

Final 403(b) Plan Regulations Employer Frequently Asked Questions

New IRS regulations for Section 403(b) plans take effect on **January 1, 2009**. In order for 403(b) plans to maintain their tax-qualified status, they must be in compliance with the new regulations by this date. The Retirement Savings Plan of the Presbyterian Church (U.S.A.) (hereinafter, “**the RSP**”) sponsored by the Board of Pensions is a 403(b)(9) plan, and is governed by the new regulations. Some employing organizations and churches offer multiple 403(b) plans, all of which must be in compliance with the new regulations by January 1.

Regardless of the number of plans you offer, the questions and answers below can help you understand your options — and actions you must take — before the new regulations take effect.

Note: Click on the links below to jump to a particular section.

[I. OVERVIEW](#)

[II. RETIREMENT SAVINGS PLAN ONLY](#)

[III. ONE OR MORE ACTIVE 403\(b\) PLANS](#)

[IV. MISCELLANEOUS](#)

[V. RESOURCES](#)

[I. OVERVIEW](#)

Q1: What is the overall impact of the final 403(b) regulations?

A: 403(b) plans will now require **increased employer oversight**. In the past, the role of the employer has sometimes been limited to remitting contributions to an account established by an employee. The new regulations will only sanction employer-provided 403(b) plans. Failure to provide proper oversight, as prescribed by the new regulations outlined below, puts your employees’ funds at risk of immediate taxation. The Board will provide substantial support for the RSP. If you offer other plans or programs, you must work with the associated vendors to bring them into compliance with the new regulations by January 1, 2009.

Q2: What are the key components of the final 403(b) regulations?

A: Beginning January 1, 2009, 403(b) plans or the employing organizations must:

- Certify loans, hardship withdrawals, and early distributions
- Establish and maintain a written plan document for 403(b) plans
- Enter into an Information Sharing Agreement with any closed or frozen programs that retain participant accounts (see Q17)
- Allow all eligible employees to make contributions/salary deferrals to the plan (only applicable to non-qualified church-controlled organizations, see Q14)
- Remit contributions to the plan within 15 business days from the end of the month in which the contribution is withheld from an employee’s salary (see Q16)
- Monitor employee and/or employer contributions/salary deferrals to ensure that they do not exceed the applicable limits across all defined contribution plans, including, 401(k), 403(b), and 457 plans

Q3: Will our 403(b) plans require a plan document?

A: As of January 1, every 403(b) plan receiving contributions must have a written plan document. The document must address plan eligibility, distributions, nondiscrimination testing (if applicable), and contribution limits. 403(b) plans, including tax deferred annuity accounts by whatever name called, that stopped receiving contributions before January 1 do not have to adopt a plan document (hereinafter referred to as “frozen plans”).

Q4: What happens if our plans do not comply?

A: If a 403(b) plan does not comply with the final regulations by January 1, the IRS could disqualify the plan, which would result in **immediate taxation of participants’ accounts**. If certain failures relate only to a participant’s individual account, then that account and all other 403(b) accounts purchased for the individual by the employer would become taxable. These types of failures include violations of distribution restrictions, loans in excess of statutory limits, and employee contributions/salary deferrals in excess of the applicable limit (\$15,500 for 2008).

Q5: What steps does our employing organization need to take to comply with the new regulations?

A: First, make a list of your current 403(b) plans and programs and identify the vendors that currently receive employee and/or employer contributions/salary deferrals. Next, decide which plan or plans you want to offer on and after January 1, 2009. If you want to consolidate or close programs, you should do so before January 1. Identify which of the scenarios below applies to your organization and read the related section:

- [**II. RETIREMENT SAVINGS PLAN ONLY**](#)
- [**III. ONE OR MORE ACTIVE 403\(b\) PLANS**](#)

It’s a good idea to begin these steps now, so that your organization has time to comply with the regulations before January 1.

[**II. RETIREMENT SAVINGS PLAN ONLY**](#)

Q6: Our employing organization only has members who actively contribute to the RSP sponsored by the Board. What steps do we need to take to comply with the new regulations?

A: In this case, you only need to:

- **Complete a Retirement Savings Plan of the Presbyterian Church (U.S.A.) Adoption Agreement** with the Board of Pensions before the end of the calendar year (see Q15)
- **Ensure that contributions are remitted** to Fidelity within the required time period each month (see Q16)
- **Monitor annual employee/employer contribution limits**
- For employing organizations other than churches and church-affiliated organizations (i.e., non-qualified church-controlled organizations - see Q14):
 - **Inform employees on an annual basis** of their rights and responsibilities under the Plan
 - **Conduct annual nondiscrimination testing**

All other compliance requirements under the final regulations will be the responsibility of the Board of Pensions. The Board is working with Fidelity and legal counsel to ensure that the RSP is in compliance with the final regulations by January 1.

III. ONE OR MORE ACTIVE 403(b) PLANS

Q7: Our employing organization has employees who actively contribute to the RSP and/or one or more other 403(b) plans through another vendor. What steps do we need to take to comply with the new regulations?

