



IRS ISSUES

Final Regulations Related to 403(b) Plans

Our goal is to highlight the major provisions of this legislation to educate you concerning the impact these regulations will have on participating members of The Wesleyan Pension Fund, Inc. retirement 403(b) plan.

It is important to note: Various kinds of employers use 403(b) retirement plans. ***Churches and church-related organizations which do not have for-profit subsidiaries and use only The Wesleyan Pension Fund Plan as their retirement plan provider will not be impacted by all of the changes listed below.***

What Are the High Points?

Written Plan Requirement —The new regulations confirm that you need a written plan that meets certain legal standards. This can be fairly simple if you utilize one 403(b) plan provider, like The Wesleyan Pension Fund, which can provide most of the plan documentation you need. Some providers have been offering 403(b) retirement plan services to employers for years with no underlying written legal plan document. The new regulations will no longer allow this beginning in 2009.

A further complexity to this new requirement arises when an employer offers multiple plan providers under one retirement plan. In such a situation, the plan must be clearly written to spell out specific issues related to legal compliance, such as who will be responsible to ensure compliance with 403(b) rules related to contribution limits when a participant holds accounts with multiple providers. Neither the employer nor the plan provider is permitted to place that responsibility solely on the shoulders of the participant. So there's a heightened level of responsibility for all parties to ensure compliance with the 403(b) regulations.

Investment Exchanges, Contract Exchanges and Plan-to-Plan Transfers — Participants, employers and plan providers have more steps to complete when a participant wants to move or transfer money from one employer-sponsored provider to another. In the past, this sort of money transfer has been called a "90-24 transfer." Effective Sept. 24, 2007, 90-24 transfers will no longer exist.

The new mechanisms for moving money in these multi-provider plan situations will be called "investment exchanges," "contract exchanges" or "plan-to-plan transfers." ***Money can still be moved***, but there is now a new wrinkle for some types of money transfers.

An *investment exchange* is the movement of retirement assets between 403(b) investment providers within the same plan both occupying a "payroll slot" with the employer where contributions, earnings and tax basis amounts are maintained. The regulations continue to allow investment exchanges without creating additional compliance issues. Note: If The Wesleyan Pension Fund Plan is the sole retirement plan of the employer, changing investments is a simple matter. The Wesleyan Pension Fund Plan offers a wide-range of investment options and a participant investment change within the plan is a simple transaction submitted by the employee via an online login to their account.

However, there are new rules for contract exchanges and plan-to-plan transfers. A *contract exchange* is a movement of retirement assets between a 403(b) investment provider (with a payroll slot) and a 403(b) vendor (who does not occupy a payroll slot) within the same plan. To perform a contract exchange now, the employer and the provider receiving the 403(b) money must enter into an agreement to exchange required information related to compliance with the 403(b) requirements. This particular provision takes effect on Sept. 25, 2007. A plan to plan transfer is a movement of retirement assets from one employer's 403(b) plan to another employer's 403(b) plan where contributions, earnings and tax basis amounts are maintained. Such transfers may only be made to the plan sponsored by a current or former employer of the participant

whose account is being transferred, and are therefore likely to be of limited use. There are special rules that apply to these transfers. Consequently, these types of exchanges and transfers will no longer be allowed between providers with which an employer has no formal relationship. These changes present some new accountabilities and challenges. We hope that the IRS will release additional clarification to help employers and providers with the operational aspects of this change. ***Again, plans that offer one provider will see little or no effect from this new regulation.***

Timing of In-Service Distributions from Employer Contribution Accounts — This provision impacts plans that allow employees to withdraw employer-contributed dollars while still in service to that employer without the occurrence of some event, such as reaching a specified age. Since The Wesleyan Pension Fund Plan does not make provision for in-service withdrawals of employer dollars until participants attain age 62, this regulation change is already satisfied for employers that use only The Wesleyan Pension Fund Plan.

Universal Availability — Certain 403(b) plans are subject to annual retirement plan nondiscrimination testing that demonstrates the plan does not discriminate in favor of highly compensated employees in design or practice. Plans subject to testing include 403(b) plans of employers such as nonprofit hospitals, colleges, universities and some children's and retirement homes. Under one of these nondiscrimination rules, plans of these employers must satisfy the "universal availability" requirement. In simple terms this means that if you allow one employee to make personal tax-deferred contributions (salary reduction deferrals) to the plan, you must let all employees make personal tax-deferred contributions. Certain limited groups of employees can be excluded from making personal tax-deferred contributions to the plan, and these exclusions must be stated in the written plan document. For example, one of the groups of employees that can be excluded from the universal availability requirement is, "employees who normally work fewer than 20 hours per week." Violation of the universal availability rule is best avoided by allowing all employees to make Participant Pre-Tax Contributions (salary reduction deferrals) to the plan. ***Churches and most church-related organizations will not be affected by this provision in the regulations.***

