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403(b) Final Regulations

- Forty-three years since the last issuance of 403(b) regulations
- Package includes regulations under 414(c)



403(b) Regulations 1 Published 7/26/2007

General Effective Date

Taxable years beginning after
 December 31, 2008

Notable exceptions



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1 - 1.403(b) - 11(a)

Delayed Effective Dates²

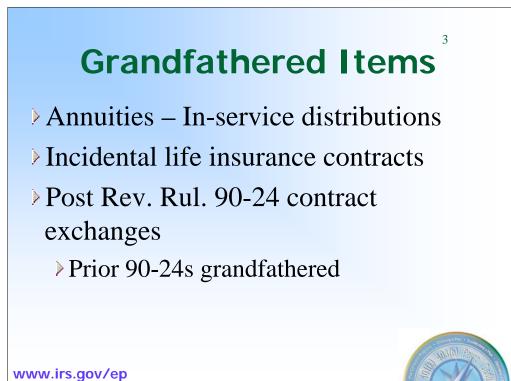
- Collective bargaining situations
- Churches sponsoring 403(b)s
- Removal of certain permissively excluded groups for universal availability purposes
- Certain governmental 403(b)s

> For limited universal availability exclusions



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2 - 1.403(b) - 11(b) - (d)



www.ii 3.gov/cp

3 - 1.403(b) - 11(e) - (g)

Primary Purpose

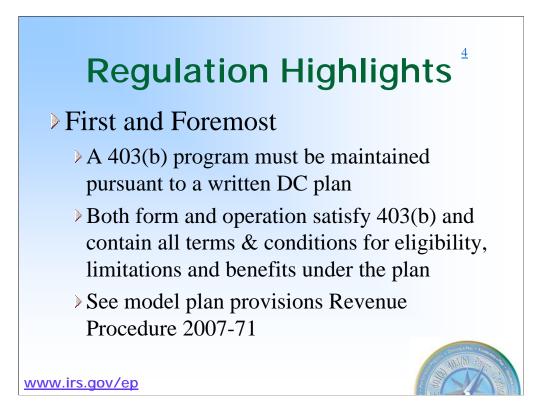
▶ Theme

To diminish the extent to which 403(b)s differ from other salary reduction arrangements

▶401(k)s

>457(b) governmental eligibles





4 - 1.403(b)-3(b)(3) and 1.403(b)-3(d)(1)(i)&(ii)

Revenue Procedure 40 2007-71

▶ Issued 11/27/07

> Published 12/17/07 in IRB 2007-51

- ▶ Effective 12/17/07
- Model plan language for public school use

> Timeliness of plan/amendments

Guidance on transitional period

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40 – <u>Rev Proc 2007-71</u>

ERISA Implications

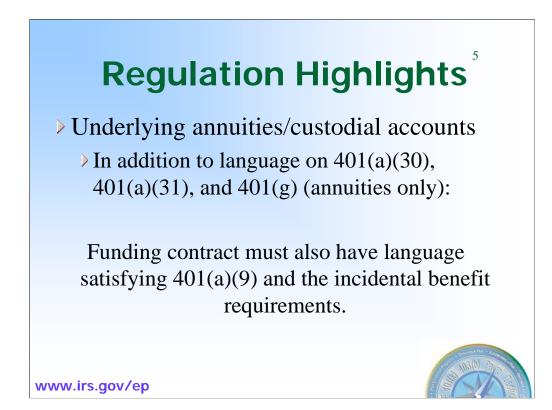
Non-ERISA 403(b)s

Written plan – Not automatically ERISA

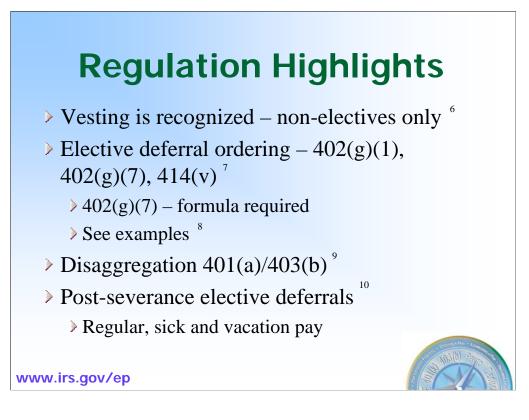
See <u>www.dol.gov/ebsa</u> for guidance -DOL Field Advisory Bulletin 2007-2 issued 7/24/2007