A: Your organization has two choices:

Option 1: Your organization can maintain all current plans beyond January 1. If you decide to continue both the RSP and other 403(b) plans, you will be required, among other things, to:

- Create plan documents for the other 403(b) plans
- Complete a Retirement Savings Plan of the Presbyterian Church (U.S.A.) Adoption Agreement with the Board of Pensions before the end of the calendar year (see Q15)
- Monitor annual employee/employer contribution limits for all plans
- Monitor distributions, including loans, hardship withdrawals, and required minimum distributions for the other 403(b) plans. Loans must be monitored across all plans.
- Approve hardship withdrawals for the other 403(b) plans
- Monitor investment performance and fees for the other 403(b) plans
- Ensure timely remittance of contributions to Fidelity and other vendors (see Q16)
- For employing organizations other than churches and church-affiliated organizations (i.e., non-qualified church-controlled organizations - see Q14):
 - **Provide universal access to employees and inform them on an annual basis** of their rights and responsibilities under the Plan
 - **Conduct annual nondiscrimination testing**

Note: Please be advised that the Board of Pensions cannot assist you in meeting the regulatory requirements for plans other than its own. You should contact an attorney familiar with 403(b) plans to assist you with compliance measures for plans other than the RSP.

Option 2: Your organization may cease future contributions to any 403(b) plan(s) or programs other than the RSP before December 31, 2008. All eligible employees who wish to continue contributing to a 403(b) plan may make contributions/salary deferrals to the RSP. In this case, your organization must:

- **Complete a Retirement Savings Plan of the Presbyterian Church (U.S.A.) Adoption Agreement** and return it to the Board of Pensions before the end of the calendar year (see Q15)
- **Ensure that contributions to the RSP are remitted** to Fidelity within the required time period each month (see Q16)
- **Monitor annual employee/employer contribution limits**
- For employing organizations other than churches and church-affiliated organizations (i.e., non-qualified church-controlled organizations - see Q14)
 - **Provide universal access to employees and inform them on an annual basis** of their rights and responsibilities under the Plan
 - **Conduct annual nondiscrimination testing**

The Board of Pensions is working with Fidelity and legal counsel to ensure that the RSP is in compliance by January 1, which will alleviate some of the administrative burden on employing organizations. If you elect Option 2, your employing organization will need to make a decision regarding existing account balances in the frozen plans (see Q11).

Q8: How do we cease contributions to all other 403(b) plans and begin remitting all contributions to the RSP effective January 1?

A: If you want to remit all new contributions to the RSP, you must **notify your current vendor(s)** of the change. You will need to work with each vendor to follow the necessary steps to properly cease contributions to the plan(s) by December 31, 2008.

You should begin to **communicate the change to all members** in the late summer/early fall and have participants **complete and return** a [Retirement Savings Plan Salary Deferral Agreement form](#) to the Board and a [Fidelity Investments/Retirement Savings Plan Enrollment form](#) to Fidelity. Once your employees enroll in the RSP, you will need to **remit contributions** to Fidelity, as required. For further enrollment details, refer to the Board of Pensions [Step-by-Step Enrollment Guide to the Retirement Savings Plan](#).

Q9: Are there advantages to offering the RSP as our sole 403(b) option?

A: Yes. The Board of Pensions will continue to work with Fidelity and legal counsel to ensure that the RSP **complies with the final regulations** and will continue to monitor operational compliance going forward. In addition to **ease of administration**, there are **no fees** associated with the RSP, and the Plan offers **socially responsible Fidelity funds** with PC(USA) social screens, often popular investment options for employees who seek long-term capital growth. Also, unlike commercial plan sponsors, the Board has the authority to designate RSP distributions as **housing allowance** eligible for exclusion from federal income tax.

Q10: Are there any disadvantages to our employing organization if we offer the RSP as our sole 403(b) plan?

A: The RSP offers twelve investment options, which represent an array of investment choices. Even so, some employees desire a wider range of choices. In addition, the RSP does not have a loan provision and requires full and immediate vesting of employer contributions. These provisions may not meet the needs of all employers.

Q11: If we cease contributions to contracts and custodial accounts other than the RSP, can the assets remain with the current vendor? What options do we have for these assets and what would the corresponding employer responsibility be?

A: If you decide to cease contributions/salary deferrals to certain vendors by December 31, 2008, the plan assets may remain with the vendor, or may be transferred to your current vendor under the plan-to-plan transfer rules of the final regulations.

Some contracts may limit employees' ability to transfer their accounts to Fidelity or impose such high transfer or termination fees that a transfer may not be a wise investment decision. Some employees may prefer to keep their accounts with certain vendors even after contributions have ceased. In both cases, the employing organization still has the responsibility to monitor fund performance and fees. The employing organization must also continue to monitor distributions from these frozen plans — e.g., certify hardship withdrawals and monitor minimum distribution requirements.

For these reasons, it is important for you to communicate with your employees in the coming weeks and months to determine which contracts they have entered into and whether a transfer to the RSP is possible. If you decide to transfer assets from frozen plans to the RSP, please contact the Board of Pensions at 800-773-7752 (800-PRESPLAN) for more information.

