

Pension
ANALYST

Compliance Bulletin

September 2007



Changes to 403(b) Transfer and Exchange Rules Require Immediate Attention

The final 403(b) regulations, published on July 26, 2007, include [many changes](#) that will reshape 403(b) arrangements and require increased involvement by employers in the administration of both ERISA 403(b) plans and non-ERISA 403(b) programs. One of these changes affects the ability of employees to move their money from one investment provider to another through an exchange of annuity contracts, commonly referred to as a “90-24 exchange.”

History of 90-24 Exchanges

Many employers that offer 403(b) arrangements limit the choice of investment providers in which participants may invest their ongoing contributions and accumulated plan assets. This is done primarily for administrative ease and as a result of payroll processing limitations. Often, participants would prefer to invest these retirement assets with providers who are not approved by the employer. To provide participants with this investment flexibility, the IRS has historically allowed participants in 403(b) arrangements to transfer their assets from accounts serviced by approved providers to unapproved providers, through tax-free transactions known as 90-24 exchanges. These exchanges must meet some basic requirements. The ERISA 403(b) plan or non-ERISA 403(b) program must allow 90-24 exchanges, and the receiving provider’s contract or account must impose the same or more stringent distribution restrictions as those imposed under the originating provider’s contract or account. The receiving provider does not need to have any connection with either the 403(b) program or the sponsoring employer.

New Annuity Contract Exchange Rules Effective September 25, 2007

As of September 25, 2007, 90-24 exchanges will no longer be allowed. Annuity contract exchanges will still be permitted on and after that date, but under more restrictive rules.

Participants who want to transfer annuity contracts after September 24, 2007, will only be able to do so if the transfer meets the requirements for a “contract exchange.” Contract exchanges may be made only if:

- They are expressly permitted under the plan;
- The new contract contains distribution restrictions that are at least as stringent as those imposed under the old contract;
- The participant’s benefit is not reduced as a result of the exchange; and
- The contract issuer and employer agree to share sufficient information to ensure compliance with 403(b) distribution rules, loan limits, and hardship provisions, to the extent applicable.

A post-September 24, 2007 exchange will be valid if plan documentation and information sharing agreements are in place before January 1, 2009, even if these documents are not available on the actual exchange date.

Orphan Contracts

The new contract exchange requirements present obstacles for “orphan contracts.” These are contracts that do not have a current relationship to any specific employer-sponsored 403(b) arrangement, including situations where:

- The participant’s employment relationship with the original plan sponsor ended many years ago;
- The contract exists because the participant had previously moved his plan assets to an unapproved vendor through a 90-24 exchange; or
- The original plan sponsor no longer exists.

After September 24, 2007, it is clear that these contracts may only be moved to new providers on a tax-free basis if they satisfy the new contract exchange rules, [described above](#). It is not clear how these contracts will be treated if they remain orphaned after September 24, 2007. It is possible that they will have to be treated as immediately taxable as of January 1, 2009.

Need for Additional Guidance

In addition to the need for clearer guidance from the IRS with respect to orphan contracts, employers and investment providers need additional guidance regarding operational compliance with the new contract exchange rules that take effect on September 25, 2007. For example, employers need to know how to identify annuity contract providers associated with their plans and programs. They also need to know what types of information must be shared under information sharing agreements and when that information must be shared. Prudential is working with industry groups to obtain additional guidance from the IRS. We will share that information with 403(b) sponsors as soon as it is available.

Next Steps

Employers that offer either ERISA 403(b) plans or non-ERISA 403(b) programs should discuss these contract exchange issues with their legal counsel. While Prudential cannot provide legal advice, we suggest that you consider taking steps to demonstrate good faith compliance with the new rules. To that end, we are providing a form that you may sign and return to us to indicate your intention to enter into an information sharing arrangement with Prudential and other investment providers by January 1, 2009. If you have questions regarding these requirements, please contact your Prudential Retirement representative.

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