

## What Are Your School's Responsibilities for "Orphan" 403(b) Accounts?

### Guidance: Rev. Procedure 2007-71

*Introduction:* In Revenue Procedure 2007-71, which includes certain model language specifically for public education employers (see the ASBO Specimen Plan Document which incorporates portions of that model language), the Internal Revenue Service included previously unavailable guidance on 403(b) accounts held by a school's employees with investment providers that are not a part of the school's plan. School business officials will be relieved to know that many of those accounts are "grandfathered," which means the school will have no direct responsibilities for those accounts under its 403(b) plan. The school may find some of the investment providers maintaining these grandfathered accounts, seeking, at a minimum, to confirm information regarding loans and hardship withdrawals under the plan.

However, some accounts are not grandfathered, and the guidance does require certain actions on the part of the school sponsoring the plan. These issues are addressed below both in brief bullet point format and on the charts that immediately follow. School business officials will want to consider communicating with investment providers holding non-grandfathered accounts that are not a part of the school's 403(b) plan, as well as employees who may be holding non-grandfathered accounts so those employees can consult with financial professionals prior to receiving loans or distributions from those accounts.

#### *What is an "Orphan" Account?*

An orphan account is a 403(b) account held by the school's employee, former employee, or beneficiary that is not a part of the school's 403(b) plan on January 1, 2009 (or later if the school's 403(b) plan is the result of a collective bargaining agreement). Certain orphan accounts are grandfathered, while others are not. For this purpose, an account with an investment provider that is deselected *after* January 1, 2009, is never an orphan account: the contract remains in the school's 403(b) plan as long as the contract remains in force and continues to hold plan assets, unless the contract is transferred to another 403(b) plan or distributed out of the school's 403(b) plan (such as in a plan termination or at severance of employment).

#### *Grandfathered Orphan Accounts:*

A school generally has no responsibility for including the following groups of grandfathered orphan accounts in the school's plan. Rather, the school's employees will deal directly with the investment providers of these accounts with no requirement that the school be directly involved:

- School employees' accounts held by investment providers (i.e., the insurance companies issuing the annuity contracts and the custodians holding the 403(b)(7) mutual fund investments) that were deselected before 2005 (i.e., the investment provider received no contributions made *to any account of any of the school's employees* after December 31, 2004).
- Accounts of individuals who were former employees or beneficiaries as of January 1, 2009, which are held by investment providers that were deselected prior to that date (although the providers may be seeking information prior to the granting of loans).
- 403(b) accounts that were properly transferred to any investment provider (regardless as to whether that provider was ever approved to receive contributions and whether that provider is part of the school's 403(b) plan after December 31, 2008) under rules in effect on or before September 24, 2007.

*Non-grandfathered Orphan Accounts:*

The guidance indicates that a school must make a reasonable good faith effort to include non-grandfathered accounts in compliance coordination protocols (also referred to as information sharing protocols) of your plan. (See details provided in charts 1 and 2 below.)

These non-grandfathered accounts include all 403(b) accounts held by the school's current employees in which the investment provider has received contributions between January 1, 2005 and December 31, 2008, and that investment provider is not eligible to receive either contributions or exchanges under the school's plan as of January 1, 2009.

*Correction of "Improper" Tax-Free Exchanges:*

A 403(b) account improperly exchanged between September 25, 2007 and December 31, 2008, can be "re-exchanged" before July 1, 2009, to an investment provider that is receiving ongoing contributions under the school's 403(b) plan, or with which the school has entered into an Information Sharing Agreement, and no information sharing is required for the "intermediate" contract. References to improper exchanges describe exchanges or transfers made to an investment provider which, on January 1, 2009, is neither an approved investment provider under the school's 403(b) plan nor an investment provider with which the school has entered into an Information Sharing Agreement.

