



403(b) Plans: Yesterday, Today and Tomorrow



Employee Plans
Phone Forum
April 30, 2010



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Tax Exempt and
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403(b) Program



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About those Regulations

- 403(b) regulations became effective 1/1/09
- EO Controlled Groups – 1.414(c)(5) became effective 1/1/09 (More Later)
- But wait.....



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The Written Plan Requirement

- Originally to be in place by 1/1/09
- Instead, transitional relief for 2009
 - Notice 2009-3
 - As of 1/1/09, no pre-approved or determination letter program existed
- Initial Remedial Amendment Period, beginning on January 1, 2010
 - Ann. 2009-89



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Transition Relief for 2009

- Notice 2009-3 provided transition relief for 2009 calendar year if:
 - Written plan was adopted on or before 12/31/09 and was intended to satisfy 403(b), including the regulations
 - During 2009, plan was operated in accordance with a reasonable interpretation of 403(b) and the regulations
 - On or before 12/31/09, “best efforts” were made to retroactively correct operational failures during 2009 to conform with the written plan



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Transition Relief for 2009

What are “Best Efforts” for 2009 Corrections?

EPCRS – Rev Proc. 2008-50

Section 6 - general principles

- restoration of benefits
- consistency of application
- reasonable and appropriate correction



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Transition Relief for 2009

- No written plan form failure defects in 2009 - includes
 - Absence of written plan or
 - Absence of amendment of existing plan to comply with final regulations
- Notice 2009-3's transition relief applies only to 2009 calendar year



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Initial Remedial Amendment Period

- Announcement 2009-89 (released 12/10/2009)
 - Intention to publish Revenue Procedures for
 - Obtaining opinion letters for prototype or other “pre-approved plans”
 - finalizing draft Revenue Procedure in Ann. 2009-34
 - Obtaining determination letter for individually designed plan
 - Remedial amendment period beginning on 1/1/2010 if certain conditions are met



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Initial Remedial Amendment Period

- Remedial Amendment Period retroactive to January 1, 2010 and Employer Reliance starting on January 1, 2010, if:
 - Conditions for 2009 relief under Notice 2009-3 are met, and
 - adopt a pre-approved plan with a favorable opinion letter or
 - apply for an individual determination letter when available



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Initial Remedial Amendment Period

- Remedial Amendment Period
 - Employers may correct form defects in their plan documents retroactive to January 1, 2010
- Employer Reliance (Beginning on 1/1/2010)
 - Employers will have reliance that the form of their plan documents satisfy 403(b) and the regulations if they retroactively correct plan defects during the remedial amendment period



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Initial Remedial Amendment Period

- New Plans (Established On or After 1/1/10)
 - Will have employer reliance retroactive to plan's effective date:
 - If employer either adopts pre-approved plan with a favorable opinion letter, or
 - Applies for an individual determination letter and
 - Corrects any form defects retroactive to plan's effective date



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Initial Remedial Amendment Period

- Ann. 2009-34 (issued April 14, 2009)
 - Announced **draft** revenue procedure for upcoming 403(b) prototype program
- Final Revenue Procedures for prototype or other pre-approved plans coming soon...



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Announcement 2009-34 Highlights

- Public comment period ended June 1, 2009
- Adopting a prototype plan is voluntary
- No prototypes permitted with non-elective vesting schedules
 - Final Revenue Procedures: some type of vesting schedule may be allowed
- No prototypes available for
 - 403(b)(9) retirement income accounts
 - Those specifically designed for ministers or church-related organizations
 - Final Revenue Procedures will likely include above



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Announcement 2009-34 Highlights

- Standardized and non-standardized prototypes available
- No applications for opinion letters before March 15, 2010
 - Subject to change in finalized Revenue Procedure
- Program reviews only plans and adoption agreements - **NOT** annuity contracts or custodial accounts under the plan
- See also supportive sample plan language (draft LRM) on our website: www.irs.gov/ep

www.irs.gov/ep



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Initial Remedial Amendment Period

Coming soon in upcoming Revenue Procedures . . .

