OMNI & TSACG Compliance Services

Plan Sponsor Newsletter

A 403(b)/457(b) Quarterly Newsletter from
U.S. OMNI & TSACG Compliance Services

WINTER 2023

Cafeteria Plan Providers

A question we often receive from prospective clients is “Should we consider using our Cafeteria Plan provider for 403(b)/457(b) compliance services?” Generally, our response centers on three key areas:

Focus – Companies will invest money and resources in the line of business that generates the most revenue. Generally, Cafeteria Plan providers generate much of their revenue through the sale of supplemental benefits and 403(b)/457(b) investments. These providers often use 403(b)/457(b) compliance services as a loss-leader, and their competing priorities can lead directly to a lack of focus and service quality. OMNI/TSACG does not sell products/investments of any kind and is singularly focused on 403(b)/457(b) compliance. Our firm has chosen to do one thing and do it very well.

Information Security – Compliance administrators are entrusted with a significant amount of Personally Identifiable Information (PII). Ensuring the protection of this information is of paramount importance to our firm. We neither share this information with other parties nor use it for any other purpose than to fulfill our responsibilities as the Administrator of the plan(s). Cafeteria Plan providers both selling investments and administering compliance in the same plans leads to inherent information security concerns and conflicts of interest.

Access - The Meaningful Notice/Universal Availability provisions of IRS code require employers to notify their staff annually they have access to a 403(b) and/or 457(b) plan and to detail who is eligible to participate. The materials provided by our firm to help satisfy this requirement are designed to inform, educate, and influence plan participation. These materials have successfully passed IRS review in more than 80 audits over the past 5 years. Cafeteria Plan providers can utilize the information they have access to influence participation in the specific 403(b)/457(b) investments they offer. This structure can lead to employees believing the investments offered by the Cafeteria Plan provider have been endorsed by the employer.

The fact you are receiving this newsletter means you have made the wise decision to work with our firm. This decision will ensure you avoid the potential pitfalls of working with a compliance administrator whose #1 priority is not the compliant operation of your 403(b)/457(b) plan(s).

Reminder: Update Your Address Book for OMNI/TSACG

Back in January, OMNI/TSACG consolidated our offices in Florida into one location.

Please update our address for all UPS, FedEx, DHL, USPS, and other physical deliveries to the following address :

73 Eglin Pkwy NE, Suite 202
Fort Walton Beach, FL 32548

Plan Updates and Reminders

Maximum Allowable Contribution (MAC) Limits for 2024

OMNI/TSACG is committed to providing our clients with the most current 403(b), 457(b), and 401(k) Plan information as it is released by the IRS. The latest IRS information concerning MAC limits indicates that the normal limit increases by $500 to $23,000 for calendar year 2024.

<u>MAC Limits for 2024</u>

- The normal calendar year limit for 403(b), 457(b) and 401(k) plans will increase by $500 to $23,000 for 2024.
- The age-based additional amount (age 50 by 12/31/2024) remains unchanged at $7,500 for 2024.
- Any other catch-up options that may be applicable to your Plan(s) remain unchanged.

<u>Examples</u>

All employees, regardless of age or years of service, may contribute up to $23,000 to their 403(b), 457(b) or 401(k) account in 2024. (The limit is coordinated for 403(b) and 401(k) accounts. 457(b) accounts are not coordinated with other plans.)

Employees who will attain age 50 by 12/31/2024 may contribute an additional $7,500 to 403(b), 457(b) and/or 401(k) accounts in 2024. (This limit is coordinated for 403(b) and 401(k) accounts.)

<u>IRC §415 Limit</u>

The overall employee and employer contribution limit for 401(a), 401(k) and 403(b) plans increases by $3,000 to a total of $69,000 effective January 1, 2024. This overall defined contribution limit is of special importance to those plan sponsors with Special Pay Plans that are designed to accommodate accumulated leave payments.

Questions regarding this information should be directed to your program consultant.

403(b)/457(b) Employee Reminders

The beginning of a new school year is a great time for employers to remind all employees about the availability of the 403(b) and/or 457(b) plan.

Many Plan Sponsors use the back-to-school timeframe to remind staff of the general employee benefits that are available to them. Plan Sponsors can include basic 403(b) and/or 457(b) informational pieces, which can include the employer specific meaningful notice, plan newsletters, Plan Participation Guide, and more. OMNI/TSACG provides general and plan specific information on our website: *https://www.tsacg.com*.

Links to our website and plan educational pieces can also be posted on an employer Intranet page, where all benefit information is typically housed. This makes it easy for employees to access the information not only at the beginning of the school year but also throughout the year.

Free Financial Planning Tools for Employees

Your employees can learn more about retirement savings plans, managing personal finances, college funding options, and how to navigate Social Security when the time comes. Calculators, videos, and informative content on various topics can help guide your employees in their planning process.