Governments not subject to ERISA

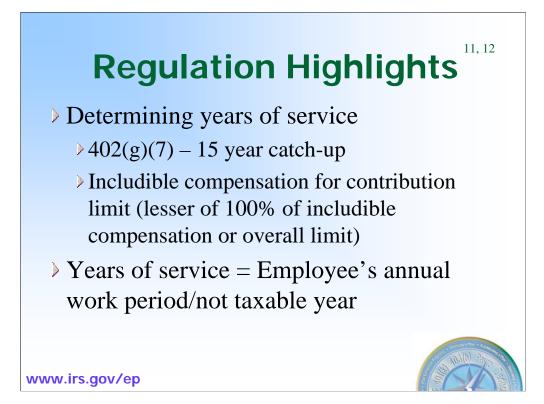




5- <u>1.403(b)-3(a)(4)-(8)</u>



- 6 <u>1.403(b)-3(d)(2)</u>
- 7 <u>1.403(b)-4(c)(3)(iv)</u>
- 8 <u>1.403(b)-4(c)(5) examples #4</u>, <u>11</u> and <u>12</u>
- 9 <u>1.403(b)-4(b)(2)</u>
- 10 <u>1.403(b)-3(b)(4)(ii)</u>



- 11 <u>1.403(b)-4(e)(2)</u>
- 12 1.403(b)-4(e)(5) and 1.403(b)-4(e)(9) examples 1 and 2

- Non-elective contributions for the 5 taxable years after employment plus endof-taxable year when employment ceases ¹³
- > No additional contributions after death ¹⁴

See examples cited in Addendum



- 13 <u>1.403(b)-4(d)(1)</u>
- 14 <u>1.403(b)-3(d)(2) examples 1</u>, <u>2</u>, and <u>3</u>

Regulation Highlights¹⁵

When using the 5-year postretirement non-elective provision in a non-governmental environment...



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15 - <u>1.403(b)-4(d)(2) examples 1</u> and <u>2</u>

Assure that in accordance with 1.401(a)(4)-10(b) and under the facts and circumstances that contributions made for those satisfying the minimum age and service requirements **and...**



...who retire by the designated date **do not discriminate** in favor of former employees who are highly compensated employees (HCEs).



- For 403(b) and 402(g) purposes, elective deferrals are limited to contributions under a cash or deferred election as defined under 401(k)
- Hardship distributions follow 401(k) rules and safe harbors ¹⁷



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 $16 - \underline{1.402(g)(3)-1(b)}$ $17 - \underline{1.403(b)-6(d)(2)}$

Elective Non-Discrimination/ Universal Availability¹⁸

Effective opportunity needed to satisfy universal availability¹⁹

Meaningful notice

Election timing

Universal availability generally applies separately to each common law entity²⁰



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18 - <u>1.403(b)-5(b)(1)</u> 19 - <u>1.403(b)-5(b)(2)</u>

20 - <u>1.403(b)-5(b)(3)</u>

Effective opportunity to make cash or deferred election to a 403(b) in order to satisfy the universal availability requirement embraces a 401(k) anticonditioning approach



Regulation Highlights Universal Availability Permissive Exclusions

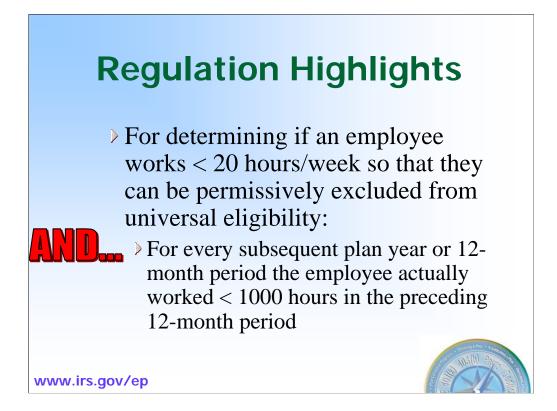
- Employees eligible under other deferral plans²¹
- > Non-resident aliens
- Students
- Those who normally work less than 20 hours per week²²



- 21 <u>1.403(b)-5(b)(4)(ii)(A)</u>
- 22 <u>1.403(b)-5(b)(4)(ii)(E)</u>



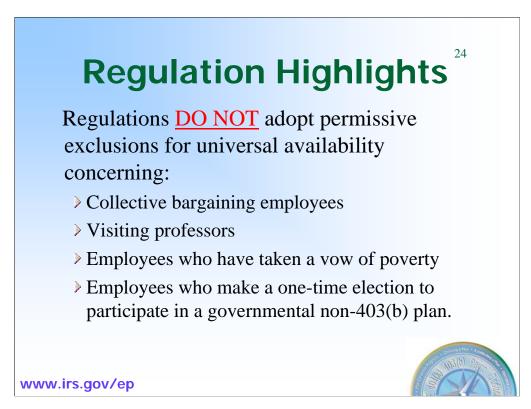
23 - 1.403(b)-5(b)(4)(iii)(B)



So, a 1000 hour standard...

