

## ***Frequently Asked Questions***

### **For Employers: New Section 403(b) Plan Regulations**

**New IRS regulations for Section 403(b) plans became effective on January 1, 2009.** In order for 403(b) retirement plans to maintain their tax-qualified status, they must be in compliance with the new regulations. The Episcopal Church Retirement Savings Plan and the Episcopal Church Lay Employees' Defined Contribution Retirement Plan (403(b)) (collectively, "**the CPF Plans**") sponsored by The Church Pension Fund (CPF) are 403(b)(9) church retirement income account plans governed by the new regulations. Some employers offer multiple 403(b) plans, all of which must be in compliance with the new regulations.

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

**PART I: OVERVIEW** provides some general concepts for you to consider in your efforts to comply with the final 403(b) regulations.

**PART II: WE ONLY PARTICIPATE IN CPF-SPONSORED PLANS** provides the required actions for employers who participate only in the CPF Plans.

**PART III: WE MAINTAIN ONE OR MORE ACTIVE 403(b) RETIREMENT PLANS WITH OTHER VENDORS, TOO** provides the required actions for employers who participate in one of the CPF Plans, and in another 403(b) arrangement through another vendor.

**PART IV: ADDITIONAL INFORMATION** sets forth general information regarding the regulations and other necessary administrative changes as a result of the final regulations.

**PART V: ADDITIONAL RESOURCES** provides additional sources of information.

#### **PART I: OVERVIEW**

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

**A:** In the past, the role of the employer has often been limited to remitting contributions to an account established by an employee. 403(b) retirement plans will now require **increased employer oversight**. Failure to provide proper oversight, as prescribed by the new regulations outlined below, may put your employees' accounts at risk of immediate taxation. CPF will provide substantial support with respect to the CPF Plans. If you offer other retirement plans or programs, you will need to work with the associated vendors and your legal counsel to bring them into compliance with the new regulations. See Q10 for a list of the key components of the final regulations.

##### **Q2: What is the first step I need to take to comply with the new regulations?**

**A:** You should make a list of your current 403(b) retirement plan(s) and programs and identify the vendors that currently receive employee salary deferrals and/or employer contributions. If you contribute only to the CPF Plans, please see PART II, below. If you contribute to the CPF Plans *and* another vendor, please see PART III.

## PART II: WE ONLY PARTICIPATE IN CPF-SPONSORED PLANS

**Q3: We only have employees who actively contribute to one (or both) of the CPF Plans. What steps do we need to take to comply with the new regulations?**

**A:** In this case, you only need to:

- **Complete a new Adoption Agreement** with CPF. This should have been completed by September 30, 2008, and is effective January 1, 2009 (see Q4). You need to periodically update the Adoption Agreement to reflect any changes.
- **Ensure that contributions are remitted** to Fidelity within a reasonable period of time each month (see Q5).
- **Provide an annual notice to eligible employees** of their eligibility to participate in the plan. (This requirement only applies to non-qualified church-controlled organizations (see Q12).) If you are a church or an elementary or secondary school controlled, operated, or principally supported by a church, you do not need to provide a notice to your employees.
- **Approve hardship withdrawals** upon employees' requests for distributions from their salary deferral accounts to satisfy immediate and heavy financial needs. In order to approve a withdrawal, your organization must request documents evidencing the financial need and a self-certification from the employee that he or she does not have any other sources from which to satisfy the need. Your organization should keep this supporting documentation in a safe place.
- **Approve loans** upon employees' requests. In order to approve a loan, your organization must request documents evidencing the legal financial reason for the loan, and also must confirm that the amount of the loan requested is at least \$500 and is in \$100 increments; the loan does not exceed the maximum loan available under the plan; and the employee has no more than one other loan currently outstanding.
- For employers other than churches and church-affiliated organizations (i.e., non-qualified church controlled organizations – see Q12) that make employer contributions to the Retirement Savings Plan, **conduct annual nondiscrimination testing** on the employer contributions. Non-QCCOs that make employer contributions to the Retirement Savings Plan should consider transferring to the Lay Employees' Defined Contribution Retirement Plan to avoid having to conduct annual nondiscrimination testing.