To explore our Financial Wellness Center, go to: ***https://usrbpfinancialwellness.com***

K-12 Plan Sponsor Responsibilities and Plan Stewardship

Sarah Breiner, Managing Director and General Counsel for U.S. OMNI & TSACG Compliance Services (OMNI/TSACG), authored this article, which was published for all members of the NTSA (National Tax-Deferred Savings Association), on October 19, 2023. Link: https://ow.ly/XvGP50Q0oq0

One of the most important—yet confusing—tasks a public school district has when sponsoring a 403(b) plan is understanding its administrative responsibilities and the best practices used to serve as a good steward of these plans.

ERISA or Not?

When determining your organization's responsibilities, it is important to understand a public school 403(b) plan cannot trigger or elect coverage under ERISA. That law requires plan sponsors to perform various administrative functions and imposes a fiduciary responsibility in administering the plan. Public school 403(b) plans are "governmental plans" that are not subject to ERISA Section 3(32) and are given the broad exemption found in 29 CFR §2510. 3-2. As such, public schools are exempt from (1) ERISA, (2) the Act's fiduciary responsibility requirements, and (3) other reporting and filing requirements.

Generally, employer responsibility in non-ERISA governmental 403(b) plans is found in IRS regulations and applicable state laws based upon statutes that address the laws of common wills and trusts, prudent investor requirements, and in some states a version of Uniform Management of Public Employee Retirement Systems Act (UMPERSA).

Responsibilities

The IRS requires sponsors of public school 403(b) plans to establish and maintain a plan document that details the features of the plan and contains certain provisions as outlined in the IRS' Listing of Required Modifications (LRMS), which are based on the 403(b) final regulations. This includes updating your plan document to reflect legal or regulatory amendments. Public schools must also ensure that they are following their plan document provisions when administering the plan. It is recommended to establish policies and procedures to ensure the plan features are being administered properly and pursuant to the plan document.

Information sharing agreements. The IRS also requires governmental plans to have information sharing agreements**[1]** with the authorized investment providers. One of the additional requirements for a 403(b) plan is the administrative appendix that outlines the responsibilities of each of the parties under the plan.

This is a great tool for the employer to see who is responsible for the various provisions. As a matter of fact, this has been such a success, that the IRS plans to add this requirement to qualified plans in the future as well.

403(b) plan sponsors. Operationally, public school 403(b) plan sponsors are responsible for various functions such as salary reduction agreement (SRA) administration, maximum allowable contribution (MAC) limit monitoring, transaction adjudication, satisfaction of universal availability, proper remittance, etc. SRA administration includes establishing and maintaining SRAs with employees who elect to contribute a portion of their salary to the plan and ensure that participants do not exceed their MAC limit set forth by the IRS each year.

Universal availability. In addition, elective deferrals must be processed properly (e.g., pre-tax or Roth contributions), and be timely remitted to the authorized investment provider selected by the employee.

K-12 403(b) plan sponsors must also satisfy the IRS' "universal availability" requirement, which requires eligible employees to be given meaningful notice of their opportunity to participate in the plan. Generally, the IRS requires all employees to be eligible to participate in the plan with very limited exceptions.

Therefore, plan sponsors must ensure that their plan document sets forth who is eligible to participate in the plan and any exclusions are permitted by the IRS. Because excluding classes of employees can be very complex and hard to define, maximum inclusion is the safest bet to avoid eligibility problems.

Meaningful notice. Also, plan sponsors are required to provide "meaningful notice" to their eligible employees. While there is no express definition of "meaningful notice," the notice should generally explain what a 403(b) plan is, the benefits of the 403(b), and how to participate. While this notice is required to be given to employees annually, it is recommended that this notice be given multiple times throughout the year, and in different avenues such as through emailed correspondence, websites, newsletters, posters, videos, etc.

Compliance Key

It is important to keep good records of the operations of the plan so as to prove compliance in the event of an IRS audit.

It is critical that public school 403(b) plan sponsors ensure that the above responsibilities are met to avoid non-compliance with IRS regulations.

Participant Support and Education

Of equal importance is adequate investment provider choice and participant support and education. As public schools struggle with employee retention and pension reductions, maximizing the benefits of the 403(b) plan is more important than ever.

The most effective way to maximize the benefits in the 403(b) plan is to offer multiple investment providers that offer different investment types and services to accommodate all employees and their investment strategy and goals. An important element of the multiple provider environment is access to local advisors who can educate and provide support to employees. Advisor support and education coupled with general education programs to satisfy UA are the most impactful for participation in public school district 403(b) plans.

The Bottom Line

In sum, the most successful plan stewards focus on three hallmarks: (1) plan compliance and administration; (2) participant choice; and (3) participant support and education. Assistance from a third-party administrator can be a valuable resource in accomplishing these plan administration hallmarks. By partnering with a full service TPA, a public-school plan sponsor can alleviate the administrative and liability burden associated with plan compliance and administration. In addition, the TPA can work with the investment providers to offer beneficial education combined with adequate investment choices for all employees.[2]

Footnotes

[1] Information Sharing Agreement must comply with Internal Revenue Code Section 403 and accompanying Treasury Regulations. Some 403(b) plans have this language within the Plan document using the IRS sample language.

[2] In selecting a TPA, plan sponsors should perform due diligence to ensure the TPA is experienced in 403(b) non-ERISA retirement plans of K-12 public schools.