Effective Opportunity Required — As a part of the universal availability requirement, the IRS wants to ensure that employers take steps to make all employees aware of their right to participate in the retirement plan. Therefore, the new regulations require employers to demonstrate that employees are being provided with "an effective opportunity" to make elective deferrals (personal tax-sheltered contributions). According to the IRS, whether this standard is being met depends on specific "facts and circumstances" such as whether the employer provides ongoing notice to employees of the opportunity to make elective deferrals. In essence, the regulations are sending a message to all employers to make, and continue making, employees aware of the tax deferral opportunities available to them under their retirement plan. ***Again, churches and most church-related organizations will not be affected by this provision in the regulations.***

Requirement to Follow Plan Terms — As can be expected, the IRS mandates that an employer administers its plan in the way it is written. This dovetails with the point made earlier — you must have a written plan that meets certain legal standards. Your plan must have all the required provisions and those provisions must be followed. Disregarding this requirement is deemed an "operational failure," a failure which comes with a cost. Certain failures by the employer in following the plan could adversely affect every individual for which the failure occurred.

Is a single-provider solution best?

You may hear other 403(b) plan providers emphasize the merits of a single-provider solution for your 403(b) plan compliance issues. We would agree. In this ever-tightening environment of compliance, a sole provider may very well make life administratively simpler for you and for your employees. Plan participants are served well when Church employers provide the Wesleyan Pension Fund Plan as their sole retirement plan. Ministers and employees appreciate the quality of the plan and the simplicity of "taking their retirement plan with them" when moving from one Church employer to another. Importantly, as a church plan, retirees who are ministers may have retirement benefits designated (within legal limits) as tax-free housing allowance.



FAQs for Church Employers

403(b) Regulatory Changes

Background Information

The 403(b)(9) Wesleyan Pension Fund Plan is a type of 403(b) retirement plan for ministers and employees of Church churches and related organizations. Internal Revenue Code Section 403(b) plans are the most common retirement plan used by not-for-profit employers.

The IRS has published new regulations that will generally become effective for tax years that begin after Dec. 31, 2008. These new regulations apply to all 403(b) retirement plans, including 403(b)(9) church plans. Churches and employers that provide a 403(b) plan for their employees are required to comply with these new regulations. A failure to comply can cause adverse tax consequences for all participants in the employer's 403(b) retirement plan.

The Wesleyan Pension Fund has been dedicated to enhancing the financial security of our participants for 40 years. We are committed to helping your organization understand and take the necessary actions to successfully address these new regulations. The following questions and answers have been developed to provide you with a general introduction to this important topic that will impact every employer that offers a 403(b) retirement plan.

Will churches and organizations that use the Wesleyan Pension Fund Plan be subject to these regulation changes?

Yes. But if your church or organization uses the Wesleyan Pension Fund as your sole 403(b) retirement plan provider, the application of these changes will be simplified.

- If your church or organization allows plan participants to invest with multiple 403(b) providers or to transfer funds to other providers, compliance with these new regulations will be more complex.
- Churches are excluded from some portions of the new 403(b) regulation changes. For example, plans of churches are not subject to certain retirement plan nondiscrimination provisions that apply to church-related organizations such as colleges, universities and hospitals.

What are the new IRS regulations for 403(b) retirement plans?

The following list includes a brief summary of the most significant 403(b) regulation changes. Those marked with an asterisk (*) are the regulations that apply to churches participating in The Wesleyan Pension Fund Plan.

- *** Written plan requirement.** Churches and organizations that provide a 403(b) plan must maintain written documents that describe all material plan provisions. The written plan can incorporate materials from other documents such as written policies, employee handbook, and other related documents.
- *** Contract exchanges and plan-to-plan transfers.** Participants, employers and plan providers now face new requirements if a plan allows participants to transfer 403(b) funds in their retirement account from one plan provider to another. Employers with multiple providers will need to have arrangements to share information with all approved providers. In addition, certain participant transactions, including some types of distributions, will now require employer consent.
- **Timing of in-service distributions from employer contribution accounts.** This provision impacts plans that allow employees to withdraw employer-contributed dollars while still in service to that employer without the occurrence of some event, such as reaching a specified age. Since The Wesleyan Pension Fund Plan does not make provision for in-service withdrawals of employer dollars until participants are 62 years of age, this regulation change is already satisfied for churches that use only The Wesleyan Pension Fund Plan.

