

IRS Finalizes Program for Pre-Approval of 403(b) Plan Documents

April 24, 2013

On March 28, 2013, the IRS finalized the program for pre-approval of prototype and volume submitter 403(b) plan documents first announced in 2009.¹ In general terms, a prototype plan consists of a basic plan document that applies to all adopting employers and an adoption agreement that such employers use to customize certain plan features. A volume submitter plan consists of a specimen plan document that an adopting employer may modify within certain limits. A volume submitter plan may also include an adoption agreement. Under the new IRS program, vendors who expect a plan to be adopted by at least 30 employers may submit the applicable plan document(s) to the IRS for pre-approval.

Submissions from vendors will be accepted beginning June 28, 2013. Once the IRS begins approving prototype and volume submitter plans, sponsors of 403(b) plans will have access to a product that permits many plan design choices while offering assurance that the plan document complies with the applicable tax rules. Notably, the IRS has announced that plan sponsors that adopt a prototype or volume submitter plan may be able to rely on such a document to retroactively cure documentary defects in any 403(b) plan documents they may have already adopted in order to comply with the December 31, 2009 plan document deadline. Additional guidance regarding this possibility for remedial amendment is expected.

The IRS has informally indicated that it will likely be some time after June 28, 2013 before pre-approved 403(b) plans become available. In the meantime, sponsors of 403(b) plans that have not complied with the December 31, 2009 plan document deadline should not wait to adopt a written plan document. Rather, they should consider utilizing the correction procedure under the IRS' Employee Plans Compliance Resolution System ("EPCRS") described in our recent client alert [New IRS Program for Retroactive Adoption of 403\(b\) Plan Documents](#). Similarly, plan sponsors that are aware of specific documentary or operational defects with respect their current 403(b) plan may wish to review the expanded correction procedures now available under EPCRS. Benefits counsel can assist plan sponsors in identifying as well as correcting such defects.

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This client alert has focused on some key aspects of a new IRS program for pre-approval of 403(b) plan documents. The program contains many additional provisions relevant to such documents. For more information regarding the pre-approval program, EPCRS, or other issues concerning your 403(b) plan, please contact [Joanne C. Youn](#) at jyoun@capdale.com or at 202.862.7855.

¹ Rev. Proc. 2013-22 (Mar. 28, 2013), available at www.irs.gov/pub/irs-drop/rp-13-22.pdf; see also IRS Announcement 2009-34 (Apr. 14, 2009), available at www.irs.gov/pub/irs-drop/a-09-34.pdf.

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