

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: 19

DATE:
November 18, 2008

RECOMMENDATION

**TIAA-CREF RETIREMENT PLAN – PENSION PROTECTION ACT
ADMINISTRATIVE REQUIREMENTS**

ACTION REQUESTED:

It is recommended that the Board of Regents authorize the President to take such action and execute such documents necessary to ensure that University's 403(b) Defined Contribution Retirement Plan and 403(b) Supplemental Plan are in compliance with the Pension Protection Act and IRS 403(b) regulations, which are effective January 1, 2009.

STAFF SUMMARY:

The Pension Protection Act and the final regulations of the 403(b) of the Internal Revenue Code require that the University implement several administrative changes to its TIAA-CREF Retirement Plan and Supplemental Plan to remain in legal compliance. Plan revisions must be enacted by December 31, 2008.

As outlined in the attached Q&A, the vast majority of plan participants will not be impacted by these changes. The new regulations require that the University create written Plan Documents for each of its retirement-related plans. TIAA-CREF has provided a template for plan documents which is being reviewed by the University's outside legal counsel Miller, Canfield, Paddock and Stone and the University's Office of Legal Affairs. The Plan documents will be finalized prior to the December 31, 2008 deadline.

The new regulations also require more University oversight and tracking of loans, hardship withdrawals, and 15 year catch-up contributions under the Supplemental Plan. While these plan options remain available to plan participants, the new regulations will necessitate changes to the processes of administrating obtaining them. The new regulations expand rollover and hardship provisions to include non-spousal beneficiaries.

FISCAL IMPLICATIONS:

The new regulations will not impact ongoing costs of the University's Retirement Plans and one-time costs are included in the University's 2008-09 General Fund Budget.

ADMINISTRATIVE RECOMMENDATION:

The proposed action has been reviewed and is recommended for Board approval.

University Executive Officer

Date

Board Recommendation
Q & A Information

New 403(b) regulations were finalized in July 2007. They replaced original ones from 1964 and will take effect on January 1, 2009.

Will the employees' retirement plan through TIAA-CREF change?

No.

Will the employer's contributions remain the same?

Yes.

What will change?

- All 403(b) plans, including non-ERISA plans must be in writing. Written plans will have to include material plan provisions, such as plan eligibility, benefits (including timing and form of distributions available), limits on contributions, distribution rules and a list of annuity contracts and mutual funds offered under the plan. The plan sponsor can adopt a single plan document which incorporates other needed documents. EMU needs to work with the vendors to ensure their written plan reflects the provisions of all the 403(b) contracts & custodial accounts. Governmental and non-ERISA plans are not required to have written plan documents through December 31, 2008.
- Employers must limit direct transfers from all 403(b) accounts to authorized funding vehicles only. Transfers to funding vehicles that are not authorized payroll slot vendors will not be permitted after Sept. 24, 2007. This has already been in place.
- Employers must require a triggering event prior to all in-service distributions from 403(b) plans (such as disability, severance from employment or the participant reaching age 59 ½.) Under the final regulations, employer contributions to a 403(b) annuity will be subject to withdrawal restrictions for contracts issued after December 31, 2008.
- The new regulations do not permit employees to self-certify that loan or hardship requirements are satisfied. This only applies to voluntary employee contributions. Hardship withdrawals can be made only if the institution verifies that there is a financial hardship. Loans must also be approved by the institution. The regulations make it clear that the determination of whether an employee has had a hardship that would entitle them to receive a distribution is the Employer's ultimate responsibility. It is the employer's responsibility to establish procedures

to administer loan or hardship requests. The Employer also has the option to disallow loans or hardship withdrawals. The employer remains responsible for determining whether each loan complies with plan loan rules, IRC 72(p) requirements and for enforcing loan repayments. Employers are responsible for determining whether or not employees have incurred an “immediate & heavy financial need.”

- The ordering rule for catch-up contributions has changed. If a participant is eligible for both the special 15 years of service catch-up and the age 50 catch-up, but does not tax defer the maximum amount permitted, the final regulations confirm that the special 15 year catch-up is to be used first.

What will remain the same?

403(b) plans will continue to be available only to 501(c) (3) organizations, state colleges and universities and public schools.

403(b) tax deferred annuity plans (TDA plans) will continue to be exempt from nondiscrimination tests and will continue to be subject to only to the “universal availability” rule.

Employers will continue to be able to make contributions to former employees for up to five years after separation from employment.

The 15 year rule will continue to permit long service employees to make catch-up contributions. The ordering rule makes it difficult for employers to monitor. Prior to the regulations there was no guidance as to which catch-up to count first. Employers may elect to remove this “catch-up” provision. Having a 457(b) plan available to EMU employees makes this possible since employees are able to defer much more than the 15 year catch rule.

What is the employer’s responsibility regarding the investment options?

This is not part of the regulations but a good idea to establish an investment policy/committee to provide oversight.

Does the employee have to monitor all 403(b) supplemental plan loans and hardship withdrawals?

Yes, the employer must have procedures in place. EMU is working on these.

Do the vendors have to share information with the Employer?

Yes, in order for the employer to monitor withdrawals.

How can the Employer minimize risk?

The employer can establish procedures to monitor withdrawals or the employer can eliminate certain types of withdrawals.

Pension Protection Act (PPA) of 2006 permits new options for participants & beneficiaries.

Non-Spousal Rollover Provision – permits non-spouse beneficiaries to roll over the benefits that they inherit into their own IRA.

Hardship or Unforeseen Emergency Distributions – permits the participant to make unforeseen emergency withdrawals in the case of hardships or unforeseen emergencies of the participant's designated beneficiary.

It is believed that these provisions will be made mandatory when the Technical Corrections to the Pension Protection Act is enacted by Congress. EMU has enacted these provisions.

November 6, 2008