**All other compliance requirements under the final regulations will be the responsibility of CPF.** CPF is working with Fidelity and legal counsel to ensure that the CPF Plans are in compliance with the final regulations.

**Q4: What is the Adoption Agreement? Why do I need it, and when and where can I get it?**

**A:** All eligible employers that were remitting contributions to the CPF Plans as of January 1, 2009 were required to complete a new Adoption Agreement and return it to CPF by September 30, 2008. The Adoption Agreement has been amended to comply with the final 403(b) regulations. The Adoption Agreement will serve as a part of the plan document, and includes provisions related to eligibility and employer contributions. Employers must periodically update the Adoption Agreement to reflect any changes. You can also access the Adoption Agreements for the RSVP and Lay Defined Contribution plans online.

Download the **Lay DC Adoption Agreement** at [www.cpg.org/laydcenroll](http://www.cpg.org/laydcenroll)

Download the **RSVP Adoption Agreement** from at [www.cpg.org/rsvpenroll](http://www.cpg.org/rsvpenroll)

**Q5: How quickly do we need to remit contributions to the vendors?**

**A:** The final regulations provide that an employee's contributions/salary deferrals must be remitted to the approved vendor within a reasonable period of time each month. The final regulations suggest that a reasonable period is 15 business days from the end of the month in which contributions are withheld.



### PART III: WE MAINTAIN ONE OR MORE ACTIVE 403(b) RETIREMENT PLANS WITH OTHER VENDORS, TOO

**Q6: We have employees who actively contribute to one of the CPF Plans and/or one or more other 403(b) retirement 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 retirement plans beyond January 1, 2009. If you have decided to continue remitting contributions to both the CPF Plans and other 403(b) retirement plans, you will be required, among other things, to:

- Create plan documents for the other 403(b) retirement plans.
- Complete a new Adoption Agreement with CPF (required to be done by September 30, 2008), and periodically update the Adoption Agreement for any changes.
- Monitor employee/employer contribution limits for all retirement plans.
- Monitor distributions, including loans, hardship withdrawals, and required minimum distributions for all 403(b) retirement plans. Loans must be monitored across all retirement plans.
- Approve hardship withdrawals for the CPF Plans and the other 403(b) retirement plans (see Q14).
- Monitor investment performance and fees for other 403(b) retirement plans.
- Ensure timely remittance of contributions to Fidelity and other vendors (see Q5).
- For employers other than churches and church-affiliated organizations (i.e., non-qualified church-controlled organizations - see Q12):
  - Allow all eligible employees to participate in the plan and provide an annual notice to eligible employees of their right to participate in the 403(b) plan(s); and
  - Conduct annual nondiscrimination testing.
- Enter into an agreement to share information among all vendors.

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

**Option 2:** Your organization could have ceased future contributions to any 403(b) plan(s) or programs other than the CPF Plans by December 31, 2008. All eligible employees who wish to continue contributing to a 403(b) plan after that date may make contributions/salary deferrals to the CPF Plan you designate. In this case, your organization must:

- Complete a new Adoption Agreement with CPF (required to be done by September 30, 2008), and periodically update the Adoption Agreement for any changes.
- Ensure that contributions to the CPF Plan are remitted to Fidelity within a reasonable period of time each month (see Q5).
- Provide an annual notice to eligible employees of their ability to participate in the plan. (This requirement only applies to non-qualified church-controlled organizations (see Q12).). If you are a church or an elementary or secondary school controlled, operated, or principally supported by a church, you do not need to provide an annual notice to your employees.
- Approve hardship withdrawals upon employees' requests for distributions from their salary deferral accounts to satisfy immediate and heavy financial needs. In order to approve a withdrawal, your organization must request documents evidencing the financial need and a self-certification from the employee that he or she does not have any other sources from which to satisfy the need. Your organization should keep this supporting documentation in a safe place.
- Approve loans upon employees' requests. In order to approve a loan, your organization must request documents evidencing the legal financial reason for the loan, and also must confirm that the amount of the loan requested is at least \$500 and is in \$100 increments; the loan does not exceed the maximum loan available under the plan; and the employee has no more than one other loan currently outstanding.

