

## IRS Issues Model 403(b) Plan and Orphan Contract Guidance: FAQs

The IRS released [Revenue Procedure 2007-71](#), providing model 403(b) plan language for public schools. The procedure also provides guidance on certain annuity contracts and custodial accounts (collectively referred to as “contracts”) issued before January 1, 2009, the effective date of the regulations. Listed below are frequently asked questions and answers to help you understand the complexities of this guidance. For more details, please read our [technical update](#).

**Q. What are some of the key features that are allowed in a model 403(b) plan?**

**A.** These features include automatic enrollment, exclusion of student-teachers and employees who normally work less than 20 hours per week (the language does not include the other statutory exclusions), qualified organization and age 50 catch-up contributions, loans, cash-outs, hardship withdrawals, rollovers, and transfers.

**Q. When does a 403(b) plan sponsor need to comply with the written plan requirements?**

**A.** The Revenue Procedure reconfirmed that the deadline for complying with the written plan requirement is January 1, 2009. However, the procedure indicates that an employer adopting a PPA provision (eligible automatic contribution arrangement [EACA] or a qualified automatic enrollment arrangement [QACA]) has until the end of the 2009 taxable year to amend the plans for those provisions. Of course, a 403(b) plan that wants to implement a QACA or EACA would have to provide the appropriate notice before the beginning of the plan year. While the model plan does include EACA language, QACA provisions are beyond the scope of the model, because a QACA requires employer contributions.

**Q. Are there any exceptions to the written plan requirement for orphan and runaway contracts?**

**A.** In the case of an orphan contract issued after 2004 and before 2009, the IRS relieves the orphan contract of the written plan requirement if: (1) the employer makes a good faith effort to collect information on the issuers of the orphan contract, and (2) the employer notifies the issuers of the name and contact information of the person in charge of administering the plan, so the issuer of the orphan plan and the employer may coordinate plan information. Alternatively, the issuer can protect the orphan contract by making a reasonable, good faith effort to exchange necessary information before making a distribution or loan. The employer or the issuer can protect a runaway contract if they comply with the same requirements. For contracts issued before 2005, the Rev. Proc. essentially waives the employer’s need to contact vendors.

Rather than complying with the requirements discussed above for protecting runaway contracts, the procedure provides a method under which a participant may bring the runaway contract back to the plan. The runaway contract will qualify as a 403(b) contract if the participant transfers the runaway contract before July 1, 2009, to: (1) a contract currently available under the plan, or (2) a contract with an information sharing agreement with the employer.

**Q. How does a plan affect plan transfers after 2008?**

**A.** For a plan with multiple vendors identified under the plan, a participant may exchange a contract for another contract under the plan if: (1) the plan permits such transfers, (2) the transferee plan must impose distribution restrictions at least as strict as the transferor plan, and (3) the accumulated benefit after the transfer must equal the benefit before the transfer. The employer and the vendor do not need to execute an information sharing agreement, because the IRS assumes the new vendor is governed by the terms of the plan. However, if the participant wants to transfer to a vendor not available under the plan, the transfer must satisfy the requirements described above, and the employer and the vendor must execute an information sharing agreement that will permit proper administration of distributions, loans, and hardships.

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