



Securities Industry Association

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By Hand Delivery

CC: PA:LP:PR (REG-155608-02)
CC: Tom Reeder
Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20044

Re: Proposed 403(b) Regulations

Dear Sir or Madam:

On behalf of the Securities Industry Association, I am writing to comment on the proposed regulations under Section 403(b) of the Internal Revenue Code ("Code"). SIA members offer many varieties of 403(b) arrangements for employers to sponsor. These include individual self-directed custodial accounts, large group plans offering mutual funds through individual custodial accounts, individual tax sheltered annuities, and group annuities. In addition, SIA members manage many mutual fund assets and insurance separate accounts, which they or non-SIA member firms use when offering 403(b) arrangements.

Summary of comments

SIA recognizes that the proposed regulations provide much needed clarity and guidance for 403(b) arrangements. SIA thanks the Treasury and the Service for their work in developing such comprehensive regulations and is in agreement with many of the proposed modifications. However, 403(b) arrangements differ widely and have existed over a long time period in many and overlapping structures. Generally, the flexibility of 403(b) arrangements allows smaller non-profit organizations to sponsor a retirement plan relatively inexpensively as compared to, for example, a 401(k) plan. SIA believes that

403(b) regulations should encourage greater retirement savings opportunities for all sized employers and their employees. We believe that the proposed regulation will have the opposite effect for smaller 403(b) sponsors.

First, SIA is in agreement with the comments submitted by the National Tax Sheltered Accounts Association (NTSSA) that were submitted to Treasury and the Service. In addition, SIA would like to comment more extensively on specific aspects of the proposed regulations. SIA recommends that the final regulations modify the requirement that every 403(b) arrangement fall under a plan document. Additionally, we also urge that most 403(b) custodial accounts and annuities be allowed to be transferred. SIA believes that compliance with the proposed regulations could require many existing 403(b) arrangements to terminate, depriving many current participants of 403(b) arrangements to save for their retirement, and discourage many employers from offering 403(b) programs due to increased compliance costs.

Plan document

The 403(b) arrangements of larger employers have a written plan document because they are generally subject to the Employee Retirement Income Security Act of 1974 (“ERISA”), which includes a written documentation requirement. However, states and employers often allow employees to choose a 403(b) arrangement as a “salary deferral only” (“supplementary” or “optional”) retirement program. These simply allow employees to defer salary to individual custodial accounts or individual (or group) annuities. Smaller non-profit employers frequently use this “salary deferral only” structure as their sole retirement plan because of its low administrative costs. A primary reason that employers use this structure is that such arrangements can be exempt from Title I of ERISA under current regulations.

SIA is concerned that the requirement for a plan document in the proposed regulations will cause employers to close 403(b) arrangements using the “salary deferral only” structure, especially the great many used by public and private educational employees. We believe that the plan document requirement can greatly increase the cost of these structures as well as effectively bar the Title I ERISA exemption because of an employer’s responsibility to follow the written plan. “Salary deferral only” 403(b) arrangements can be exempt from Title I of ERISA, because employers do not control them. The proposed regulations require a degree of employer control that will eliminate this type of 403(b) arrangement.

SIA proposes that the Service, as part of the 403(b) regulations, create a model “safe harbor” 403(b) arrangement that employers can in lieu of a 401(k)-like plan document for “salary deferral only” 403(b) arrangements. Further, the Service should obtain assurances from the Department of Labor that use of the model will not in itself cause the loss of the Title I exemption.

The model could be similar to those provided for SIMPLE or SEP plans and list the requirements for 403(b) arrangements. We do not believe that the model should cause the arrangement to become part of a 401(a) style trust but continue to allow individual custodial account or annuity structure.

Transferring 403(b) arrangements

One hallmark of 403(b) arrangements, especially those which are “salary deferral only,” is the employee’s ability to transfer from one 403(b) account or annuity to another. This grants employees great freedom of choice with regard to investment selection, expenses, methods of distribution, and vendor selection. The proposed regulations take away these benefits by requiring transfers to be made under the control of a plan, which, in turn, is controlled by an employer. For example, if an employee leaves an employer and wishes to maintain the benefits of a 403(b) arrangement, the employee will be required to remain a member of the employer’s plan. Today, that employee could transfer to a custodial account or annuity that is independent of the employer and both increase his or her choice of benefits and reduce the employer’s cost and potential liability in sponsoring a plan.

Employers can establish 403(b) arrangements, which restrict transfers. Additionally, it is appropriate that 403(b) plans that are subject to Title I of ERISA or receive employer funds have such restrictions. However SIA recommends that this significant benefit for other employees be maintained in the final 403(b) regulations.

If you have any questions about our comments, please do not hesitate to contact the undersigned or Liz Varley at (202) 216-2032.

Sincerely,

Gregory J. Reynders
Chair, Retirement & Savings Committee

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CC: Tom Reeder