IV. MISCELLANEOUS

Q12: Will the new regulations have any effect on assignments of benefits to ex-spouses under domestic relations orders (DROs) and how they are approved by the Board?

A: No. The final 403(b) regulations have not changed the rules for DROs.

Q13: What are the new rules for hardship withdrawals?

A: If a 403(b) plan allows hardship withdrawals, employers must now request supporting documentation from the participant concerning the financial need and must **certify the hardship** based on the information provided. If a hardship is approved, contributions to the 403(b) plan must be suspended for six months. Employing organizations should draft or review existing hardship withdrawal procedures to ensure that all requests are processed according to the new rules. The Board already has such procedures in place for the RSP.

Q14: Is my organization a QCCO or a non-QCCO? Why do I need to determine this?

A: Under the Internal Revenue Code, churches and qualified church-controlled organizations (“QCCOs”) are exempt from certain legal requirements. A QCCO is any church-controlled 501(c)(3) tax-exempt organization that does not generally offer goods, services, or facilities for sale to the general public and receives less than 25% of its financial support from government grants or receipts from goods and services in related activities or business. Examples of churches and QCCOs are churches, middle governing bodies, General Assembly agencies and entities, seminaries, and primary and secondary schools. Non-QCCOs are organizations qualified to participate in church plans that are neither a church nor a QCCO. Examples of **non-QCCOs** are church-affiliated hospitals, universities, children’s homes, and retirement housing facilities.

For help determining whether your organization is a church, QCCO, or a non-QCCO under the Internal Revenue Code, please contact the Board of Pensions at 800-773-7752 (800-PRESPLAN).

It is important to determine whether your organization is a QCCO or a non-QCCO because the requirements under the final regulations are more extensive for non-QCCOs. Non-QCCOs must comply with the nondiscrimination testing and universal availability requirements under the final regulations. The RSP will have a separate plan document for non-QCCOs to adopt.

Q15: What is the Retirement Savings Plan of the Presbyterian Church (U.S.A.) Adoption Agreement? Why do I need it, and when and where can I get it?

A: All employing organizations that will be remitting contributions to the RSP as of January 1 must complete a [Retirement Savings Plan of the Presbyterian Church \(U.S.A.\) Adoption Agreement](#) and return it to [the Board of Pensions by December 31, 2008](#). [The Adoption Agreement is required](#) so that the Board will be aware of any exceptions to the eligibility, distribution, and employer contribution provisions provided in the RSP plan document.

Q16: After January 1, how quickly do we need to remit contributions to Fidelity or any other vendors we continue with?

A: The final regulations provide that an employee’s contributions/salary deferrals should be remitted to Fidelity or any other approved vendor **no later than 15 business days from the end of the month in which the contribution is withheld from an employee’s salary.** For example, if an employee is paid on April 15 and the employing organization withholds \$100 from the employee’s paycheck as a salary deferral, the \$100 must be sent to Fidelity no later than May 19 (assuming four non-business days). This rule can be somewhat burdensome if the same employee is also paid on April 30 and the employing organization withholds \$100 as a salary deferral. This contribution, even though paid 15 days later, would still need to be remitted to Fidelity no later than May 19. Please keep in mind that it is permissible to remit both contributions together.

Q17: What are best practices for information sharing with vendors?

Information sharing is necessary between plan sponsors and 403(b) vendors in order to facilitate compliance with the IRS distribution requirements and restrictions. If your organization decides to consolidate its plans and only permit contributions to the RSP after January 1, 2009, but employees are permitted to retain funds in frozen plans or programs, your organization should enter into an information sharing agreement or letter agreement with the frozen plan vendor(s) in order for your organization to continue to receive information on distributions (such as loans and hardships). No information sharing agreement will be necessary between your organization and the Board of Pensions because the terms of the Retirement Savings Plan Official Plan Document, the Fidelity Recordkeeping Agreement, and the Retirement Savings Plan of the Presbyterian Church (U.S.A.) Adoption Agreement cover the information sharing requirements.

V. RESOURCES

You may locate the documents listed below by entering the document’s name in the Search box found on the homepage of Pensions.org and clicking “GO,” or by following the appropriate links on the site to the Retirement section of Forms & Publications.

- [Retirement Savings Plan of the Presbyterian Church \(U.S.A.\) Adoption Agreement](#)
- [Retirement Savings Plan Enrollment Kit](#)
- [Retirement Savings Plan – Summary Plan Document](#)
- [Retirement Savings Plan – Official Plan Document](#)
- [Retirement Savings Plan Product Sheet](#)
- [Retirement Savings Plan Salary Deferral Agreement](#)
- [Step-by-Step Enrollment Guide to the Retirement Savings Plan](#)
- [403\(b\) Plan Questionnaire – New IRS Regulations](#)

In addition, [individual fund profiles](#) for the RSP can be found on the Retirement Savings Plan page of Pensions.org.

Q18: Who may I contact if I have further questions?

A: Please contact the Board of Pensions at 800-773-7752 (800-PRESPLAN).