



Common Misperceptions Regarding New 403(B) Regulatory Changes

In a recent Fidelity Plan Sponsor survey, research uncovered some common myths about the impact of pending 403(b) regulatory changes, expected to be finalized in June.

Perception	Reality
<p style="text-align: center;">Employers will be required to limit the number of plan vendors they use.</p> <hr style="width: 20%; margin: auto;"/> <p><i>Nearly two out of five (39%) plan sponsors responded incorrectly when asked if there was a limit on the number of plan vendors they could use.</i></p>	<p>Employers may choose any number of plan vendors to use, as long as the vendors are specified in plan documents. Yet, most plan sponsors see the practical need to begin to limit the number of investments and vendors in their plans.</p>
<p style="text-align: center;">Employers will be required to limit the number of investment choices they offer.</p> <hr style="width: 20%; margin: auto;"/> <p><i>One-third of respondents (33%) responded incorrectly when asked if they thought there was a limit to the number of investment choices they could offer.</i></p>	<p>Employers may choose any number of investment choices to offer as long as the funds are listed in the plan documents.</p> <p>Most plan sponsors realize that they will need to limit investments in order to effectively manage their plans.</p>
<p style="text-align: center;">Employers will be required to terminate frozen plans.</p> <hr style="width: 20%; margin: auto;"/> <p><i>More than two out of five (43%) plan sponsors answered incorrectly when asked if they would have to terminate frozen plans under the new regulations.</i></p>	<p>Employers will not be required to terminate frozen plans, but are given the option to do so under the new regulations. However, plan sponsors who decide not to terminate frozen ERISA plans should remember that they will still need to file 5500 reports to the IRS annually on these frozen plans. Additionally, all frozen plans, both ERISA and non-ERISA, are subject to IRS audits.</p>
<p style="text-align: center;">All 403(b) plans will be subject to ERISA requirements.</p> <hr style="width: 20%; margin: auto;"/> <p><i>Over half of plan sponsors polled (64%) answered incorrectly when asked if their plans would be subject to ERISA requirements.</i></p>	<p>The IRS does not determine ERISA status. (DOL regulations set ERISA policy.) These new regulations come from the IRS, which did not intend to cause a plan to fall under ERISA because of the new plan document requirement. Any 403(b) plan that was non-ERISA prior to these regulatory changes will remain non-ERISA after the changes are implemented.</p>
<p style="text-align: center;">Employers will be required to write one plan document per vendor.</p> <hr style="width: 20%; margin: auto;"/> <p><i>More than half (53%) of plan sponsors were unsure if one plan document was required per vendor, the majority of which were K-12 organizations (63%).</i></p>	<p>A plan sponsor can continue to allow multi-vendors, but must identify the vendors and the eligible investments in their plan document.</p>

Perception	Reality
<p>New regulations will burden plan sponsors with more fiduciary responsibilities.</p> <hr/> <p>Overall 61% of plan sponsors saw these changes as increasing their fiduciary responsibility. These responses vary based on the market segment:</p> <ul style="list-style-type: none"> • 74% of K-12 • 63% of Higher Education • 51% of Health Care 	<p>Plan sponsors will have the added responsibility of selecting vendors and documenting these vendors in their plan documents. However, this new responsibility is different from the standard of care required by a fiduciary.</p>
<p>Participants will not be allowed to make 90-24 asset transfers outside their employer's official portfolio of plan vendors.</p> <hr/> <p>More than half of plan sponsors polled (60%) answered incorrectly that 90-24 transfers will be banned, including:</p> <ul style="list-style-type: none"> • 63% of K-12 • 57% of Higher Education • 60% of Health Care 	<p>Technically, 90-24 transfers are being eliminated. However, new transfer regulations will be issued in place of the 90-24 ruling. The new regulations will continue to allow active participants to transfer their assets from one vendor's investments to another vendor's investments. The difference will be that transfers will be restricted to only those vendors specified in the plan document.</p> <p>All former employees will be prohibited from making transfers and, instead, will be limited to rollover transactions only.</p>
<p>These new regulations will increase the administrative burden on plan sponsors.</p> <hr/> <p>Overall, 56% of plan sponsors see these changes as creating additional administrative burden on their plan. This figure differs significantly based on the market segment:</p> <ul style="list-style-type: none"> • 72% of K-12 • 62% of Higher Education • 42% of Health Care 	<p>The IRS has always expected plan sponsors to maintain the capability to furnish certain reports and data in the event of an audit. So, a plan sponsor's obligation to provide records and reporting has not changed under the new regulations.</p> <p>Much of the reporting and audit data demanded by the IRS are standard for most recordkeeping vendors. Most 403(b) plan sponsors will find that the administrative work can be performed by record-keepers and has been provided for 401(k) plans for years.</p>
<p>These new changes will limit participants' investment choice.</p> <hr/> <p>A minority of plan sponsors, only 31%, saw this to be the case. However, that figure differs greatly by market segment:</p> <ul style="list-style-type: none"> • 54% of K-12 • 26% for Higher Education • 16% for Health Care 	<p>Plan sponsors are not required to limit the number of vendors or investment choices. However, the practical application of these rules will force plan sponsors to think about what investments make the most sense for their participants.</p>

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