

403(b) Plan Transfer Rules: FAQs

With the passing of the 403(b) regulations, the IRS also included many transfer rules for these documents. Listed below are frequently asked questions and answers to help you understand the complexities of the transfer rules and how they affect plan design and administration.

Q. With what requirements must a 403(b) plan comply in order to effect a transfer?

A. In order to effect a transfer, the plan must satisfy the following requirements: (1) the plan must provide for transfers; (2) the participant's benefit after the transfer must equal the benefit prior to the transfer; (3) the transferred benefit must be subject to distribution restrictions no less stringent than those to which the benefit was subject prior to the transfer; and (4) the employer must enter into an information sharing agreement with the new investment vendor.

Q. For transfers after September 24, 2007 and before January 1, 2009 (effective date of the regulations), must the employer and the new investment vendor sign an information sharing agreement?

A. The IRS has not addressed this question. However, the IRS intends to issue guidance soon that will answer this question.

Q. If a participant transfers to another investment already provided by the 403(b) plan, will the investment vendor and the employer need to sign an information sharing agreement?

A. Under existing IRS guidance, the answer seems to be no. However, if the investment vendor does not sign the plan document, the employer may want the investment vendor to sign some form of agreement which will require the vendor to share information so the employer (or someone to whom the employer has delegated responsibility) can coordinate distributions, hardship withdrawals, and loans.

Q. If an employer changes investment vendors provided for under the plan, may the employer require a transfer to the new investment vendor(s)?

A. The regulations permit an employer to transfer participant accounts to a new investment vendor. However, if the plan provides individual contracts or custodial agreements (as opposed to a group arrangement), the individual contract or custodial agreement likely does not afford the employer sufficient control to effect a transfer without the participant's and investment vendor's cooperation.

Q. May a participant transfer his/her 403(b) account to an investment not provided for under the 403(b) plan?

A. The plan may permit a participant to transfer to a contract or custodial agreement not provided under the plan. Once the final regulations are effective, for benefits transferred after September 24, 2007, a participant may transfer his/her benefits to a contract (or custodial agreement) not offered under the plan if: (1) the plan included language permitting such a transfer, and (2) the new investment vendor signs an information sharing agreement with the employer.

Q. What information must be included in the information sharing agreement?

A. Generally, the agreement must include sufficient information to allow the 403(b) plan and the transferee contract (or custodial agreement) to comply with the 403(b) exclusion and other taxation requirements. Specifically, the agreement should require information sharing concerning the participant's employment status, loans, hardship distributions and other plan distributions.