



benefits

A Publication of  BOLT • CUMMINGS
CONNERS • BERRY LLC

Deadline Approaches for 403(b) Plan Transfers

by **B. David Joffe**

Earlier this year, the Internal Revenue Service (IRS) issued final regulations for 403(b) plans. Most of the requirements in the regulations, including the requirement to have a written plan, are delayed until January 1, 2009. However, the portion of the regulations that provides new restrictions regarding plan transfers applies to transfers that occur *after* September 24, 2007.

90-24 Transfers and the New Regulations

Exchanges of 403(b) contracts are currently governed by IRS Revenue Ruling 90-24. Under the ruling, 403(b) contracts may be exchanged, without income inclusion, if the new contract includes distribution restrictions that are the same or more stringent than the distribution restrictions in the original contract. The final regulations retain the concept of 90-24 transfers but add restrictions for certain transfers *after* September 24, 2007.

The final regulations permit transfers in three cases: a change in the contract within the same plan (contract exchange); a plan-to-plan transfer of assets from one plan to the plan of another employer (plan-to-plan transfer); and a transfer for the repayment or purchase of permissive service credits in a governmental defined benefit plan.

Contract Exchanges

For contract exchanges, there are several requirements. First, the original contract must provide for the exchange. Second, the accumulated benefit immediately after the exchange must be at least equal to the accumulated benefit immediately before the exchange. Third, the new contract must be subject to distribution restrictions that are not less stringent than those under the current contract, and the employer must enter into an agreement with the issuer of the new contract under which the employer and issuer will from time to time provide each other with certain required information. The information basically allows for the coordination of certain matters such as whether a severance from employment distribution event has occurred and whether hardship withdrawal rules have been satisfied. Therefore, contract exchanges after September 24, 2007, will be limited to 403(b) providers with whom the employer has entered into an information sharing agreement. The IRS Commissioner is authorized to issue future guidance on contract exchanges.

Plan-to-Plan Transfers

Plan-to-plan transfers from one 403(b) plan to another 403(b) plan are also allowed, subject to certain requirements. First, for participant transfers, the participant must be an employee or former employee of the employer for the new plan; for the beneficiary of a deceased participant, the participant must have been an employee or former employee of the employer for the new plan. Second, the old plan must provide for the transfer, and the new plan must provide for the receipt of transfers. Third, as with contract exchanges, the accumulated benefit immediately after the transfer must be at least equal to the accumulated benefit

immediately before the transfer. Fourth, to the extent any amount is subject to any distribution restrictions, the receiving plan must impose restrictions that are not less stringent than those imposed in the old plan.

Consequences and Compliance

An exchange or transfer that fails to meet the requirements of the final 403(b) regulations will be treated as a taxable distribution to the employee (if a distribution-triggering event such as severance from employment has not otherwise occurred). As a result, employers need to be mindful of the restrictions and new requirements.

Ensuring compliance will require a review of the plan's current documentation and procedures. Employers should ensure that changes in documentation and procedures consistent with the final regulations are established by providers receiving transfers. They should request certification from their 403(b) provider that it will enter into an agreement on or before January 1, 2009, to share the required information for compliance with the final regulations. Employers could notify employees that, starting on September 25, 2007, requests to make contract exchanges will be suspended until the provider has certified that it will provide the required information.

If you have any questions about the final 403(b) regulations, please contact one of the [Employee Benefits and Executive Compensation](#) attorneys at Boulton, Cummings, Connors & Berry PLC:

Charles M. Cain II
615.252.2330
ccain@boultcummings.com
B. David Joffe
615.252.2368
djoffe@boultcummings.com
John M. Scannapieco
615.252.2352
jscannapieco@boultcummings.com

Andrew Elbon
615.252.2378
aelbon@boultcummings.com
Gordon Earle Nichols
615.252.2387
gnichols@boultcummings.com

Boulton Cummings eNews is published solely for the interest of clients and friends of [Boulton, Cummings, Connors & Berry, PLC](#) and should in no way be relied upon or construed as legal advice. If you need specific information on legal issues or want to address specific factual situations please seek the opinion of legal counsel.

Boulton Cummings eNews is designed to update our clients on legal issues that may impact their business. If this information is not relevant to your position, please forward to the appropriate person in your organization. If this topic is not pertinent to your company, please provide topic suggestions as to the types of legal updates and topics that are relevant to your business. Please email cbillingslea@boultcummings.com your feedback or suggestions.

2008 Boulton, Cummings, Connors & Berry, PLC. All rights reserved



Roundabout Plaza, 1600 Division Street, Suite 700 Nashville, TN 37203
615.244.2582 www.boultcummings.com

This email was sent to [email]. To ensure that you continue receiving our emails, please add us to your address book or safe list.

[manage](#) your preferences | [opt out](#) using TrueRemove™
Got this as a forward? [Sign up](#) to receive our future emails.