**Chart 1: Grandfathered Orphan Accounts**

<b>Orphan Accounts for Which the School Has No Information Sharing Responsibility</b>		
<b>Ongoing Contribution Accounts Held by Current Employees (Contributions Made Before 2005 and Provider Deselected)</b>	<b>Accounts Held by Former Employees and Beneficiaries as of 1/1/09 (Provider Deselected)</b>	<b>Accounts Transferred On or Before 9/24/07</b>
<ul style="list-style-type: none"> <li>Contract held by current employee as of 1/1/09</li> <li>Contract issued before 1/1/05 <b><u>AND</u></b></li> <li>No contributions to <i>any</i> contract held by the investment provider after 12/31/04 (i.e., investment provider is not included under the school’s plan)</li> <li>No Information Sharing Agreement is required</li> </ul> <p>School has no responsibility for information sharing with the investment providers of these accounts. There need be no effort to include these investment providers in the school’s 403(b) plan.</p> <p>(The employee will deal directly with the investment provider holding the account with no impact on the school’s 403(b) plan. The investment provider may seek information from the school or other providers to comply individually with 403(b) regulations.)</p> <p>If the school’s 403(b) plan permits, employees can exchange these accounts to an investment provider that is a part of the school’s plan or with which the school has entered into an information sharing agreement.</p>	<ul style="list-style-type: none"> <li>Contract held by former employee or beneficiary as of 1/1/09</li> <li>Contract issued before 1/1/09</li> <li><b><u>Contract does not hold any assets of current employees as of 1/1/09, AND</u></b></li> <li>Investment provider ceases receiving contributions to <i>any</i> contract on or before 12/31/08 (i.e., investment provider is not included under the school’s plan)</li> <li>No Information Sharing Agreement is required</li> </ul> <p>School has no responsibility for information sharing with the investment providers of these accounts. There need be no effort to include these investment providers in the school’s 403(b) plan.</p> <p>(The former employee or beneficiary will deal directly with the investment provider holding the account with no impact on the school’s 403(b) plan. The investment provider may seek information from the school or other providers to comply individually with the 403(b) regulations, in particular, prior to permitting loans from those accounts.)</p>	<ul style="list-style-type: none"> <li>Contracts properly transferred under Revenue Ruling 90-24 on or before 9/24/07</li> <li>No Information Sharing Agreement is required</li> </ul> <p>School has no responsibility for information sharing with the investment providers of these accounts. There need be no effort to include these investment providers in the school’s 403(b) plan.</p> <p>(The employee will deal directly with the investment provider holding the account with no impact on the school’s 403(b) plan. The investment provider may seek information from the school or other providers to comply individually with the 403(b) regulations.)</p> <p>If the school’s 403(b) plan permits, employees can exchange these accounts to an investment provider that is a part of the school’s plan or with which the school has entered into an information sharing agreement.</p>

## Chart 2: Orphan Accounts That Are Not Grandfathered

<b>Orphan Accounts for Which the School Has Information Sharing Responsibility</b>
<p style="text-align: center;"><b>Ongoing Contribution Accounts Held by Current Employees (Contributions Made Between 1/1/2005 – 12/31/2008 and Provider Deselected) - School Must Take Some Action</b></p>
<ul style="list-style-type: none"><li>• Contract held by current employee as of 1/1/09</li><li>• Contract issued on or after 1/1/05 and before 1/1/09 <b><u>AND</u></b></li><li>• Contributions made to account between 1/1/05 and 12/31/08 <b><u>AND</u></b></li><li>• Investment provider is not eligible to receive contributions or exchanges under school's 403(b) plan on or after 1/1/09 (i.e., investment provider is not included under the school's plan)</li></ul> <p>As of January 1, 2009, the school must make good-faith effort to contact such investment providers in an effort to exchange the information necessary to facilitate compliance. This may be accomplished by entering into an Information Sharing Agreement or making other arrangements to share the information necessary for the proper administration of the school's 403(b) plan (including notifying the investment providers of the name and contact information for the person in charge of administering the plan).</p> <p>The investment provider must make a good-faith effort to contact the school to exchange information before allowing a distribution or loan.</p> <p>If the good-faith effort does not result in the exchange of necessary information, it is not entirely clear how these accounts are impacted. In its comment letter filed April 10, 2008, ASBO requested that the IRS provide clarification on this issue. Updates will be provided to ASBO members on this and other issues when additional guidance is issued by the IRS.</p> <p>If the school's 403(b) plan permits, employees can exchange these accounts to an investment provider that is a part of the school's plan or with which the school has entered into an information sharing agreement.</p>

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