

Key 2009 403(b) Compliance Dates

In July 2007, the Treasury Department released final 403(b) regulations that take effect in 2009, and substantially affect the operation of 403(b) plans. 403(b) plan sponsors and participants must adhere to several key compliance dates in 2009, as outlined in this bulletin, or face potential disqualification of their 403(b) plans and account balances.

Who Is Affected?

- 403(b) plan sponsors who do not have a written 403(b) plan in place by January 1, 2009
- 403(b) plan sponsors who have adopted a written plan document, but may need to make corrections in order to comply with final regulations
- 403(b) plan participants and sponsors with orphaned accounts and/or contracts

What Do I Need to Know?

- As of **January 1, 2009**, plan sponsors must operate their 403(b) plans according to a reasonable interpretation of Section 403(b) of the Internal Revenue Code, taking into account the final regulations.
- On or before **December 31, 2009**, plan sponsors must adopt a written plan document that meets the requirements of the final regulations with an effective date retroactive to January 1, 2009. In other words, the one year delay in having a plan document in place does NOT waive the requirement to be in compliance with new regulations effective January 1, 2009.
- Before **December 31, 2009**, plan sponsors must correct any plan operational failures that may have occurred during the 2009 calendar year. The correction should be based on the general principles of the correction methods set forth in the IRS Employee Plans Compliance Resolution System (EPCRS) in Revenue Procedure 2008-50, available at the IRS Web site.
- As soon as possible, plan sponsors and participants must address "orphaned" accounts and/or contracts as explained next. Accounts in an orphaned state after **July 1, 2009** are at risk of disqualification.

Q: What is an "orphaned" 403(b) contract or account?

A: An orphaned 403(b) account or contract is one that is not maintained with a vendor that is approved by the participant's current employer, or does not have an information sharing agreement with the current employer. There are three exceptions to the orphaned contract or account rule. They are contracts or accounts:

- For current participants issued before 2009 that have not received contributions after 2004;
- For former participants or beneficiaries that ceased receiving contributions before 2009;
- Transferred by participants before September 24, 2007, with no further transfers made after September 24, 2007.

Q: What are the consequences of maintaining an orphaned 403(b) contract or account?

A: Orphaned 403(b) contracts or accounts are at risk of being disqualified, and their owners subject to taxation and potential penalization. Plan sponsors that contribute to orphaned 403(b) contracts or accounts risk plan disqualification.

Q: What can be done to bring orphaned 403(b) contracts or accounts into compliance?

A: The following table outlines appropriate compliance measures.

If you are a ...	and the orphaned contract or account was issued before 2009, then	and the orphaned contract or account was issued in 2009
Plan Sponsor	You must make a reasonable effort to include the contract or account in the plan by collecting information about the vendor and providing the vendor with the plan administrator's contact information.	Before the end of 2009, you must follow IRS correction methods contained in Revenue Procedure 2008-50 (i.e., the Employee Plans Compliance Resolution System).
Current plan participant	Before July 1, 2009, you must transfer your orphaned contract or account to a vendor that is approved by, or maintains an information sharing agreement with, your employer.	The contract or account must be with a vendor that is approved by, or maintains an information sharing agreement with, your employer.
Former plan participant or beneficiary as of January 1, 2009	Any loans or distributions from the contract or account may only be allowed if the vendor makes a reasonable effort to determine eligibility.	N/A

What Action Should I Take?

- Contact your 403(b) plan sponsor clients to help them identify 403(b) documents that meet their needs and objectives, and comply with the final 403(b) regulations.
- Contact your 403(b) plan participant clients regarding the July 1, 2009, transfer deadline for orphaned contracts and/or accounts.