

403(b) Regs Webinar: Answers to Your Questions

In follow-up to our exclusive webinars held in conjunction with representatives from Davis Harman LLP, Washington, D.C., we are pleased to present a summary of participants' questions and answers. Should you have further questions, please e-mail them to **403bregs@gafri.com**.

As part of our ongoing commitment to you, we will continue to post current questions and answers, informational updates and materials on our web page ***www.GAFRI.com/403bregs***.

Asked: What do the new regulations say about 90-24 transfers? Does all the money have to be received by the new company by September 24?

Answered: Old rules will apply to any transfer made before September 24, 2007. Between September 25, 2007 and January 1, 2009, an information sharing agreement between the issuer of the contract and the employee will be mandatory. Additionally, transfers are still possible, but at the very least, any and all approved vendors will need to be listed in the plan document. Regulations do not address the need for money to be fully received by the new company by 09/24/07. Technically, the "grandfather" rule applies to contracts "issued" before 09/24/07, so at a minimum the new contract would need to be viewed as "issued" prior to that date. To the extent that monies are moved to the newly issued contract, they probably would need to be viewed as part of an exchange that was completed before 09/24/07 in order to be eligible to the grandfather rule.

Good News! We will accept all complete, signed and sealed transfer paperwork that reaches our home office, up to end of business day, September 20, 2007, assuring agents and clients that it will beat the cut-off!

Asked: What constitutes a complete transfer, pre-September 24, 2007?

Answered: In order for a transfer to be complete by September 24, 2007, all paperwork must be complete and any filings. An exception or grandfathering clause does state that the money involved in the transfer however does not need to be fully transferred by this date. Additionally, final paperwork does not have to be in the possession of the client by this date, either.

Asked: Can a participant “roll over” 403(b) funds to an IRA while he is still employed by the school district?

Answered: Generally, no. A rollover is treated as a distribution for tax purposes, so if the withdrawal restrictions apply a rollover cannot be made.

Asked: Can a rollover to another 403(b) take place if the employee is still employed by schools (like a 403(b) brokerage account)?

Answered: This would not be considered a rollover. It would be a transfer. Please note that rollover rules have not changed.

Asked: Are all money movements a “rollover”?

Answered: No. There are three terms to define a money movement and they are not all the same: rollover, transfer and exchange. An “**exchange**” refers to the provision of the US tax code that allows investors to transfer accumulated funds in one life insurance policy, endowment or annuity policy to another without incurring a tax liability. A “**transfer**” is the transfer of funds between investment carriers in your 403(b) retirement plan. And, a “**rollover**” is a lump-sum distribution deposited from an existing retirement account or plan into another retirement account or plan.

Asked: If someone makes a contribution in excess of allowable limits does it cause the whole contract to fail?

Answered: If the issuer maintains a separate accounting of the excess contributions, the whole contract does not “fail.” Rather, the excess is treated as having been contributed to a separate contract governed by 403(c). If a separate accounting is not maintained for the excess contribution, the whole contract fails.

Asked: Can you transfer accounts using TSA funds while the employee is employed?

Answered: Yes, but if withdrawal restrictions apply, then after 09/24/07 the only way to transfer funds tax free is through the exchange and transfer rules of the final regulations (requiring, e.g., an information sharing agreement).

Asked: How about the existing life insurance already in force in 403(b)?

Answered: It is grandfathered, and premiums can continue to be made, subject to the incidental benefit rules.

Asked: How do you transfer money from a 403(b) to a company not approved or having a payroll slot at a school?

Answered: After 09/24/07, the new rules governing exchanges apply. This includes a requirement that there be an information sharing agreement between the issuer and the employer. It is not clear whether this agreement (and the plan document generally) must be in place at the time of the exchange, or whether it is sufficient that the agreement be in place by 01/01/09.

Asked: Is there still an advantage of using 403(b)s over a 401(k)s now that there is so much more administration and reporting involved? If so, what?

Answered: It is important to understand that when it comes to an investor preparing for or planning toward their retirement goals, 403(b) and 401(k) plans accomplish different yet complimentary goals. The final regulations for 403(b) plans are meant to streamline them, bringing them closer to 401(k) plans. This should make the plans easier to understand, manage and work within.

Asked: What is the Information Sharing Agreement (e.g., what is included in it)?

Answered: We are completing such documents at this time, in preparation of providing them to employers for use. We will communicate with employers once Information Sharing Agreements are available for distribution. Per IRS communication, it is the issuers responsibility to provide information sharing agreements and at this time, IRS has no plan to release any further directions concerning such matter or documents.

Asked: Will withdrawals still be allowed for disability?

Answered: Yes; no changes there.

Asked: Will an employee of a church with a current SRA be allowed to continue contributions after 1/1/09, in the absence of a plan? Or, does the requirement to have a plan extend to current contracts as well as new contracts?

Answered: The plan document requirement applies to church plans as well. However, a delayed effective (namely, the first day of the first plan year beginning after 12/31/09) date applies if the plan is maintained by a church-related organization for which the authority to amend the plan is held by a church convention within the meaning of IRC section 414(e).

Asked: How do you share the information based on the privacy laws?

Answered: To-date, information sharing agreements will simply require limited information concerning loans, withdrawals and contributions. We will communicate further information and specifics as they are released.

Asked: Will there be varying affects on small versus large schools or participant groups? What about private schools or church organizations?

Answered: If they have a 403(b) plan, the same rules apply to all organizations, regardless of size, public versus private or even church.

Asked: How should a plan document list or include vendors? Especially, if there are anticipated changes to the plan in the future?

Answered: It is recommended that authorized vendors be listed as a referenced separate document in the plan document language. Specifically, this could be a separate page listed as an “Exhibit” or “Addendum” that will allow for easy modifications.

Asked: Who controls transfers or is ultimately responsible for managing?

Answered: Employers should monitor transfers. It is up to the employee to manage their transfer within the law. Additionally, the law provides for a third-party administrator to provide assistance with this function. Visit our own third-party administrator at www.gapladata.com for more information on such services.

Asked: Will model plan language be available on the IRS web site?

Answered: Most likely, this information will be available in the near future on both the IRS web site and our own web page www.GAFRI.com/403bregs.

