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Reminder To Execute 403(b) Plan Documents Before IRS Deadline Of December 31, 2009

Employers that sponsor 403(b) plans (public school districts and tax-exempt 501(c)(3) entities such as charities, museums, private colleges and hospitals) have until December 31, 2009, to adopt written 403(b) plan documents in order to comply with the 403(b) Regulations issued by the Department of Treasury ("Regulations"). Although the Regulations originally required the written 403(b) plan document to be in place before January 1, 2009, the IRS in December of 2008 extended the deadline to December 31, 2009, so long as the Plan document's effective date is retroactive to January 1, 2009. For more background with respect to the IRS extension issued last year, please click here to view our Employee Benefits Alert dated December, 2008 or visit <http://www.shipmangoodwin.com/publications/Detail.aspx?pub=500>.

Having a written 403(b) plan document is a requirement of the Regulations, and applies whether or not the Employer's 403(b) plan is governed by the Employee Retirement Income Security Act ("ERISA"). According to the Regulations, failing to have the written plan document executed and in place by the deadline results in the amounts contributed

to the 403(b) plan, including the employees' elective contributions deducted from their paychecks, being taxable income.

Many 403(b) vendors, recordkeepers and third party administrators have provided employers with sample 403(b) plan documents. These documents often take the form of an adoption agreement that is part of a standard "basic" plan. We have prepared custom plan documents for clients, too, where necessary. What is most important is that the plan document accurately reflects the terms of the employer's plan and how it operates.

As the year-end deadline approaches, most employers have already completed and signed a written plan document and are in compliance with the Regulations. For those employers who are still not done, there is still time to get the job completed and be in compliance.

QUESTIONS OR ASSISTANCE?

If you have questions about this alert or would like our assistance in reviewing or drafting your 403(b) plan document, please contact Richard Cohen at (860) 251-5803 or Natalie Welsh at (860) 251-5828, or any other member of the Employee Benefits Practice Group.

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