



BUILDING A BETTER 403(B) PLAN

IF YOU HAVE A 403(B) PLAN OR ARE THINKING ABOUT OFFERING ONE TO YOUR EMPLOYEES, YOU NEED TO KNOW THE NEW REGULATIONS. THE IRS HAS ISSUED NEW REGULATIONS GOVERNING THE ADMINISTRATION OF 403(B) PLANS WHICH RENDER 40 YEARS OF PRIOR REGULATIONS PRACTICALLY OBSOLETE. THE BOTTOM LINE? YOUR 403(B) PLAN IS GOING TO LOOK A LOT MORE LIKE ITS 401(K) COUSIN AND YOUR DUTIES AND RESPONSIBILITIES AS THE EMPLOYER OF A PUBLIC SCHOOL, CHURCH, OR 501(C)(3) ENTITY ARE GOING TO LOOK A LOT MORE LIKE THE DUTIES AND RESPONSIBILITIES TYPICALLY BORNE BY 401(K) SPONSORS.

The New 403(b)

Why the change and why now? Recent IRS audits of 403(b) plans demonstrated clearly that the current norms and practices within the 403(b) market make it difficult, if not impossible, for the tax laws governing 403(b) contributions and distributions to be consistently enforced. With multiple vendors, individual annuity contracts, and 90-24 exchanges, employers and vendors were unable to ensure that the rules governing loans, distributions, and contribution limits were properly applied. The growing outcry regarding the high fees, limited investment choice, and steep surrender charges that characterize much of the 403(b) market also provided a significant motivator for change.

The new regulations address these shortfalls by laying greater responsibility for oversight and coordination on the doorstep of the employer. From requiring a central plan document to mandating that the employer coordinate information-sharing between vendors, your role will never be the same. With this new responsibility, however, comes the power to make a real difference to your employees. You will have additional responsibilities -- there's no getting around that. But with the right plan provider, these new responsibilities do not have to be a burden. Instead, they can give you the power to offer the 403(b) plan your employees have always wanted -- a plan with lots of low-cost mutual funds, no expensive annuity provisions, no surrender charges, and great customer service.

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New Responsibilities

EFFECTIVE JANUARY 1, 2009, EMPLOYERS WITH 403(B) PLANS WILL ASSUME SEVERAL NEW DUTIES. WHAT WILL YOU BE REQUIRED TO DO TO KEEP YOUR 403(B) PLAN COMPLIANT? HERE ARE THE HIGHLIGHTS!

Written Plan Document

All 403(b) plans are now required to have a written plan document that satisfies the requirements of section 403(b) and the final regulations. The plan document must specify the material terms and conditions for eligibility, benefits, applicable limitations, funding media, and distributions. The inclusion of optional plan features (e.g. hardship withdrawals or loans) must also be documented. To the extent that the document incorporates by reference other documents (e.g. annuity contracts), the employer is responsible for making sure that the various documents do not contradict each other. For many employers with an existing 403(b), this requirement could be a daunting task because few currently have much in the way of formal documentation and many use multiple vendors that may have very disparate contracts and provisions.

Allocation of Responsibilities

The plan document will need to specify the allocation of responsibilities among the employer, plan providers, and any other parties to ensure that the various tax laws are properly enforced. To keep your plan in compliance, you must make sure:

- elective deferrals are limited to the amounts under IRC 402(g) for the calendar year
- total employer and employee contributions do not exceed the IRC 415(c) limits
- catch-up contributions, including the 50+ and special “15 years of service catch-up”, and their applicable limits and requirements under 402(g) are enforced
- you and your plan provider(s) must enforce loan repayments and aggregate loan limits under IRC 72(p)
- you and your plan provider(s) must meet hardships distribution definitions and requirements under IRC 401(k)

Because failure to properly administer these limits and requirements can have serious tax consequences for you and for your employees, you will need to put in place procedures and communication protocols to make sure that these duties are properly executed, especially if your employees have accounts or contracts with multiple vendors.

Designation of Approved List of Vendors

The new regulations eliminate the familiar 90-24 exchanges whereby employees transferred funds between different vendor contracts or accounts. Under the new regulations, the employer must enter into an agreement with each provider accepting an exchange before an employee can make an exchange to that provider. The agreement must specify that the employer and provider will exchange information as necessary to ensure the plan's continued regulatory compliance. If an exchange occurs without satisfying these conditions, the employee's funds become taxable income.

Control Group Review

The new regulations specify the conditions under which tax exempt entities are treated as a single employer with other section 501(c)(3) or nonsection 501(c)(3) organizations. Common control would exist between a tax-exempt organization and another organization if at least 80% of the directors or trustees of one organization were either representatives of, or directly or indirectly controlled by, the other organization. Because nondiscrimination requirements, 415 contribution limits, 403(b) catchup contributions, and 401(a)(9) minimum distribution rules depend on such control group analysis, an employer will be responsible for identifying the existence of any control groups.

Fiduciary Responsibilities

Plan sponsors that are subject to Title I are also fiduciaries to the plan. The law is very clear regarding the duties of a fiduciary. A fiduciary is responsible for the prudent selection and monitoring of the investment options available in the plan. A fiduciary is also responsible that plan participants pay reasonable fees for the services provided. To satisfy this responsibility in a multiple-provider scenario would require that the sponsor analyze, understand, monitor, and manipulate multiple investment option lists and fee schedules.