If subject to ERISA see 1.403(b)-5(b)(4)(iii)(B)(2) of the regulations





24 - <u>1.403(b)-11(d)(1)&(2)</u>

Regulation Highlights Non-Elective Non-Discrimination²⁵

- Regulations <u>DO NOT</u> adopt good faith reasonable standard of Notice 89-23 for purposes of non-elective nondiscrimination
- Now 401(a)(4) and 401(m) testing as in a qualified plan
- Not relevant for governments

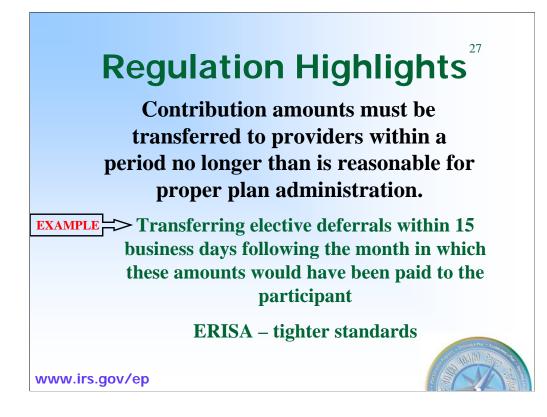
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25 - <u>1.403(b)-5(a)(1)</u>



26 - <u>1.403(b)-6(b)</u>



27 - <u>1.403(b)-8(b)</u>



28 - <u>1.403(b)-8(c)(2)</u> 29 - <u>1.403(b)-6(g)</u>

Regulation Highlights³⁰

As with 457(b) governmental eligibles, 403(b) plan provisions may permit **plan termination** with distribution and rollover in cases where no successor 403(b) arrangement for 12 months.



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30 - <u>1.403(b)-10(a)(1)</u>



31 - <u>1.403(b)-6(h)</u>



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32 - <u>1.403(b)-10(b)(1)</u>

Regulation Highlights The New Transfer Regime ³³

Exchanges Within same plan

- > Plan permits
- Benefit not diminished
- > Undiminished distribution restrictions
- Employer and issuer enter into information sharing agreement



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33 - <u>1.403(b)-10(b)(2)</u>

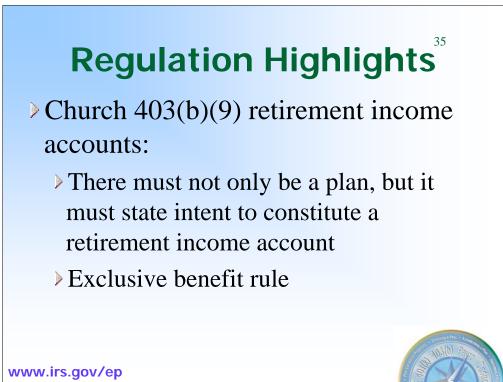
Regulation Highlights The New Transfer Regime ³⁴

Plan-to-plan

- Participant is employee or former employee of employer for receiving plan
- > Transferor and receiving plans permit
- Benefit not diminished
- Undiminished distribution restrictions

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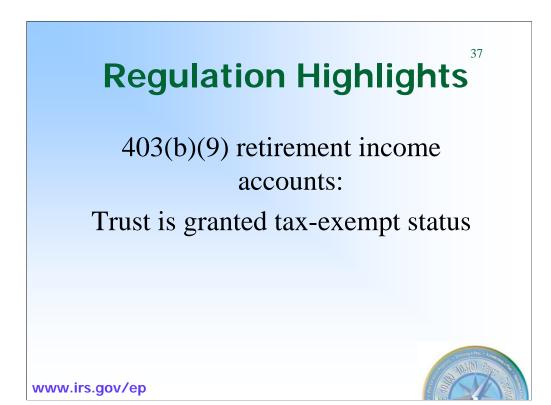
34 - <u>1.403(b)-10(b)(3)</u>



