

Employee Benefits Alert

December 2008

IRS Extends Deadline for 403(b) Written Plan Document

On December 11, 2008, just three weeks before the December 31st deadline, the IRS released an official notice (IRS Notice 2009-3) extending until December 31, 2009, the written plan document requirement for 403(b) plans. By extending the deadline one more year, the IRS recognized that the 403(b) compliance work facing plan sponsors was more daunting than the IRS originally expected. The IRS extension should provide all 403(b) sponsors and their advisors with ample breathing room to finish the plan document in an orderly fashion.

What does this IRS extension mean for you?

If you already have your signed written plan document, as many 403(b) sponsors have, the extension is a non-event for you. If you do not yet have your document completed, the IRS extension means that you will be able to finish the drafting of the document and have it signed as late as December 31, 2009, so long as your plan document has a retroactive effective date of January 1, 2009.

Besides the written plan document extension, did the IRS announce other relief for 2009?

- Yes, during 2009, the IRS will not require strict compliance with the requirements set forth in the 403(b) regulations. Rather, the IRS will permit 403(b) plan sponsors to operate their plans in accordance with a reasonable interpretation of Section 403(b), taking into account the final regulations. This lower compliance standard is welcome news for all 403(b) sponsors as they grapple in 2009 with their first batch of 403(b) plan compliance issues under the new regulations.
- Yes, during 2009, the IRS expects all 403(b) sponsors to make their best effort to correct any operational failure that occurs during 2009 that causes the 403(b) plan to fail to conform to the terms of its written plan document. The IRS Notice instructs plan sponsors to follow the same general principles of correction that the IRS has set forth in its existing correction program for employee plans, which allows for many plan errors to be corrected by plan sponsors through self-correction without IRS involvement. Correcting errors (without jeopardizing the plan's tax-favored status) is a welcome development and should be something that all 403(b) sponsors pay particular attention to during 2009.



What to do next?

In 2009, many 403(b) sponsors, for the first time, will face administrative issues with their 403(b) plans. The IRS is making it clear that it does not view the written plan document as a mere formality that can be “thrown in a drawer” and forgotten. The IRS continues to pursue its goal of having 403(b) plans operate more like 401(k) plans and other qualified plans. In this respect, being sure that your 403(b) plan stays in compliance with the plan document and the other IRS regulatory requirements, and utilizing correction procedures when the plan fails to conform, will be a very important ongoing job for all 403(b) sponsors.

Questions?

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