- **New definition of severance from employment.** The new regulations provide additional clarity to legal terms and phrases, one of which is "severance from employment." For most churches this change will have no impact. But for churches or church-related organizations that have complex legal structures and separate subsidiaries, there may be some impact.
- **Universal availability.** Some 403(b) plans are subject to annual retirement plan nondiscrimination testing that demonstrates the plan does not discriminate in favor of highly compensated employees in design or practice. This regulation is not applicable to churches.
- **Effective opportunity required.** This is related to the universal availability provision above and is also not applicable to churches.
- * **Requirement to follow plan terms.** As mentioned earlier, all 403(b) plans must be documented in writing. A failure to follow these written plan provisions can result in adverse tax consequences for individual plan participants and/or all plan participants of the employer, depending upon the nature of the failure.

What actions should churches and organizations that participate in The Wesleyan Pension Fund Plan take to comply with the new IRS 403(b) regulations?

Employers should do the following by December 31, 2008:

- **Stay informed.** While the new IRS 403(b) regulations have been released, guidance is still unfolding. To keep you apprised of new developments, The Wesleyan Pension Fund will periodically provide updates via our Web site – www.wesleyanpensionfund.com.
- **Develop written policies and procedures.** The Wesleyan Pension Fund provides general plan documentation for the Wesleyan Church Pension Plan. However, since each organization that participates in this plan has flexibility related to certain plan provisions, your organization must develop and maintain additional written policies and procedures that address:
 - Which employees are eligible to participate in the retirement plan;
 - What contributions the employer/church will make on behalf of employees;
 - Whether the church/organization will use The Wesleyan Pension Fund as the sole provider for the plan or allow multiple plan providers? (A decision to allow multiple providers will require the church/organization to enter into arrangements to share information with all approved providers as well as assume responsibility to work with each provider to achieve plan compliance.)
- **Become familiar with an investment exchange and the new contract exchange and plan-to-plan transfer requirements.** Participants, employers and plan providers have more steps to complete if your church/organization allows plan participants to move or transfer money from one provider to another. In the past, this sort of money transfer was called a "90-24 transfer." Effective September 25, 2007, 90-24 transfers no longer exist.

The mechanisms for moving money in these multi-provider plan situations will be called "investment exchanges" and the new "contract exchanges" or "plan-to-plan transfers." These new provisions took effect on September 25, 2007 (these new rules do not apply to *rollovers* between retirement plans).

An *investment exchange* is the movement of retirement assets between 403(b) investment providers within the same plan both occupying a "payroll slot" with the employer where contributions, earnings and tax basis amounts are maintained. The regulations continue to allow investment exchanges without creating additional compliance issues. Note: If The Wesleyan Pension Fund Plan is the sole retirement plan of the employer, changing investments continues to be a simple matter. The Wesleyan Pension Fund Plan offers a wide-range of investment options and a participant investment change within the plan is a simple transaction submitted by the employee via an online login to their account.

However, there are new rules for contract exchanges and plan-to-plan transfers. A *contract exchange* is a movement of retirement assets between a 403(b) investment provider (with a payroll slot) and a 403(b) vendor (who does not occupy a payroll slot) within the same plan. To perform a contract exchange now, the employer and the provider receiving the 403(b) money must enter into an agreement to exchange required

information related to compliance with the 403(b) requirements. The other approach to moving money, a *plan-to-plan transfer*, occurs between two unrelated employers' 403(b) plans. Consequently, these types of exchanges and transfers will no longer be allowed between providers with which an employer has no formal relationship. This particular provision takes effect on Sept. 25, 2007. This change presents some new accountabilities and challenges. For example, employers will need to establish information sharing agreements documenting responsibility for sharing information when participants move money within a single 403(b) plan from provider to provider.

Again, plans that use The Wesleyan Pension Fund as their sole provider will see minimal impact from this new regulation.

- **Review plan terms.** As can be expected, the IRS mandates that your organization administer its 403(b) plan in the way it is written. This dovetails with the earlier point that the employer must maintain a written plan that meets certain legal standards. The plan must have all the right provisions and those provisions must be followed. Disregarding this requirement is deemed an "operational failure." Certain failures by the employer in following the plan could adversely affect every individual for which the failure occurred and/or all of the employers' plan participants.

When are these changes effective?

The written plan document requirement is not effective until January 1, 2009 but employers are encouraged to complete their retirement plan documentation prior to the effective date. However, it is important to note that any contract exchanges and plan-to-plan transfers made after September 24, 2007 will be subject to the contract exchange and plan-to-plan transfer provisions. If the employer is not in compliance (with written plan documents and required information-sharing agreements, if any) then taxes and penalties could be imposed by the IRS.

Do the regulations address the time frame in which a participant's elective deferral must be sent to the provider?

Yes. The general rule under the final regulations is that all contributions must be made to the provider within "a period that is not longer than is reasonable for the proper administration of the plan." The regulations indicate that employee elective deferral contributions should be deposited in an administratively feasible period, typically within 15 business days following the month in which these amounts would have been paid to the employee if they had not been deferred. The key thought is that the IRS is seeking to ensure that contributions are properly and efficiently handled by the employer from the point of withholding to the point of contribution to the plan.