



Education Code Section 25100-25115
(Full Text)

25100. (a) The board shall establish a vendor registration process through which information about tax-deferred retirement investment products as described in Section 403(b) of the Internal Revenue Code of 1986 shall be made available for consideration by public employees of all local school districts, community college districts, and county offices of education.

(b) For the purposes of this chapter, "403(b) product or 403(b) products" means tax-deferred retirement investment products as described in Section 403(b) of the Internal Revenue Code of 1986, and its subsequent amendments, and complying with applicable California insurance laws, and federal and California securities laws and rules as applied by appropriate regulatory entities.

(c) For the purposes of this chapter, "vendor" means a public retirement system, broker-dealer, registered investment company, nonbank custodian, or life insurance company qualified to do business in California that provides 403(b) products. "Vendor" does not include individual registered representatives, brokers, financial planners, or agents. "Nonbank custodian" means a fund custodian, other than a bank, that meets the criteria of a trustee specified in Section 408(a)(2) of the Internal Revenue Code. "Broker-dealer" means only those broker-dealers who offer a proprietary 403(b) product or who charge fees that are otherwise not disclosed.

25101. A prospective vendor of 403(b) products that offers those products, or the products of other 403(b) vendors, to local school districts, community college districts, county offices of education and their employees, shall register those products with the board pursuant to this chapter. Registered vendors shall offer only registered 403(b) products as funding vehicles for 403(b) plans.

(a) Prospective vendors shall be registered with the board based upon a complete response to the disclosures required by this subdivision. This information shall be included in the impartial investment information bank established pursuant to Section 25104. The prospective vendors shall provide the following information:

(1) A statement of experience in California and in other states in providing retirement annuities, custodial account mutual fund arrangements, or other retirement products and related financial services under public employer retirement plans.

(2) A characterization by the vendor of its offering as either an annuity or custodial account, as defined under Sections 403(b)(1) and 403(b)(7) of the Internal Revenue Code, respectively.

(3) A disclosure of all expenses paid directly or indirectly by retirement plan participants, including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees, and annual fees, supported by documentation as required for prospectus disclosure by the National Association of Securities Dealers and the Securities and Exchange Commission. Vendors shall be required to provide information regarding the impact of product fees upon a hypothetical investment, as described in Section 25104.

(4) The types of products, product features, including presence of two tier annuity features, services offered to participants, and information about how to access product prospectuses or other relevant product information.

(5) A discussion of the ability, experience, and commitment of the vendor to provide retirement counseling and education services, including, but not limited to, access to group meetings and individual counseling by various means, including telephone and telecommunications devices for the deaf (TDD), Internet, and face-to-face consultations by registered representatives.

(6) A statement of the financial strength and stability of the vendor, as may be applicable, by identifying its ratings assigned by nationally recognized rating services that evaluate the financial strength of life insurance, mutual funds, and other similar companies.

(7) The location of offices and counselors, or method of distribution, of the vendor relative to serving local school districts, community college districts, and county offices of education and their employees in California.

(8) A description of the ability of the vendor to comply with all applicable provisions of federal and state law governing retirement plans, including minimum distribution requirements and contribution limits.

(9) To the extent applicable, the demonstrated ability of the vendor to offer an appropriate array of accumulation funding options, including, but not limited to, a diversified mix of value, growth, growth and income, hybrid and index funds or accounts across large, mid, and small capitalization asset classes, both domestic and international. These investment products may include mutual funds, group or individual annuity contracts, fixed or variable annuity contracts, individual retirement annuities, interests in trust and collective trusts, separate accounts, and other financial instruments.

(10) A discussion of the range of administrative and customer services provided, including asset allocation, accounting and administration of benefits for individual participants, recordkeeping for individual participants, asset purchase, control, and safekeeping, execution of a participant's instructions as to asset and contribution allocation, calculation of daily net asset values, direct access for participants to their account information, periodic reporting to active participants, not less than quarterly, on their account balances and transactions, and compliance with the standard of care applicable in the provision of investment services and consistent with federal law.

(11) Certification by the vendor that the information provided to the board accurately reflects the provisions of the Section 403(b) products they register pursuant to this chapter.

- (b) Registration may not be conditioned upon the content of the information.
- (c) Vendors shall supply information and data in the format required by the board.

25102. Registration shall be offered to vendors once annually, and renewal of registration shall be required at least once every five years thereafter for vendors that wish to continue to participate. The board shall provide public notice prior to the initial registration, annual registration, and registration renewal periods. The board may require, through a password-based update system that allows vendors to access the registration list for the purposes of updating their product information, or through other means, an update of the information required to be provided under Section 25101 with each registration renewal. Registered vendors shall submit to the board within the time required by the Securities and Exchange Commission an amendment to the information required to be provided under Section 25101 to reflect material changes to the products or services offered that occur between registration or renewal periods. Registered vendors may register additional 403(b) products with the board between registration or renewal periods by providing the board the information required under Section 25101 and fees required under subdivision (c) of Section 25108. Upon receipt of information reflecting material changes or additions to the products or services offered by registered vendors that occur between registration or renewal periods, the board shall reflect those changes in the impartial investment information bank established pursuant to Section 25104 within the time required by the Securities and Exchange Commission.

25103. (a) The board may remove a vendor from the registry if the vendor submits materially inaccurate information to the board, does not remit assessed fees within 60 days, or fails to submit notice of material changes to its registered investment products, pursuant to Section 25102. Vendors found to have submitted materially inaccurate information to the board shall be allowed 60 days to correct the information. The board may refer vendors that submit information required under Section 25102 that is materially inaccurate and may constitute conduct prohibited by the National Association of Securities Dealers and the California Department of Insurance to those entities.