Your Plan -- Your Benefit

THESE NEW RESPONSIBILITIES CAN BE OVERWHELMING FOR OLD-STYLE MULTIPLE-PROVIDER 403(B) PLANS. THE MORE PROVIDERS YOU HAVE, THE HARDER IT IS TO MAINTAIN THE REQUIRED AGREEMENTS AND KEEP THE PLAN IN COMPLIANCE. WHAT'S THE SOLUTION? NOW THAT YOUR 403(B) LOOKS AND ACTS MORE LIKE A 401(K) THAN EVER, THE ANSWER IS TO FOLLOW THE 401(K) LEAD BY ENGAGING A FULL-SERVICE, SINGLE-SOURCE PROVIDER.

The Power of One

A full-service, single-source provider eases your administrative burden and enables you to use your centralized authority and bargaining leverage to negotiate better services and lower costs for your employees.

FOR YOU

Coordinating plan documents and establishing communication protocols among multiple vendors can be a lot of work and because the consequences for you and your employees are significant, getting it wrong is not an option. Using only one provider enables you to effectively out-source the work and have the confidence that the job is getting done right. A single provider can know your plan document and make sure that all of the applicable terms and conditions are being followed. A single provider can maintain the plan, payroll, and census records for all of your employees and monitor for you any compliance issues that arise. Your responsibility -- but not your work!

FOR YOUR EMPLOYEES

A single provider also enables you to use the leverage of your plan assets to negotiate better services and fees for your employees. Choice is only good if your employees have good choices from which to select. Unfortunately, the products and services offered to the traditional 403(b) participant have been poor. With little leverage and even less information, 403(b) participants often find themselves saddled with contracts with steep surrender charges, high fees, and poor investment choice. Rather than simply providing your employees with a list of possible vendors, you can select the provider that offers the set of services you want your employees to have. Because all your assets will be combined with one provider, you can use your leverage to negotiate a price for those services that your employees could not obtain on their own.

What About Title I?

501(c)(3) entities can avoid the reporting and disclosure requirements of ERISA Title I by acting only as a conduit through which providers and participants are brought together. Many existing 403(b) plans are non-ERISA plans, with no employer contributions and very limited employer involvement. In the new 403(b) world, however, embracing Title I status makes a lot of sense. Sponsors maintaining the old-style non-ERISA 403(b) lose the ability to design and influence one of the most important benefits an employer can offer to its employees. In contrast, sponsors of a new-style 403(b) plan affirmatively embrace their role as plan sponsor and thereby gain a powerful strategic compensation and personnel retention tool that works the way they want it to, rather than how their providers choose.

Accepting Title I status also makes good sense in light of the new regulations, which require you to play a larger role in your plan anyway. Skating the fine line between enough involvement to fulfill your new duties, yet not too much involvement, will be a difficult challenge. Because too much employer involvement automatically triggers Title I status, many plans may unknowingly cross the line and find themselves subject to rules they did not know applied to them. Further, non-ERISA 403(b) plans must offer more than one vendor choice and thus cannot enjoy the administrative efficiencies and participant benefits that come with a full-service, single-source provider. With the responsibility of adherence to Title I comes the right to run your plan your way and offer a benefit your employees really will want.



Our Services Are Your Solution

NEW REGULATIONS? NO PROBLEM. CAPITAL SERVICES GROUP OFFERS A COMPREHENSIVE THIRD PARTY ADMINISTRATION, RECORDKEEPING, AND FIDUCIARY SERVICES PACKAGE THAT WILL MEET ALL OF YOUR NEEDS. WE CAN HELP YOU EASILY AND EFFECTIVELY OFFER A 403(B) PLAN THAT YOUR EMPLOYEES WANT AND IS EASY FOR YOU TO ADMINISTER!

Full Administration

At Capital, we design your plan, create your plan documents, and perform regular testing and review all with an eye towards making compliance with applicable regulations easy for you. We'll provide:

- Your plan documents and all required amendments as the laws and regulations change
- All required compliance testing and government filing including Form 5500 and notices
- Customized plan design enabling your 403(b) to meet your unique compensation and personnel objectives
- Plan notices, Summary Plan Descriptions, and other required participant communications

Recordkeeping & Trading

As an independent provider, we offer true choice. Because we are not affiliated with any investment provider, your plan's investment options can be selected based solely on factors relevant to your plan.

- Access to over 10,000 investment options, enabling access to the best-performing and most suitable investment options for your plan, including index funds, target date funds, investor profile funds, and specialty funds
- All investment option revenue sharing is returned to the plan to be applied as the sponsor directs
- Easy payroll and contribution submission

Fiduciary Services

Our partner company Capital Investment Advisory, Inc. guides sponsors through the development and execution of a prudent process for investment option selection and monitoring -- so you can know you're doing it right.

- Customized Investment Policy Statement
- Ongoing fund monitoring and replacement as needed
- Fee transparency and no surrender charges -- ever

Employee Education

Our full menu of educational tools enables your employees to be well-equipped to make good decisions about their retirement savings plan. We provide:

- Both on-site and web-based enrollment meetings by trained personnel
- Online Educational Video, available on demand in English and Spanish
- Complete online enrollment experience including online enrollment materials, Retirement Wizard to help participants compute a recommended savings rate, online investment research, and guided enrollment process
- Participant investment advice solutions from proven investment advisers
- Targeted participant communications to encourage participation

Online Services

You and your participants can get what they need when they need it. Our website provides constant access to plan and participant account details and transactional tools.

- plan reports
- employee records
- on-demand account statements and account transaction histories
- investment option information
- online loans and distributions
- investment election changes
- investment transfers
- scheduled automatic rebalancing
- plan forms and documents
- online enrollment
- enrollment kits

