

Two new 403(b) plan updated for the recent final regulations



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Agenda

- | Questions
- | Overview of 403(b), plan documents
- | Full Scope plan (ftwilliam)
- | ERISA/Non-ERISA for nonprofits
- | Limited Scope plan (ftwilliam)



403(b) Plan Intro

- | 3 Plan Sponsor Types
 - Public School (PS)
 - Non-profit, 501(c)3
 - Minister
- | Universal Availability for elective deferrals (does not apply to certain Church plans) – no ADP test
- | Nondiscrimination testing of employer contributions (if nondiscrimination applies: certain Churches, PS exempt)
- | Special Catch-up for 15 years of service w/ qual org
- | Plan Doc requirement
- | No IRS plan doc approval program



Introduction – Full Scope Plan

- | ERISA or non-ERISA (PS/Churches) option
- | Elective deferrals (including Roth)
- | Voluntary contributions
- | Matching contributions
- | Nonelective Contributions
- | Loans, Hardship and other in-service withdrawals
- | Other features:
 - QACA / traditional automatic enrollment
 - EACA
- | Uses model language and 401k volume submitter language (fav letter) whenever possible/appropriate



Limited Scope Plan

- | Non-ERISA only
- | Elective deferrals (including Roth)
- | Loans, Hardship and other in-service withdrawals
- | Other features:
 - Traditional automatic enrollment
 - EACA
- | Based very closely on IRS model document



ERISA

- | Is the Plan subject to ERISA?
 - Public Schools and Church Plans exempt
 - Non-profits must follow FAB. If they are not a Public School or Church Plan, then they must use limited scope document

- | Application to ftwilliam 403(b) docs:
 - Limited Scope is restricted to non-ERISA Plans
 - Full scope plan has non-ERISA option meant for Public Schools and Church Plans



FAB 2007-02

I Background

- If 403(b) is “established” or “maintained” by employer subject to ERISA
- 29 CFR 2510.3-2(f) non-ERISA 403(b) safe harbor issued in 1979

New final regs (July 2007) – does the safe harbor still apply?

- FAB 2007-02: yes, with some clarifications



29 CFR 2510.3-2(f) safe harbor

- | Participation “completely voluntary” for employees
- | Right enforceable solely by employees
- | Employer involvement limited
- | Employer receives no compensation/consideration for offering plans



29 CFR 2510.3-2(f) safe harbor employer involvement

Employer involvement is limited to:

- | Permitting vendors to publicize products to employees
- | Requesting info re proposed funding media
- | Summarizing/compiling info re vendors avail
- | Collecting salary reductions and remitting to vendors
- | Holding in the employer's name one or more group annuity contracts covering its employees
- | Limiting vendors available to employees (list of factors)



FAB 2007-02 interpretation of 29 CFR 2510.3-2(f)

Employers can:

- | perform duties as necessary to ensure tax compliance (nondisc, max contrib limits),
- | adopt a 403(b) plan,
- | perform information collection and compilation duties,
- | terminate a plan

and still be a safe harbor

- | “The documents should correctly describe the employer’s limited role and allocate discretionary determinations to the annuity provider...” or other third party
- | 1.403(b) – 3: plan is permitted to assign admin functions to third party - NOT Participants (unless employees for whom a substantial portion of their duties are admin of the plan).



FAB 2007-02 interpretation of 29 CFR 2510.3-2(f)

- | “The employer could not, however, consistent with the safe harbor, have responsibility for, or make, discretionary determinations in administering the program.”
- | This includes (as examples):
 - authorizing plan-to-plan transfers,
 - processing distributions,
 - satisfying applicable joint and survivor annuity requirements,
 - making determinations regarding hardship distributions,
 - making determinations regarding QDROs, and
 - eligibility for or enforcement of loans
- | “Negotiating with annuity providers or account custodians to change the terms of their products for other purposes [other than ensuring tax compliance], such as setting conditions for hardship withdrawals, would be a form of employer involvement outside the safe harbor.”