not improve and may, in fact, continue to deteriorate.

Thus, not only does ASBO echo the request that the effective date be delayed, we further request that, once effective, accounts generated through ongoing contributions and held by a provider that receives ongoing contributions on and after January 1, 2005 for *any employee* and, as of the final effective date of these regulations, has chosen not to retain a payroll slot, or has been de-selected by the employer, be grandfathered and that the guidance extending that grandfather treatment make it clear that the employer has no responsibility for those accounts, and that employees holding those accounts are permitted to deal directly with the issuer of that account. This action will eliminate the question of how to retroactively apply information exchange between that

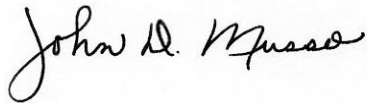
issuer and the employer, when, in fact, the issuer may not have the ability to supply that information (or, in the case where the contractual language prohibits the sharing of information with anyone but the participant). It can be made clear in the requested guidance that the accounts “fall outside” the employer’s plan *only if no additional contributions are made to that account after the effective date of the final regulations.*

We believe it is urgent that additional guidance be issued immediately, first, delaying the effective date of these regulations, and secondly, making it clear that the problematical language in Revenue Procedure 2007-71 is rescinded, and that participants holding the previously described accounts *prior* to the delayed effective date of the regulations will receive grandfather treatment.

Additionally, the model language provided in that revenue procedure clearly states that employers that do not currently have plan documents must use the model language in its entirety. Again, the IRS verbally indicates that employers can use appropriate portions; however, verbal assurances are of small comfort to the vast majority of ASBO members for whom the model language “in its entirety” cannot be used, and the vast majority of whom did not already have a written plan in place (as Treasury and the Service are aware, there was no such requirement prior to these final regulations). Thus, we again echo the request that the effective date of the regulations be set at some point after the Internal Revenue Service has made a plan document approval program available.

It is our sincere belief that Treasury and the Service did not intend the confusion that these regulations and the subsequent guidance have created – and that careful attention will be given to our very reasonable requests.

Regards,



John D. Musso, RSBA
Executive Director, ASBO International

cc: Steven T. Miller, Commissioner, Tax Exempt and Governmental Entities, IRS
William Bortz, Associate Benefits Counsel, Office of Benefits Tax Counsel, Department of the Treasury
Robert J. Architect, Senior Tax Law Specialist, Employee Plans, IRS