

Employer Information Circular

Volume 23; Issue 10

September 18, 2007

New IRS Regulations Regarding 403 (b) Plans “90-24 Transfers”

The purpose of this circular is to inform employers about the final 403(b) regulations on information sharing requirements and the change to the rules for “90-24 Transfers” in particular.

Under current law, “90-24 Transfers” are governed by IRS Revenue Ruling 90-24, which permits transfers among 403(b) vendors without school district involvement or oversight. The new regulations change this approach. Under the new regulations, the school district and vendor are required to enter into an agreement prior to allowing any “90-24 Transfers.” This new rule does not affect transfers or exchanges among investment funds within a single investment vehicle but would affect transfers among investment providers or different contracts or custodial accounts offered by a single provider. Moreover, the new rule would only affect the “90-24 Transfers” and do not affect distributions upon termination of employment or otherwise.

The IRS has indicated that the new information-sharing requirements will apply as of January 1, 2009 to “90-24 Transfers” that are completed after September 24, 2007. To clarify, if a contract/account transfer is completed after September 24, 2007, it appears that the school district will be required to negotiate and enter into an information-sharing agreement by January 1, 2009 with the investment provider selected by the participant. Otherwise, the participant’s new investment contract/account will be disqualified and become taxable as of January 1, 2009.

At this time, there is still uncertainty about these new rules and it is not clear how easy it will be to enter into the required information-sharing agreements with the investment providers. **In light of these considerations, we strongly recommend that employers impose a temporary freeze, effective September 25, 2007 on all “90-24 Transfers.”** A temporary freeze will provide time for clarification of the legal and practical implications of these new rules. We also recommend that school districts advise their employees of this temporary freeze as soon as possible. For your convenience, we have attached a sample letter that you could send to your 403(b) participants. If transfers are allowed after September 24, 2007, the IRS could deem them as distributable events, which could impose tax implications on the employee.

It is imperative that employers implement a long-term compliance program prior to the effective date of January 1, 2009, so that 90-24 transfers can be allowed prior to that date.

If you have questions regarding this circular or how CalSTRS 403(b)Comply, CalSTRS’ new program to provide deferred compensation compliance and administration services to employers, can assist, please call CalSTRS 403(b)Comply at 888-394-2060 or visit our website at <http://www.CalSTRS.com/Employers/index.aspx>.

[School District Letterhead]

[September] _____, 2007

Participant Name
Address Line 1
Address Line 2

Re: Temporary Freeze on Revenue Ruling 90-24 Transfers

Dear _____ School District 403(b) Plan Participant:

The Internal Revenue Service recently issued new rules affecting 403(b) retirement plans. Among the changes are new rules affecting a participant's ability to transfer 403(b) funds among investment providers, contracts and accounts before taking a distribution from the plan.

As a result of these new rules, the _____ School District is placing a temporary freeze on all 90-24 transfers among investment providers, contracts and accounts, effective September 25. A 90-24 transfers occur when you choose to move your assets to another investment provider. It is important to note that the freeze only affects exchanges among investment providers, or among different contracts or custodial accounts offered by a single provider (for example, a transfer of funds from ING to CalSTRS VIP). It does not affect your ability to make exchanges among investment funds within your current investment vehicle (for example, exchanges among funds offered under the CalSTRS VIP 403(b) program), nor does it impact distributions upon termination of employment or otherwise.

The reason for this temporary freeze is that if a 90-24 Transfer among investment providers (or among different contracts or custodial accounts offered by a single provider) is completed after September 24, 2007, we cannot guarantee that your transferred account will remain in compliance with the new rules (and thus, remain tax-deferred) when the new rules become effective as of January 1, 2009. The freeze will give us time to understand the legal and practical implications of the new rules, and will be lifted as soon as the legal and practical implications of these new rules become clear.

During this freeze, we will not approve 90-24 Transfers among investment providers (or among different contracts or custodial accounts offered by a single provider). Furthermore, we strongly recommend that you do not undertake such an exchange, even if you are able to complete it without district approval after September 10. Finally, if you have taken initial steps toward such an exchange but do not believe the new investment vehicle will be issued in your name by September 24, 2007, we recommend that you consider cancelling the exchange.

Again, we wish to emphasize that this freeze only affects 90-24 Transfers among investment providers, or among different contracts or custodial accounts offered by a single provider. It does not affect your ability to make exchanges among investment funds within a single investment vehicle, nor does it impact distributions upon termination of employment or otherwise.

If you have any questions, please contact _____ at () __-_____.

Thank you,