- For employers other than churches and church-affiliated organizations (i.e., non-qualified church controlled organizations – see Q12) that make employer contributions to the Retirement Savings Plan, **conduct annual nondiscrimination testing** on the employer contributions. Non-QCCOs that make employer contributions to the Retirement Savings Plan should consider transferring to the Lay Employees' Defined Contribution Retirement Plan to avoid having to conduct annual nondiscrimination testing.

CPF is working with Fidelity to ensure that the CPF Plans are in compliance, which will alleviate some of the administrative burden on employers. If your organization chose to cease contributions to all other 403(b) retirement plans by December 31, 2008, CPF will work with you to transfer assets to the CPF Plans, if you elect to do so. If you did not transfer your other 403(b) plans to one of the CPF Plans before December 31, 2008, you will continue to have some administrative responsibilities relating to the frozen 403(b) plan(s) (see Q9).

**Q7: How do we cease contributions to all other 403(b) retirement plans and begin remitting all contributions to one of the CPF Plans?**

**A:** If you want to remit all new contributions to one of the CPF Plans, 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 your current plan(s) by the effective date of the change.

You should begin to **communicate the change to all employees** in the months preceding the effective date of the change. You will need to **complete and return** a new Adoption Agreement to CPF and have all employees complete and return Employee Application for Membership Forms to Fidelity. Once your employees enroll in one of the CPF Plans, you will need to **remit contributions** to Fidelity within a reasonable period of time (see Q5). For further enrollment details, refer to CPF enrollment kit or call us toll-free at (866) 802-6333, Monday to Friday, 8:30 AM through 7:00 PM ET (excluding holidays) or email us at [benefits@cpg.org](mailto:benefits@cpg.org).

**Q8: Are there advantages to offering one of the CPF Plans as our sole 403(b) option?**

**A:** Yes. Compliance with the final 403(b) regulations is simplified if you limit the 403(b) plans to one provider. CPF will continue to work with Fidelity to ensure that the CPF Plans **comply with the final regulations and will continue to monitor operational compliance going forward**. The investment options for the CPF Plans offer a variety of selections, including a stable value option with a fixed rate, reset periodically, and mutual funds ranging from a money market fund to growth-focused stock funds. The CPF Plans also offer the Fidelity Freedom Funds that provide a blend of stocks, bonds, and short-term investments within a single fund. Each Freedom Fund's asset allocation is based on the number of years until the Fund's target retirement date. Further, the CPF Plans allow participants to take a loan from their CPF Plan accounts -- up to \$50,000 or 50% of the account balance (subject to other limitations).

Importantly, unlike commercial plan providers, the Retirement Savings Plan has an additional clergy benefit. All distributions from the Retirement Savings Plan are designated as housing-allowance-eligible, which allows clergy to exclude the distribution from federal income tax up to their actual housing expense. (For more information on housing allowance, please review the Hammer Tax Guide and speak with your personal tax advisor.)

Any nondiscrimination testing for the Episcopal Church Lay Employees' Defined Contribution Retirement Plan (401(a)) will be performed by CPF on a plan-wide basis.

Finally, there is only a nominal quarterly administrative fee (.075%) based on a participant's account balance, and, as with all mutual fund investments, there are underlying fees and expenses. You can review the prospectus for information about fund fees and expenses.

