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New 403(b) Plan Language and Approval Procedures Released By IRS

By Bernard E. Kaplan, JD, LLM

More than three years have passed since tax-exempt 501(c)(3) organizations and public schools were first required to have written plan documents in place for their 403(b) retirement plans. Now, the IRS has released sample language for use in 403(b) plan documents and unveiled procedures for preapproving such documents (Rev. Proc. 2013-22).

Your Current Plan

Your existing plan documents should include all of your plan's material provisions (regarding eligibility, benefits, contribution limits, distributions, etc.). Although good faith efforts were made to ensure that the terms of your plan comply with Section 403(b) of the tax code and the related IRS regulations, until now the IRS had not provided suggested language and had not provided a procedure for employers to obtain formal IRS approval of their plan document.

In the newly issued procedure, the IRS provides that all 403(b) plan documents will be required to be rewritten to contain the suggested language or variations acceptable to the Service.

Preapproved Plans

Retirement plan practitioners and vendors, such as financial institutions, will have to submit their proposed plan documents with the suggested language to the IRS in order to receive an advance approval letter stating that the plan meets all of the requirements for a 403(b) plan. Once approval is received, employers may adopt a preapproved plan document.

The format of the 403(b) document will be similar to what most employers are accustomed to today. There will be a Basic Plan Document containing all of the provisions of the law. And there will be an Adoption Agreement with fill in the blanks and options to select that are specific to each employer.

You Have Time

It is important to note that the IRS rewrite and approval process is long. There is ample time before an employer is required to have a new preapproved plan in place. The IRS is accepting practitioner and vendor applications for approval letters from June 28, 2013 through April 30, 2014. After the IRS has reviewed all of the plans submitted by the April 30, 2014 deadline, it will announce a deadline for employers to adopt a preapproved plan. That deadline will be no earlier than one year from the date of the announcement, or sometime after April 30, 2015. During this period, we will keep you informed of any developments and advise your organization in any way we can.



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Failure to Meet the Original 2009 Deadline

What if your organization failed to timely adopt a written plan by the December 31, 2009 deadline or started a new 403(b) plan after 2009 without adopting a written plan? The IRS's recently updated Employee Plans Compliance Resolution System (EPCRS) provides a method your organization can use to correct the error and be in good standing to adopt a preapproved plan when they are available.

This document-failure correction requires filing with the IRS under the Voluntary Correction Program (VCP) and paying a filing fee that is based on the number of participants your plan has. Employers are eligible for a 50% reduction in the fee if they file under the VCP by December 31, 2013 and the document failure is the sole 403(b) plan failure.

Next Steps

If you need assistance in getting your plan into compliance or if you have any questions about the new document preapproval program or using the EPCRS, please contact Bernard Kaplan, Managing Director at CBIZ Tofias and head of the Retirement Plan Services Practice, at BKaplan@cbiztofias.com or 617.761.0541. You may also contact any member of your Not-for-Profit & Education Practice team, or reach us at notforprofit@cbiztofias.com.

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