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Final § 403(b) Retirement Plan Regulations Issued

October 2007

A § 403(b) plan is a defined contribution retirement plan that certain educational and tax-exempt organizations may sponsor. The Treasury Department just released final regulations that drastically alter the form and administration of these plans. Because the new § 403(b) regulations generally apply in post-2008 tax years, now is ample time to schedule your § 403(b) compliance action plan.

What Employers Need to Know About the Final § 403(b) Regulations

- § 403(b) plan sponsors must now have a written plan document;
- Operations must conform to that written plan;
- The plan document must identify the investment offerings by vendor;
- Employers must allow all employees (unless the employer is a church) to make salary deferral contributions into the plan;
- Employer matching contributions are now subject to the same nondiscrimination testing as § 401(k) plans; and
- Employers may now terminate a § 403(b) plan.

Why Do The Final § 403(B) Regulations Matter?

All Existing § 403(b) Plans Affected. Currently, most § 403(b) plans consist of loose paperwork and contracts. Companies, therefore, lack a formal, written plan document outlining eligibility, contributions, vesting, and other plan provisions. All employer sponsors of § 403(b) plans must now react to these new requirements.

Employee Income Tax Consequences. Generally, if an employer sponsors a § 403(b) plan and fails to satisfy these final regulations by the effective date, all of the employee investments and earnings lose their tax-deferred status. This means that the employees must treat the deferred amounts as if they were taken into income in the year deferred and must also include any gains on those deferrals in income.

Department of Labor Clarifies ERISA Applicability. Currently plans maintained by tax-exempt companies are subject to ERISA and, therefore, to Department of Labor oversight of the retirement plan unless a safe harbor exemption is satisfied.

What To Do

Identify § 403(b) Plan Paperwork. Begin gathering all documents related to your existing § 403(b) plan to assist in creating a written plan document.

Identify Plan Operation and Conform Provisions. Retirement plans are not just governed by their written plan document but also by the actions of the plan administrator and how the plan operates in practice. Begin identifying and

Final § 403(b) Retirement Plan Regulations Issued, Continued

documenting your particular plan's operations including, but not limited to:

- Which employees are eligible to participate in the plan,
- When employees may enter the plan,
- When employees may alter investment options,
- Whether hardship distributions are available,
- Whether catch-up contributions are allowed; and
- Whether the employer provides matching contributions?

Help For § 403(b) Plans

Contact the Chamberlain Hrdlicka Employee Benefits Group. These § 403(b) final regulations create a new world of formal requirements for your plan. We work with § 403(b) plans from all types of employers on a daily basis and would happy to guide you. You can contact us toll-free at (800) 342-5829, or:

- Call Stephen M. Mason and Jerome M. Harris at (713) 658-1818; or
- Call Jewell Lim Esposito and Rebecca Jordan Manners at (610) 772-2300.