(b) The board shall remove a vendor from the registry if the vendor is not licensed or has had its license revoked by the National Association of Securities Dealers or the California Department of Insurance for engaging in conduct prohibited by those entities.

(c) The board shall establish an appeals process pursuant to Section 22219 for vendors that are denied registration or removed from the registry.

25104. (a) The board shall maintain an impartial investment information bank, via an Internet Web site, containing the information required by Section 25101 about the retirement investment products offered by each registered vendor and objective comparisons of vendors and types of products.

(b) The information bank shall include information on investment performance based upon the investment's average annual total return, as measured by a nationally recognized rating service selected by the board for standard periods of time of not less than one year.

(c) The Web site shall include a table showing, for each registered fund, the total fee cost in dollars incurred by a shareholder who initially invested ten thousand dollars (\$10,000), earned a 5 percent rate of return for one, five, 10, 15, and 20 year time periods. This table shall be accompanied by a disclaimer that the rate of return is for purposes of illustrating the respective impacts of different fee amounts on each investment, and is not to predict future investment returns.

(d) The board shall have the authority to organize data, but may not subjectively rank or give preference to a vendor or product.

25105. The board shall include notice of the existence of, and the Internet Web site address for, the impartial investment information bank in each newsletter sent to members. The board shall include a notice in the individual account statements of members of the Defined Benefit Program and participants of the Cash Balance Benefit Program that explains the purpose and Web site address of the impartial investment information bank.

25106. The board shall design the information bank Internet Web site and include retirement investment product plan information and education materials taken from and referenced to the Internal Revenue Service, the Securities and Exchange Commission, the National Association of Insurance Commissioners, and other applicable governmental or regulatory agencies. Information shall be presented and used in a manner that is consistent with the rules of those agencies and with rules of the National Association of Securities Dealers. The information shall be offered as a preface to the vendor information required in Section 25101. The preface shall include, but shall not be limited to, the following information:

(a) An explanation of Section 403(b) of the Internal Revenue Code of 1986.

(b) The retirement investment products that may be purchased under Section 403(b) of the Internal Revenue Code of 1986, and with definitions of those products.

(c) Definitions or explanations of all fees referred to in the investment information bank.

25107. A vendor may not charge a fee associated with a registered 403(b) product that is not disclosed, pursuant to Section 25101.

25108. (a) The actual cost of establishing the vendor registration system and the investment information bank shall be borne equally by registered vendors, based on the total number of registered vendors. Each registered vendor shall pay a one-time establishment fee equal to a pro rata share of the establishment costs charged to vendors that register with the board prior to the close of the initial registration period, as determined by the board. The one-time establishment fee charged to vendors that register with the board after the completion of the initial registration period shall be distributed equally among registered vendors that have paid the establishment fee, and credited toward subsequent maintenance and administrative fees charged to each vendor.

(b) The actual cost of maintaining the vendor registration system and the investment information bank, and the costs associated with publicizing the availability of the investment information bank to local school districts, community college districts, and county offices of education and their employees, shall be borne equally by registered vendors, based on the total number of registered vendors. Each registered vendor shall pay a renewal fee equal to a pro rata share of the maintenance costs, as determined by the board.

(c) Each registered vendor shall pay an administrative fee for each 403(b) product it offers to school employees, which shall represent the actual costs associated with processing the information related to the investment option and presenting it on the investment information bank, as determined by the board.

(d) The board may not divert member services resources or personnel to establish or maintain the registration list.

25109. (a) The board and the system, and its officers and employees, are not responsible for, and may not be held liable for the adequacy of the information provided by the participating vendors contained in the information bank. The information bank maintained by the board serves only to provide information supplied by the participating vendors for the consideration of selection of 403(b) products.

(b) Participating vendors may not utilize the system's logo, or claim or infer any endorsement or recommendation by the board or the system with respect to products and services identified by the vendors in the information bank. At the discretion of the board, a violation of this section may lead to removal from the registry. This restriction does not apply to 403(b) products offered by the board to school employees pursuant to Section 24950.

(c) The board and the system may not be held liable for the actions of other registered vendors.

25110. The board shall complete the initial registration process on or before July 1, 2004.

25111. Each local school district, community college district, and county office of education, in consultation with the exclusive bargaining agent of its employees, if any, may develop a process to ensure that employees are aware of, and have access to, information provided in the impartial investment bank maintained by the board.

25112. Personnel, including elected school officials, acting on behalf of a local school district, community college district, or county office of education may not receive consideration from a vendor in exchange for the promotion of a particular vendor or vendor's products.

25113. A local school district, community college district, or county office of education may not forward annuity or custodial account consideration to the vendor of any unregistered 403(b) product, except insofar as an employee continues making contributions to an unregistered product or products purchased or entered into prior to the implementation date of the impartial investment bank, as established by this chapter.

25114. Employees shall select from registered 403(b) products. Notwithstanding Section 25113, an employee of a local school district, community college district, or county office of education may continue to make contributions to unregistered products purchased or entered into prior to the date of implementation of the impartial investment bank, as established by this chapter.

25115. For purposes of restricting the use of 403(b) investment products provided to employees of local school districts, community college districts, and county offices of education by those vendors and investment products registered with the board pursuant to this chapter, the provisions of Section 770.3 of the Insurance Code do not apply.