

# Final 403(b) Regulations

**Relief From Immediate Compliance with 2009 § 403(b)  
Written Plan Document Requirement**

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# Background

Let's recap once again....





# History

- Proposed regulations issued 11/16/04
- Comment period ended 2/14/05
  - ASBO Int'l submitted comments
- Public hearing held 2/15/05
- Final regulations issued 7/26/07
  - Written plan required no later than 12/31/2008
- Revenue Procedure 2007-71 issued 11/24/2007
  - Provided model plan language for preparation of written plan
- Notice 2009-3 issued 12/11/2008
  - Provides an extension for adopting a written plan until 12/31/2009

# Effective Dates for the Regulations



- Contract Exchanges are effective *September 24, 2007*
- Life insurance changes are effective *September 24, 2007*
- All other non-clarification items operationally *are effective January 1, 2009.*
- Adoption of written plan now required *by January 1, 2010.*

# What relief does the notice provide?

How do we translate it?





## Notice 2009-3 – Relief for adoption only

- The IRS will treat these plans as meeting the requirements of 403(b) and the regulations during the 2009 calendar year if:
  - By December 31, 2009, the plan sponsor of the plan has adopted a written 403(b) plan that is intended to satisfy the requirements of 403(b) and the regulations.
  - During 2009, the plan sponsor operates the plan in accordance with a reasonable interpretation of 403(b) and the related regulations.
  - By the end of 2009, the plan sponsor makes its best effort to retroactively correct any operational failure during the 2009 calendar year to conform to the written plan.



## How does that affect our plan operations?

- Your plan must still operate as if there were a plan in written form.
- Eligibility - Universal Availability
- Investment Options - Qualified Funding Vehicles (Annuity/Custodial Mutual Fund Agreements)
- Contributions - including types, limitations, and aggregation with other plans
- Plan Rollovers
- Plan Transfers
- Optional plan features such as:
  - Participant loans
  - Hardship withdrawals
  - Roth provision
- Plan distributions
- ***Failure to operate in accordance with the plan terms, whether adopted or not, would be a compliance issue.***



# Can we postpone deselection of vendors?

- Vendor deselection is based on your investment policy statement, and not on your actual written plan. It is a procedural issue, not a compliance issue.
- Investment policies can be made effective at a later date; however, some investment providers may have company policies that limit their ability to extend past 1/1/09 without a signed agreement.
- Service Provider Agreements are not required under the regulations, but are recommended for good business practices to minimize plan sponsor liability.
- Information Sharing Agreements must still be signed with any vendor who has received a contract exchange and is a deselected vendor by 12/31/08.

# Is this a great gift?

- The extension only really offers relief to those plan sponsors who have not completed the adoption of written plan document (i.e. board approval and endorsement).
- All operational requirements mandated under the regulations must still be followed effective 1/1/2009.



# Questions?



- We would be happy to address your questions concerning the regulations. Feel free to contact us at:
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