**Q9: If we cease contributions to contracts and custodial accounts other than the CPF Plans, can the assets remain with the current vendor? What options do we have for these assets and what would the corresponding employer's responsibility be?**

**A:** If you decided to cease contributions/salary deferrals to certain vendors, the plan assets may remain with the vendor, or may be transferred to your current vendor, including one of the CPF Plans, under the plan-to-plan transfer rules of the final regulations.

Some contracts may limit your ability to direct the transfer of employees' accounts, limit the ability of employees' to transfer their accounts, 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. So long as assets remain with a vendor, the employer still has the responsibility to monitor fund performance and fees (except for individual contracts entered into by employees and frozen by December 31, 2008). The employer must also continue to monitor distributions from any frozen retirement plans – e.g., certify hardship withdrawals and monitor loans and minimum distribution requirements.

For these reasons, it is important for you to communicate with your employees to determine which contracts they have entered into and whether a transfer to one of the CPF Plans is possible. If you decide to transfer assets from frozen retirement plans to one of the CPF Plans, please call us toll-free at (866) 802-6333, Monday through Friday, 8:30 AM to 7:00 PM ET (excluding holidays) or email us at [benefits@cpg.org](mailto:benefits@cpg.org).

#### **PART IV: ADDITIONAL INFORMATION**

The following questions and answers provide additional information regarding specific issues identified in the previous answers. Questions 10, 12, and 15 are applicable to all employers. Questions 11, 13, and 14 are applicable to employers who contribute to plans other than the CPF Plans.

**Q10: What are the key components of the final 403(b) regulations?**

**A:** Beginning January 1, 2009, 403(b) plan sponsors, employers, or their delegates must:

- Certify loans, hardship withdrawals, and early distributions.
- Establish and maintain a written plan document. (If you are a church, this written plan document requirement only applies if you maintain a 403(b)(9) plan.). The IRS has delayed the effective date of the written plan requirement to January 1, 2010.
- Provide plan contact information to vendors with any frozen programs that retain accounts of employees (see Q13).
- If you are a non-qualified church-controlled organization (see Q12), allow all eligible employees to make contributions/salary deferrals.
- Remit contributions to the vendor(s) within a reasonable amount of time following the end of the month in which the contribution is withheld from an employee's salary. (For example, remitting contributions within 15 business days from the end of the month is considered a reasonable time.)
- Monitor employee and/or employer contributions/salary deferrals to ensure that they do not exceed the applicable limits across all defined contribution retirement plans, including 401(k), 403(b), and 457 retirement plans.

**Q11: Will our 403(b) retirement plans require a plan document?**

**A:** As of January 1, 2010, **every 403(b)(9) 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)(9) church retirement income account plans**, including tax-deferred annuity accounts, that stopped receiving contributions before January 1, 2010 (hereinafter referred to as "frozen retirement plans") **do not have to adopt a plan document**. Other 403(b) plans sponsored by a church do not need to adopt a plan document, but must be in operational compliance with the section 403(b) regulations.

### **Q12: 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 that apply to non-QCCOs (including the non-discrimination and universal availability requirements). Your adoption agreement has questions for you to answer that will assist you in your determination of your QCCO or non-QCCO status. Below is a short discussion of the definitions of church, QCCO, and non-QCCO for your reference. If, after reviewing the adoption agreement, you need additional assistance to determine whether your organization is a church, QCCO, or a non-QCCO, please call us toll-free at (866) 802-6333, Monday through Friday, 8:30 AM to 7:00 PM ET (excluding holidays) or email us at [benefits@cpg.org](mailto:benefits@cpg.org).

The term “church” includes a church, convention, or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or association of churches. 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 a QCCO are a seminary or a social services organization that receives 80% of its support from a parish. “Non-QCCOs” are all other 501(c)(3) organizations qualified to participate in church retirement plans that are neither churches nor QCCOs. Examples of non-QCCOs are hospitals, universities, nursing homes, and retirement housing facilities.

