
IRS Gives 403(b) Sponsors More Time to Comply with Written Plan Document and Other Requirements

On Thursday, December 11, 2008, the Internal Revenue Service issued IRS Notice 2009-3, giving employers a “transitional period” to comply with certain key provisions of the final 403(b) regulations, including the requirement to adopt a written 403(b) plan document.

Before reading on, there is one important item to keep in mind - the effective date of the final 403(b) regulations was NOT extended beyond 12/31/08!

To maintain a retirement plan, an employer must generally comply with all applicable federal regulations. Under the final 403(b) regulations, issued July 26, 2007, employers sponsoring 403(b) plans for 2009 are required to adopt a written plan document *before* January 1, 2009. Many employers, however, have expressed concern with this deadline. As a result, the IRS has given employers until December 31, 2009, to adopt a written 403(b) plan document, provided the plan meets all other requirements under the final regulations.

Once again, it is important to note that the IRS has *not* delayed the effective date of the final 403(b) regulations. The Service has simply given employers additional time to comply with the requirement for a written plan document. According to Notice 2009-3, the IRS will not treat a 403(b) plan as failing to satisfy the final regulations during 2009, provided that:

- A written plan document is adopted before December 31, 2009, with an *effective* date of January 1, 2009.
- The plan document is written to comply with the requirements under the final 403(b) regulations.
- Throughout 2009, the employer operates the plan in compliance with the final regulations. This means that all transactions during calendar year 2009 must satisfy the regulations as of January 1, 2009. Thus, delaying the adoption of a written plan document and the plan-level compliance requirements are not in the employer’s best interest. The longer an employer waits to make sure that the operation of the plan is, in fact, satisfying the regulations, the more errors there will be to potentially correct.
- Before the end of 2009, the employer makes a good faith attempt to correct mistakes made, if any, during the operation of the plan during 2009. These corrective measures must be retroactive to January 1, 2009, and must comply with the principles of the IRS’ *Employee Plans Compliance Resolution System* (EPCRS).