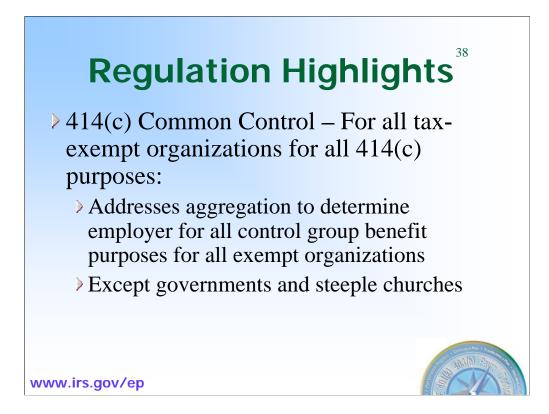
35 - <u>1.403(b)-9(a)(2)</u>



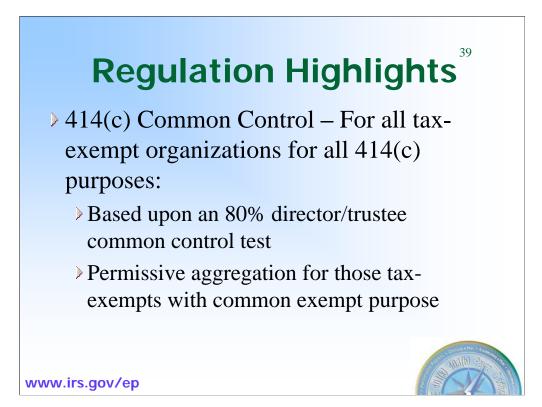
36 - <u>1.403(b)-9(a)(4)</u>



37 - <u>1.403(b)-9(a)(7)</u>



38 – <u>1.414(c)-5(a)</u>



39 - <u>1.414(c)-5(b)</u>



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INDIVIDUALS BUSINESSES CHARITIES & NON-PROFITS	GOVERNMENT ENTITIES TAX PROFESSIONAL CRETIREMENT PLANS	COMMUNITY X EXEMPT BOND COMMUNITY
Benefits Practitioner Plan Participant/Employee Plan Sponsor/Employer		
Retirement Plans Community Topics	IRC 403(b) Tax-Sheltered Annuity Plans A 403(b) tax-sheltered annuity (TSA) plan is a retirement certain tax-exempt organizations. An individual's 403(b) employer's TSA plan.	
• <u>IvewSietters</u>	General Questions	Resources:
	Who can establish a 403(b) plan? You are allowed to have a 403(b) plan if you are a:	Guidance: 403(b) Final Regulations
Correcting Plan Errors	 Public school, college or university or Charitable entity tax-exempt under section 501(c)(3) of the Code. 	Issued JulyXX, 2007, with a general effective date of taxable years beginning after December 31, 2008,
•Examination/Enforcement	How do 403(b) plans work? Basically, 403(b) plans are similar to 401(i) plans. Just as with a 401(k) plan, a 403(b) plan lets employees deter some of their salary, in this case, their deferred money goes to 403(b) plan	Overview News Articles Presentations
•EP FAQs •Types of Plans	sponsored by the employer. What are the advantages of <u>participating</u> in a 403(b) plan?	Related Guidance: Notice 2007-7, Pension Protection Act Guidance
	There are significant tax advantages for participants in a 403(b) tax-sheltered annuity:	Final 415 Regulations Notice 2005-5, Automatic Rollover
Contact EP/Services	 Contributions to a 403(b) annuity are tax deferred, Earnings are tax deferred, and The annuity is portable. 	Prior Law Guidance
• <u>More Topics</u>	Ask Bob Architect!!!	I.T. Reg. 1.403(b) 1 I.T. Reg. 1.403(b)-2
	Bob Archited, Senior Tax Law Specialist and the resident expert on $403(b)$ plans, receives many questions while presenting the latest 403(b) information to organizations. See the most frequently asked questions and Bob's answers here.	Correcting Plan Errors Publications: Choose a Retirement Plan for

This button provides information on starting and maintaining a retirement plan including what kinds of plans are available, how they work and the benefits of having a retirement plan.



