



THE NEW 403(B) REGULATIONS: CHOOSING THE RIGHT PROVIDER

Ignorance Is Not Bliss

YOU'VE ALREADY HEARD THAT THE NEW 403(B) REGULATIONS HERALD MAJOR CHANGES FOR 403(B) PLANS AND PLAN SPONSORS. YOU'VE ALSO HEARD ABOUT REVISED PLAN DOCUMENT REQUIREMENTS. IF YOU DON'T ALREADY HAVE A PLAN DOCUMENT, YOU WILL NEED TO ADOPT ONE PRIOR TO JANUARY 1, 2009. IF YOU DO ALREADY HAVE A DOCUMENT, IT WILL NEED TO BE RESTATED TO INCORPORATE NEW REQUIREMENTS.

BUT WHAT DON'T YOU KNOW AND WHAT ARE YOUR CURRENT VENDORS UNLIKELY TO TELL YOU? MOST 403(B) PLAN SPONSORS ARE MORE CONCERNED ABOUT THE UNKNOWN THAN ABOUT THE POTENTIALLY BURDENSOME, BUT AT LEAST SEEMINGLY STRAIGHTFORWARD, REQUIREMENT FOR A PLAN DOCUMENT.

IN THE PREAMBLE OF THE FINAL REGULATIONS, THE INTERNAL REVENUE SERVICE CLEARLY STATED THAT THE INTENT OF THE NEW LEGISLATION WAS TO MAKE 403(B) PLANS ACT AND LOOK MORE LIKE 401(K) PLANS, AND ALSO TO MAKE 403(B) PLAN SPONSORS TAKE ON MORE OF THE RESPONSIBILITIES 401(K) SPONSORS ARE NOW USED TO. A PLAN DOCUMENT IS A FIRST STEP. BUT AS 401(K) PLAN SPONSORS ARE WELL AWARE, THERE ARE MANY MORE REQUIREMENTS THAT MUST BE FULFILLED BY PLAN SPONSORS.

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Taking Responsibility

If your 403(b) plan is an ERISA plan (see *The New 403(b) Regulations: Understanding the ERISA Exemption*), it's YOUR plan and the government is going to hold you responsible for ensuring that the plan is administered in accordance with the plan document and that the plan always serves the best interests of plan participants.

What does that mean and what do you need to do?

1. **Execute a Plan Document** that conforms with the new regulations and amend the document on an ongoing basis as regulations change.
2. **Understand your plan's eligibility requirements** and administer the plan in accordance with those eligibility requirements. All 403(b) plans are subject to universal availability and the ability to exclude different groups of employees has changed significantly with the new regulations.
3. **File Form 5500** on an annual basis. In the past, filing Form 5500 was easy for 403(b) plans – the filing was little more than a notice to the government that the plan existed. Beginning for the 2008 plan year, however, reporting requirements are much more extensive requiring detailed financial reporting similar to the reporting requirement of 401(k) plans. If your plan assets are divided among multiple vendors, this will be particularly challenging as you will be required to reconcile those assets and prepare an aggregate accounting.
4. **Deliver a Summary Plan Description** to all participants as they become eligible and thereafter as your plan is modified and a Summary Annual Report to all participants who had an account balance at the end of the annual reporting period.
5. **Enforce your plan's loan and distribution policies.**
6. **Satisfy ERISA fiduciary duties**, including:
 - ✦ Establishing the investment policy for the plan and preparing/maintaining an investment policy statement (IPS).
 - ✦ Prudently selecting the investment options to be offered to the participants, consistent with the IPS.
 - ✦ Prudently monitoring (and removing/replacing as necessary) the investment options offered to the participants, consistent with the benchmarks established in the IPS.
 - ✦ Determining whether the fees and expenses paid by the plan are reasonable. This includes both direct costs borne by the plan or participant accounts and any indirect compensation received by service providers for services provided to the plan.



Do What You Do Best

Sound complicated? Unfortunately, it can be. As 401(k) sponsors have already realized, being a plan sponsor can be difficult and requires an understanding of complex rules and regulations, which most sponsors do not have and don't have the time or inclination to learn. As a result, service agreements in the 401(k) market cover two service areas: services provided to the plan participants *and* services provided to the plan sponsor.

By contrast, in the 403(b) market, service agreements have traditionally focused almost exclusively on the investment vehicles and participant account mechanics, and not on the day-to-day administrative duties that will increasingly burden the 403(b) plan sponsor.

By following the lead of 401(k) plan sponsors, taking responsibility for your plan need not be a burden. Finding the right provider that will actively assist with your administrative duties will make your job easy! As you review your current vendors and consider new vendors, be sure to address the following questions.

1. Does the provider prepare signature-ready plan documents that conform to the new regulations and will they provide any necessary amendments? Be wary of "sample documents" that are often provided free of charge. While they can be a very useful starting point, many plan sponsors fail to adapt the plan language to their plan specifications or do not realize that the document needs to be formally adopted and executed.
2. Does the provider prepare and distribute to plan participants any required reporting and disclosure notices? Who needs a QDIA Notice, who should receive your SPD, and when do you need to distribute your Summary Annual Report? Most plan sponsors have no idea and often do not properly fulfill these reporting requirements. Find a provider that will either do these tasks for you or will provide the necessary guidance so that you can administer your plan correctly.
3. Will the provider perform all necessary compliance testing and government filing? Will they prepare a signature-ready Form 5500 that meets the new financial disclosure requirements?
4. Will the provider review and administer loan and distribution requests in accordance with your plan document?
5. If you are considering maintaining multiple providers, will one of them agree to be the ringleader, acting as the hub for information gathering, reporting, and testing?
6. Does the provider offer fiduciary assistance, including the development of an Investment Policy Statement and quarterly monitoring reports to assist you administer your investment menu?
7. Does the provider allow you to modify your investment menu as necessary to meet your fiduciary obligations? Be wary of providers that restrict your menu to a list of proprietary funds that may or may not serve the best interests of your participants.
8. Are the fees your provider charges easy to understand and easy to communicate to plan participants? No plan is free. Be sure you require that the provider fully disclose all revenue sources and all recipient of those fees.

ASK THE RIGHT QUESTIONS AND YOU WILL BE SURE TO FIND A PROVIDER THAT NOT ONLY REDUCES YOUR ADMINISTRATIVE BURDEN BUT PROVIDES YOUR PARTICIPANTS WITH A 403(B) PLAN THAT WILL ALLOW THEM TO EFFECTIVELY PREPARE FOR THEIR RETIREMENT.





WWW.CAPITALRETIREMENTPLANS.COM

800.878.5220

103A Solana Road • Ponte Vedra Beach, FL 32082