

SUPPORTING STATEMENT
Internal Revenue Service
Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts
REG-155608-02 / TD 9340
OMB Control Number 1545-2068

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts, Treasury Decision 9340, promulgates final regulations under section 403(b) of the Internal Revenue Code and under related provisions of sections 402(b), 402(g), 402A, and 414(c). The regulations provide updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). The regulations affect sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

The collection of information in the final regulations under section 1.403(b)-10(b)(2)(i)(C) requires the employer to enter into an agreement with the issuer of the other contract under which the employer and the issuer will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting contract, or any other contract to which contributions have been made by the employer, to satisfy section 403(b), including information concerning the participant's employment and information that takes into account other section 403(b) contracts or qualified employer plans (such as whether a severance from employment has occurred for purposes of the distribution restrictions in § 1.403(b)-6 and whether the hardship withdrawal rules of § 1.403(b)-6(d)(2) are satisfied).

(2) Information necessary for the resulting contract, or any other contract to which contributions have been made by the employer, to satisfy other tax requirements (such as whether a plan loan satisfies the conditions in section 72(p)(2) so that the loan is not a deemed distribution under section 72(p)(1)).

Such information exchange is necessary to ensure compliance with tax law requirements relating to loans and hardship distributions from section 403(b) plans and sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

2. USE OF DATA

The data will primarily be used by the section 403(b) plan sponsor or administrator to ensure that a plan participant receives a loan or hardship distribution from his plan account in accordance with the statutory limitations and requirements applying to these provisions. In addition, the data will be used by the Service to determine whether the eligible employer sponsoring the section 403(b) arrangement has complied with the statutory loan and hardship distribution requirements and other requirements of section 403(b) for the benefit of the plan participants and beneficiaries.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998. Information is shared between the employer and issuer and not collected by the Internal Revenue Service, only reviewed during an investigation or audit so electronic capability is not appropriate for this collection.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaption from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

We have attempted to minimize the burden on small businesses or other small entities wherever possible. This information collection is applied to not-for-profits.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Information exchange is necessary to ensure compliance with tax law requirements relating to loans and hardship distributions from section 403(b) plans and sponsors of section 403(b) contracts, administrators, participants, and beneficiaries. It will be used during an audit or investigation to verify compliance with Section 403 (b) of the Internal Revenue Code. Less frequent collection of information could adversely affect the government's ability to meet its mission.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The notice of proposed rulemaking regarding the revised regulations under section 403(b) was published in the *Federal Register* for November 14, 2004 (69 FR 67073) and it provided the public an adequate period in which to review and provide public comments relating to any aspect of the proposed regulation. A public hearing was on February 15, 2005, at which at a dozen witnesses discussed various aspects of the proposed regulations. After consideration of the comments received, the 2004 proposed regulations were adopted by Treasury decision 9340, subject to a number of changes, and published in the *Federal Register* on July 26, 2007 (72 FR 41128). The collection of information in 1.403(b)-10(b)(2)(i)(C) of the final regulations was

not included in the prior notice of proposed rulemaking and for that reason, TD 9340 solicited public comments. No comments were received during the comment period.

In response to the *Federal Register* Notice dated November 10, 2016 (81 FR 79118), we received no comments during the comment period regarding REG-155608-02 / TD 9340.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information is being collected by the agency. Information is being shared by the employer and issuer and only provided during an inquiry or audit.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.403(b)-10(b)(2) requires section 403(b) sponsors who want to permit in-service contract exchanges with outside vendors to enter into agreements with these vendors to exchange certain information with them regarding the exchanged section 403(b) contracts. The burden of the collection of information required by section 1.403(b)-10(b)(2) is estimated to be 45,000 hours with an average burden to each respondent of 4.1 hours. The estimated number of respondents is 11,000, and it is estimated that there will be approximately 8 responses per respondent, taking approximately 30 minutes to complete each response (11,000 respondents x 8.1818 responses x .50 hours = 44,999.9 total burden hour estimate.)

Code Section	Description	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Burden
1.403(b)-10(2)	Revised Regulations concerning Section 403(b) Tax Sheltered Annuity Contracts	11,000	8.1818	90,000	.5	45,000

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the paperwork burden previously approved by OMB.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.