



California State Teachers'
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October 4, 2004

TO: County Superintendents of Schools
District Superintendents of Schools
Community College Districts
Other Employing Agencies

FROM: EXECUTIVE OFFICE

SUBJECT: Employer Directive 2004-04
Supcedes Employer Directive 2004-01
403(b) Information Bank (403bCompare.com)

PURPOSE

The purpose of this directive is to inform employers about the procedures regarding the creation of a 403(b) retirement investment product information bank, known as 403bCompare.com, established by Section 25100 et seq., of the California Education Code. This newly created information bank will be effective **November 30, 2004**. Therefore, employers should forward this directive to their staff who administer the 403(b) plans to ensure the timely completion of the steps or actions necessary to implement as specified in this directive.

The substantive changes made in this directive are in **bold** and underlined. They include:

- A change in the implementation date from July 1, 2004 to November 30, 2004, with conforming changes made to the date of other activities;
- A clarification in the definition of a vendor;
- The setting of the date of October 18, 2004 when Employer Administrator access will be available;
- A modification in the responsibilities of employers, as identified in the Administrative Requirements section, to be more consistent with the language in Education Code 25113; and
- The inclusion of additional information on the role of the contact person in the Employer Participation Section.

SCOPE

This directive contains information for all county superintendents of schools, school districts, and community college districts that allow their employees to contribute to a retirement savings product on a tax-deferred basis as described in Section 403(b) of the Internal Revenue Code of 1986. This directive does not apply to state agencies, nor does it replace any existing state and federal requirements or procedures related to 403(b) products (i.e. Hold Harmless Agreements, California Insurance Code Section 770.3, or Internal Revenue Code requirements).

DISCUSSION

Chapter 1095, Statutes of 2002 (Assembly Bill 2506 – Steinberg: copy attached for your reference), added Section 25100 et seq. to the California Education Code, which requires the California State Teachers' Retirement System (CalSTRS) to establish and maintain a comprehensive, impartial, online information bank consisting of vendors who offer products as described in Section 403(b) of the Internal Revenue Code, to all employees of California's local school districts, community college districts, and county offices of education. CalSTRS will administer and promote the online information bank under the name 403bCompare.com. Chapter 1095 applies to 403(b) products purchased by both credentialed and classified employees, regardless of whether they are CalSTRS members or members of another public retirement system. 403bCompare.com will provide information on available investment options, product performance, participant fees, vendor experience, services offered by the vendor, and educational content to help school employees understand investment product features and retirement planning principles. This information will be accessible through the 403bCompare.com Web site.

For the purposes of 403bCompare.com, a vendor is defined as a public retirement system, broker-dealer, registered investment company, nonbank custodian, or life insurance company that is qualified to do business in California and 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.** State law requires that initial vendor registration process be completed by July 1, 2004. **CalSTRS has completed this requirement. Prospective vendors have submitted a Letter of Intent to register on the Web site. Additional vendors who wish to participate in the initial registration process for 403bCompare.com have until the implementation date of the project to contact the 403bCompare.com system administrator (administrator@403bCompare.com). Vendors who fail to contact CalSTRS by the implementation date of the project will be unable to participate until the next open registration period which will be from May 1, 2005 through June 25, 2005.**

Employers' administrator access to 403bCompare.com is scheduled to be released on October 18, 2004. The Web site will be fully functional for employees November 30, 2004. For purposes of California Education Code Sections 25113 and 25114, November 30, 2004 will be known as the implementation date. As of November 30, 2004, only vendors who are registered with 403bCompare.com will be allowed to market their 403(b) products to California public school employees.

Beginning in January 2004, CalSTRS sent letters to prospective vendors of 403(b) products to inform them of the effect of the new law. A "Letter of Intent" Form was included for the vendors to complete and return to the 403bCompare.com Administrator. The information provided allows CalSTRS to determine the number of vendors who intend to register with 403bCompare.com. Employers can assist CalSTRS with this process by ensuring that their vendors of 403(b) products are aware of the new law and its requirements. **As of the date of this directive, more than 170 vendors have submitted Letters of Intent.**

ACTION

Administrative Requirements

With one exception, employers are prohibited from processing salary reduction agreements for, or forwarding any funds to, unregistered vendors or unregistered products beginning **November 30, 2004**. The one exception is that employers may continue to process payroll deductions after **November 30, 2004**, for their employees who have established **accounts with vendors who are** unregistered, providing that **account** was established prior to **November 30, 2004 and the employee makes continuous contributions to the product.** For purposes of this directive, such accounts will be referred to as "grandfathered."

If the employer uses the services of a third-party administrator for its 403(b) program, it is the employer's responsibility to ensure the third-party administrator adheres to these same requirements as the employer.

Employers are encouraged to notify the 403bCompare.com Administrator at Administrator@403bCompare.com if:

- The employer suspects materially inaccurate information has been provided by a vendor.
- The employer is aware that a registered vendor has changed its name, but that registered vendor is not displayed on the Web site.
- The employer is made aware that an unregistered vendor is marketing its 403(b) products to employees.
- The employer is made aware of other action in violation of California Education Code Sections 25100 et seq. or discrepancies displayed on the 403bCompare.com Web site.

Each registered vendor will be issued a vendor identification number by 403bCompare.com. Employers may ask a vendor to supply its 403bCompare.com vendor identification number to minimize confusion among vendors with similar names or addresses. "Grandfathered" vendors will not have a 403bCompare.com vendor identification number.

Employers are also encouraged to revise their Salary Reduction Agreement to include a field for the 403bCompare.com vendor identification number. As many vendors use the same or similar names, this unique identifier may help to eliminate confusion when the Salary Reduction Agreement is submitted to the employer.