### **Q13: How do I coordinate the 403(b) regulations and limitations between multiple vendors?**

**A:** In order to coordinate the limitations and restrictions of the 403(b) regulations among your approved vendors, you will need to enter into an agreement with each of your vendors to ensure information is properly and promptly provided.

Many vendors may send you documents called information-sharing agreements. An information-sharing agreement is an agreement between a plan sponsor or an employer and a vendor under which the plan and vendor agree to provide each other with information to facilitate compliance with the 403(b) requirements, limitations, and restrictions. Although a formal information-sharing agreement is only required under the new regulations when an employee wants to transfer money to an annuity or custodial account offered by an unapproved vendor, in general it is useful to have a written agreement with each vendor to which you are sending employee money.

If your organization decides to consolidate its retirement plans and only permit contributions to one of the CPF Plans after January 1, 2009, but employees are permitted to retain funds in the frozen retirement plans, you will need to provide plan contact information to the frozen plan vendor so that the vendor can contact you when a participant requests a distribution.

The CPF Plans already have the necessary recordkeeping and other arrangements for sharing information with Fidelity.

### **Q14: What are the new rules for hardship withdrawals?**

**A:** Employees may no longer self-approve a hardship withdrawal from a 403(b) plan. If a 403(b) plan allows hardship withdrawals, employers must now request supporting documentation from the participant concerning the financial need and a written representation from the participant that the need cannot be relieved from other sources (unless contributions cease to the plan for a period of six months after the distribution (please note that this exception does not apply to the CPF Plans)). Based on this information, employers must consider whether to approve the hardship. Employers should draft or review existing hardship withdrawal procedures to ensure that all requests are processed according to the new rules. The CPF Plans already have such procedures in place.

#### **Q15: What are the rules for nondiscrimination testing?**

**A:** If you are a non-QCCO, then you must comply with the universal availability rules (see Q10).

For employers participating in the Episcopal Church Lay Employees' Defined Contribution Retirement Plan (401(a)), Fidelity will perform the required nondiscrimination testing for the Plan.

Employers other than churches and church-affiliated organizations (i.e., non-qualified church controlled organizations – see Q12) that make employer contributions to the Retirement Savings Plan must conduct annual nondiscrimination testing on the employer contributions. Non-QCCOs that make employer contributions to the Retirement Savings Plan should consider transferring to the Lay Employees' Defined Contribution Retirement Plan to avoid having to conduct annual nondiscrimination testing.

If you participate in multiple 403(b) or 401(a) plans, then you will be responsible for ensuring the non-CPF plans meet the nondiscrimination requirements.

#### **Q16: What happens if our retirement plans do not comply?**

**A:** If a 403(b) retirement plan does not comply with the final regulations by January 1, 2009, 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 salary deferrals and employer contributions in excess of the applicable limits (\$16,500 and \$49,000 respectively for 2010).

### **PART V: ADDITIONAL RESOURCES**

Plan information, enrollment applications, and the new Adoption Agreements are available on the Church Pension Group website.

For the Retirement Savings Plan (RSVP), go to [www.cpg.org/rsvpenroll](http://www.cpg.org/rsvpenroll)

For the Lay Employees' Defined Contribution (DC) Plan, go to [www.cpg.org/laydcenroll](http://www.cpg.org/laydcenroll)

#### **Q17: Who may I contact if I have further questions?**

**A:** For answers to any additional questions, please call us toll-free at (866) 802-6333, Monday through Friday, 8:30 AM to 7:00 PM ET (excluding holidays) or email us at [benefits@cpq.org](mailto:benefits@cpq.org).

*Please note that these questions and answers are provided to you for informational purposes only and should not be viewed as investment, tax, legal or other advice. Participating Employers should seek advice from legal counsel to ensure full compliance with the changes in the law. In the event of a conflict between the information contained in these questions and answers and the official plan documents, the plan documents will govern. The Church Pension Fund and its affiliates retain the right to amend, terminate, or modify the terms of any benefit plans described in these questions and answers at any time, without notice and for any reason.*

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