- Determination letter program for individually designed plans
- More details on
 - remedial amendment period
 - time-frames for adopting pre-approved plans
 - applying for individually designed plan determination letters



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Initial Remedial Amendment Period

- Revenue Procedure 2008-50
 - 403(b) EPCRS modifications
- Rev. Proc. 2007-71
 - Model Plan language - continued employer reliance



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And, Meanwhile...

- Examinations continue
 - Universal availability is still main issue
- Concerns continue:
 - Plan termination not always simple
 - Additional guidance coming
 - Confusion about 3121(w) churches vs. 414(e) religious organizations
 - Other lingering issues . . .



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The Written Plan Refresher – Essential Elements

- Eligibility (non-discrimination rules)
- Benefits
- Dollar limitations
- Available investments
- Time and form of distributions



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The Written Plan Refresher – Optional Elements

- Loans
- Hardship distributions
- Auto enrollment
- Roth's



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The Written Plan Refresher – Optional Elements

- Elective deferral catch-ups
 - 15 year plus service
 - Age 50 or older
- In-service contract exchanges
- Transfers
- Termination
- 5-year provision



403(b) Failures and their Effect

- Not operating in accordance with plan terms
 - Affects all contracts (aggregation rule) of employee(s) for whom failure occurred
- Nondiscrimination failures – elective and non-elective
 - Non-elective failures not applicable to governments
 - Plan-wide affect



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403(b) Failures and their Effect

- Ineligible employer
 - Plan-wide effect
- Improper written plan or no written at all
 - Plan-wide effect (not in 2009)



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Final Regulations – New EO Controlled Group Rules

- 1.414(c)-5 – 414(c) Common Control – for all tax-exempt organizations for 414(c) purposes:
 - Addresses aggregation to determine employer for all control group benefit purposes for exempt organizations
 - Except government, steeple churches and Qualified Church Controlled Organizations (QCCOs)
 - Based on 80% director/trustee common control test
 - Permissive aggregation for those tax-exempts with common exempt purpose



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Final Regulations – New EO Controlled Group Rules

- Potential impact:
 - Nondiscrimination rules
 - Contribution limits, including 15 years of service catch-up
 - Minimum distributions
 - Severance from employment

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IRC 403(b) Tax-Sheltered Annuity Plans - Microsoft Internet Explorer

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IRC 403(b) Tax-Sheltered Annuity Plans

A 403(b) tax-sheltered annuity (TSA) plan is a retirement plan offered by public schools and certain tax-exempt organizations. An individual's 403(b) annuity can be obtained only under an employer's TSA plan. Generally, these annuities are funded by elective deferrals made under salary reduction agreements and nonelective employer contributions.

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What's New

[403\(b\) Mini-Courses](#)
Presentations on operating 403(b) plans and how they work.

[Proposed amendments](#) to the regulations relating to certain cash or deferred arrangements and matching contributions under section 403(b) plans were published in the Federal Register. The proposed regulations would allow plans that incur substantial business hardship to reduce or suspend safe harbor nonelective contributions during a plan year.

A special edition of [Employee Plans News](#) contains a brief summary of the proposed amendments.

Announcement 2009-34
This announcement contains drafts of the [revenue procedure](#) and [sample plan language](#) for §403(b) prototype plans.

The draft revenue procedure explains the proposed 403(b) plan prototype program for issuing opinion letters and the sample plan language can be used to draft §403(b) prototype plans. Interested persons are invited to comment on the drafts of the

Resources:

Guidance:

[403\(b\) Final Regulations](#)
(released July 24, 2007)

Published July 26, 2007 in the [Federal Register](#), with a general effective date of taxable years beginning after December 31, 2008, these regulations encompass the changes made by legislation from the past 43 years. By diminishing the extent 403(b) plans differ from other salary reduction arrangements (401(k) and 457(b)), administration of 403(b) plans will be simpler, which should lead to increased compliance.

[Overview](#)

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How Can I Find Out More?





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Thank you!

Questions?

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