Vendor Removal Process

California Education Code Section 25103 gives authority to the Teachers' Retirement Board to remove a vendor for submission of materially inaccurate information, not submitting assessed fees within 60 days of invoice, or failing to submit notice of material changes to registered products. Employers who provide contact information will automatically receive an email from 403bCompare.com when a vendor is removed from the Web site.

Audit

At the discretion of CalSTRS, employers may periodically be audited to ensure employers comply with the requirements of California Education Code Section 25100 et seq.

Conflict of Interest

California Education Code Section 25112 disallows employers, including elected school officials acting on behalf of the local school district, community college district, or county office of education, from receiving consideration from vendors in exchange for the promotion of a particular vendor or vendor's 403(b) products.

Bargaining Process

California Education Code Section 25111 allows employers to develop a process, in consultation with employee bargaining agents, to ensure that employees are aware of, and have access to, information contained on the 403bCompare.com Web site.

Employer Participation

Beginning **October 18, 2004**, employers will have the ability to log in to 403bCompare.com to:

- Upload **links to** their Salary Reduction Agreement Form so that their employees can print the document. This will reduce or eliminate the need for employers to provide paper copies to their employees.
- Add, edit, and remove employer users who have access to maintain employer information on 403bCompare.com.
- Designate their approved 403(b) vendors from a list of vendors who have registered with 403bCompare.com. This will allow employees to view the employer's approved

list of vendors online and potentially reduce employee contacts with the employer. If an employer does not designate its approved vendors, the employee will use a general query that may result in a selection of unapproved vendors, thus adding to the employer's workload.

- Update their list of approved vendors registered with 403bCompare.com.

Employers are encouraged to provide the name, telephone number, and email address of their designated 403(b) contact or "employer contact" to the 403bCompare.com Administrator as soon as possible. Attached, for your convenience, is a form to be completed by the employer to identify the contact person(s) who will have full administration rights on behalf of the employer. The form may be emailed to Administrator@403bCompare.com, faxed to (916) 229-4202, or mailed to 403bCompare.com, P.O. Box 15275, MS 44, Sacramento, CA 95851-0275. The employer's contact will be **assigned administrator rights to the Web site. That employee or employees will be the point of contact for 403bCompare.com on behalf of the employer. The contact(s)** will receive e-mail instructions for logging in to the Web site, maintaining employer information, **and setting up other users or administrators.**

The Web site will automatically generate an email notification to the employer's **administrator** and users when the following occurs on the 403bCompare.com Web site:

- A vendor is added
- A vendor changes its name
- A vendor has been removed
- A vendor has appealed removal
- A vendor has been notified of a material inaccuracy
- A vendor adds a product

If an employer does not provide contact information to the 403bCompare.com Administrator, it will be the employer's responsibility to monitor the Web site for additions, changes, or other modifications made by registered vendors, employees, or the 403b Administrator.

Employees will be able to use the 403bCompare.com Web site to compare the available 403(b) products offered by their employer and to print a copy of their employers' Salary Reduction Agreement.

Employers may ask vendors to provide their 403bCompare.com vendor identification number; however, it is the employer's responsibility to verify that the vendor is registered on the Web site.

After **November 1, 2004**, employers will receive 403bCompare.com informational material designed to inform employees about 403bCompare.com. Employers will be encouraged to distribute this information to their employees. If needed, the employer may make additional copies.

Vendor Notification

Employers may download a copy of the Letter of Intent, which can be accessed by clicking the “Vendor” tab on the 403bCompare.com Web site. To ensure your approved vendors are aware of the registration requirements, employers are encouraged to send a copy of the Letter of Intent to their approved vendors.

Vendors will be able to register on 403bCompare.com.com between May 1 and **November 30, 2004**. If vendors do not complete their registration by **November 30**, they will not be able to register until the next registration period in 2005. Employers will be able to verify a vendor’s registration beginning **October 18, 2004**.

You may view basic informational content of 403bCompare.com on the Internet at www.403bCompare.com. Questions regarding 403bCompare.com should be directed to the 403b Compare Administrator at (888) 394-2060, or [Administrator@403b Compare.com](mailto:Administrator@403bCompare.com).

Jack Ehnes
Chief Executive Officer

Attachments

403bCompare.com

EMPLOYER CONTACT INFORMATION

Complete the information listed below and forward to the 403bCompare.com Administrator via email to Administrator@403bCompare.com, or fax to (916) 229-4202, or U.S. Mail to 403bCompare, P.O. Box 15275, MS 44, Sacramento, CA 95851-0275

EMPLOYER NAME: _____

403(b) CONTACT*: _____

403(b) CONTACT TELEPHONE NUMBER: _____

403(b) CONTACT EMAIL (print or type): _____

403(b) BACKUP CONTACT**: _____

403(b) BACKUP CONTACT TELEPHONE NUMBER: _____

403(b) BACKUP CONTACT EMAIL (print or type): _____

OFFICIAL REPRESENTATIVE FOR EMPLOYER:

Signature

Printed Name

Title

Telephone Date

*The 403(b) contact must be employed by a California local school district, county office of education, or community college district. The individual identified will be contacted by the 403bCompare Administrator by email with appropriate information to login to 03bCompare.com to set up and manage employer information which includes setting up accounts for their users. A user is someone who can act on behalf of the employer to add, delete, or modify their approved vendor list and salary reduction agreement on 403bCompare.com.

**Backup contact will be sent the same information as the 403(b) contact above.

CALIFORNIA EDUCATION CODE

CHAPTER 39. SCHOOL EMPLOYER RETIREMENT INVESTMENT PRODUCT
VENDOR REGISTRATION PROCESS AND INFORMATION BANK

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.

(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.

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 their 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 their 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 that is not disclosed.

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.