

## **Frequently Asked Questions about Revenue Ruling 90-24 Direct Transfers**

### **What are Revenue Ruling 90-24 Direct Transfers?**

This ruling permits the direct transfer of accumulations between 403(b) annuity contracts and custodial accounts (collectively referred to as “403(b) contracts”), whether or not the provider issuing the 403(b) contract is approved under your institution’s plan. After September 24, 2007, transfers from a 403(b) contract issued by a provider **approved** under your plan to an **unapproved** provider’s 403(b) contract will no longer be permitted unless the **unapproved** 403(b) provider enters into an information sharing agreement with your institution by January 1, 2009.

Our current understanding of the final 403(b) regulations, based on our conversations with IRS representatives responsible for this guidance, is that a separate information sharing agreement between the 403(b) plan sponsor (i.e., a participating institution) and an **approved** provider is not required – before January 1, 2009, or thereafter. This is because the IRS regulations presuppose that there is already an existing contractual relationship between the 403(b) plan sponsor and the **approved** provider to share information by virtue of the provider being selected to be an **approved** provider under the plan. The IRS’ intent with the information sharing agreement is to ensure there is plan compliance with transfers that occur to providers that are **NOT** approved under your 403(b) plan. The IRS is defining an **approved** provider as a provider which receives contributions directly from a plan, sometimes described as a “payroll slot” provider.

Keep in mind that, generally, transfers to unapproved funding vehicles could always be limited by plan terms and that the terms of the plans of most participating institutions follow that practice today. This repeal of 90-24 will primarily be an issue for the K-12 market and those public plans where the payroll slots were limited, but the institution allowed participants to transfer to any 403(b) contract, whether or not approved by the employer. And this is where the IRS has seen the greatest noncompliance in its 403(b) audit program.

### **What is an Information Sharing Agreement?**

An information sharing agreement is an agreement between the institution and an **unapproved** provider that outlines the information that must be shared between the employer and the provider to ensure the plan’s compliance with the requirements of Section 403(b) of the Internal Revenue Code and the regulations, including information needed to monitor loan limits, verify hardship distributions amounts and confirm termination of employment dates, which may be needed to process a distribution. Under the

regulations, providers can no longer rely on the employees' representations with respect to these matters.

Enclosed is a sample information sharing agreement that you can use for the **unapproved** providers that you intend to enter into agreements with by January 1, 2009. As this agreement is only a sample, we recommend that your legal counsel review and approve the agreement before you use it. This agreement will enable TIAA-CREF to process direct transfers requested by your plan participants to the **unapproved** providers from September 25, 2007 through January 1, 2009. In late 2008, TIAA-CREF will follow up with you to verify which providers you have entered into an information sharing agreement with by January 1, 2009.

So far, the IRS has not issued sample information sharing agreement language or defined the terms and conditions that need to be in the agreement. However, we anticipate that more guidance will be issued before the regulations' effective date. Therefore, depending on the IRS guidance, it is possible that you will need to amend the agreement to fully comply with the guidance.

#### **Why Did the IRS Make this Change to 90-24 Transfers?**

For years, Revenue Ruling 90-24 transfers have been completed by plan participants without the employer's knowledge or control to unapproved providers outside the plan. The IRS defines **unapproved** providers as those that do not have a "payroll slot" to receive contributions directly from the plan.

The IRS audits of 403(b) plans over the years have uncovered noncompliance with the legal requirements relating to areas such as loans, hardships and distributions prior to a triggering event (i.e., age 59½, termination of employment, death or disability), particularly with respect to the accumulations that were transferred to unapproved providers. The IRS is putting a stop to these activities by repealing Revenue Ruling 90-24 and requiring information sharing agreements between plan sponsors and unapproved providers.

#### **What Type of 403(b) Transfers are Allowed after September 24, 2007?**

In short, the following types of transfers will be allowed:

- 1) Providers who are **approved** by your institution to receive contributions and transfers and are part of your 403(b) plan; or
- 2) Providers who are **unapproved**, but who agree to enter into an information sharing agreement by January 1, 2009.

## **What Should I Consider When Authorizing an Unapproved Provider?**

You should consider the following:

- What steps is the provider taking to ensure the appropriate administrative procedures are in place to comply with the regulations?
- Will we be able to easily communicate with the unapproved provider when we need to verify loan amounts, hardship distributions and whether an employee has had a termination of employment?
- Will they enter into an information sharing agreement under your 403(b) plan by January 1, 2009?

## **TIAA-CREF is an Approved Vendor in our 403(b) Plan. Will TIAA-CREF Sign an Information Sharing Agreement?**

TIAA-CREF is taking the necessary steps to help ensure compliance with the regulations. It is our understanding in conversations with the IRS that as an approved vendor, we are not required to sign an Information Sharing Agreement. However, if you would like TIAA-CREF to sign one, our example is included for your use that we will sign with no review process. If you are not willing to use the sample enclosed, please send me an electronic copy of your Information Sharing Agreement and our legal counsel will review it. If the terms are acceptable, we will send a signed original back to you for your records. Please keep in mind these are not legally required to be executed until January 1, 2009.]

## **What is the Process if TIAA-CREF is no Longer an Approved Provider Under Your 403(b) Plan?**

If TIAA-CREF is no longer a provider with an approved “payroll slot” for your 403(b) plan, we will need to enter into an Information Sharing Agreement or a Letter of Intent to sign such an agreement by January 1, 2009, to allow transfers to and from TIAA-CREF. Enclosed is a copy of our Information Sharing Agreement for your use.]