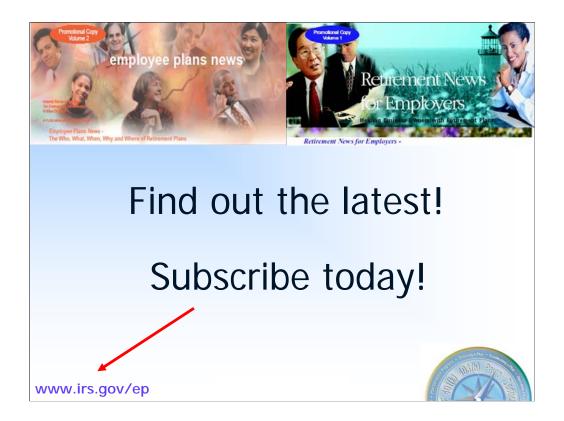
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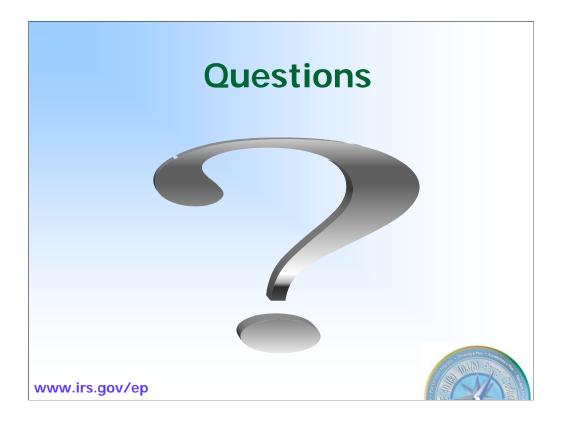




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PLAN FEATURE COMPARISON CHART - easy, quick-glance format to help you pick the plan that's good for you and your employees! SPONSOR/ELIGIBLE Employer CONTRIBUTORS TO THE PLAN PLAN KEY ADVANTAGE EMPLOYER'S ROLE Payroll easy to set up any employer - arrange for employees to make employee can decide Deduction IRA and maintain payroll deduction contributions how much to contribute - transmit contributions for any time employees to IRA - no annual filing requirement - set up plan - employer may use Form 5305-SEP - transmit contributions for employees SEP easy to set up any employer employer can decide and maintain whether to make contributions year-to-year to IRA - generally, no annual filing requirement bank or financial institution handles most of the paperwork www.irs.gov/ep





- 1. 1.403(b)-11(a)
- 2. 1.403(b)-11(b)-(d)
- 3. 1.403(b)-11(e)-(g)
- 4. 1.403(b)-3(b)(3) and 1.403(b)-3(d)(1)(i)&(ii)
- 5. 1.403(b)-3(a)(4)-(8)
- 6. 1.403(b)-3(d)(2)
- 7. 1.403(b)-4(c)(3)(iv)
- 8. 1.403(b)-4(c)(5) examples 4, 11 and 12
- 9. 1.403(b)-4(b)(2)
- 10. 1.403(b)-3(b)(4)(ii)



11. 1.403(b)-4(e)(2)

12. 1.403(b)- 4(e)(5) & 1.403(b)- 4(e)(9) examples 1&2

13. 1.403(b)-4(d)(1)

14. 1.403(b)-4(d)(2) examples 1, 2, and 3

15. 1.403(b)-4(d)(2) examples 1 and 2

16. 1.402(g)(3)-1(b)

17. 1.403(b)-6(d)(2)

18. 1.403(b)-5(b)(1)

19. 1.403(b)-5(b)(2)

20. 1.403(b)-5(b)(3)



1.403(b)-5(b)(4)(ii)(A)
 1.403(b)-5(b)(4)(ii)(E)
 1.403(b)-5(b)(4)(iii)(B)
 1.403(b)-5(b)(4)(iii)(B)
 1.403(b)-11(d)(1)&(2)
 1.403(b)-5(a)(1)
 1.403(b)-6(b)
 1.403(b)-6(b)
 1.403(b)-8(c)(2)
 1.403(b)-6(g)
 1.403(b)-10(a)(1)



- 31. 1.403(b)-6(h)
- 32. 1.403(b)-10(b)(1)
- 33. 1.403(b)-10(b)(2)
- 34. 1.403(b)-10(b)(3)
- 35. 1.403(b)-9(a)(2)
- 36. 1.403(b)-9(a)(4)
- 37. 1.403(b)-9(a)(7)
- 38. 1.414(c)-5(a)
- 39. 1.414(c)-5(b)
- 40. Rev Proc 2007-71

