

Special Edition
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Retirement News for Employers

Information for Sponsors of Retirement Plans

Internal Revenue Service Tax Exempt and Government Entities

Model 403(b) Plan Language and Additional Guidance Issued

The IRS has issued [Revenue Procedure 2007-71](#), which provides model plan language that may be used by public schools to either adopt a written §403(b) plan or to amend its §403(b) plan to reflect the requirements of the Internal Revenue Code and final 403(b) regulations. The revenue procedure also provides guidance for applying §403(b) to certain contracts issued before 2009. It will be published in IRB 2007-51 on December 17, 2007 and will be effective upon date of publication.

The model language is designed for use by a public school employer. It is intended for a basic plan under which contributions are limited to pre-tax elective deferrals. By adopting the entire model language as its written plan, a public school will have the same reliance as from a private letter ruling - that the written form of the plan satisfies §403(b). An eligible employer that is not a public school may use the language as sample language to comply with one or more of the requirements imposed by the final 403(b) regulations.

The revenue procedure provides transitional relief for contracts or custodial accounts that were issued or exchanged before January 1, 2009. This relief is available to comply with the final §403(b) regulations' requirement that all contracts and custodial accounts be part of a written plan. For contracts issued after December 31, 2004, and before January 1, 2009, by an issuer that no longer receives contributions under the plan in a year after the contract issue date, the contract will satisfy §403(b) even though it is not part of a written plan that satisfies the 2007 regulations. This situation could occur because of either the issuer being discontinued as an issuer under the plan or having become an issuer under the plan in a post-September 24, 2007 exchange (permitted under Revenue Ruling 90-24). However, the employer must make a reasonable good faith effort to include the contract as part of its plan. For this purpose, a reasonable good faith effort includes collecting available information about the issuers and notifying them of the plan administrator's name and contact information to satisfy §403(b)'s information sharing requirement.

In addition, if a contract is issued in a 90-24 exchange after September 24, 2007, and before January 1, 2009, and then the contract is exchanged in accordance with 90-24 before July 1, 2009, for a contract issued by an issuer which is either receiving contributions as part of the plan or has an information sharing agreement per the regulations, then the information sharing conditions of the regulations do not apply to the intermediate contract. For further information on 403(b) plans and the final regulations, visit the [403\(b\) web page](#).

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