



Relief From Immediate Compliance With 2009 § 403(b) Written Plan Requirement – Notice 2009-3

The IRS requires under § 403(b) that starting January 1, 2009, 403(b) Plan Sponsors must maintain a written plan in place that meets the regulatory requirements in both form and operation. A lot of 403(b) Plan Sponsors have already adopted a written plan. However, due to approval reasons, some may not have a written plan in place by 01/01/09.

Additionally, there's no current program that the plan sponsor can use to verify that the written form of their plan meets the requirements apart from a private letter ruling.

The Treasury and IRS have decided that to assist in compliance with the regulation they would create and make available pre-approved and individually designed plan programs for sponsors to adopt. Therefore, this notice provides for transition relief to 403(b) Plan Sponsors who have made appropriate efforts to comply with the final regulation.

As a result, the IRS will not treat a 403(b) plan as failing to satisfy the requirements of the final regulation during the 2009 calendar year, provided that:

1. On or before December 31, 2009, the sponsor of the plan has adopted a written § 403(b) plan that is intended to satisfy the requirements of § 403(b) (including the final regulations) effective as of January 1, 2009;
2. during 2009, the sponsor operates the plan in accordance with a reasonable interpretation of § 403(b), taking into account the final regulations; and
3. before the end of 2009, the sponsor makes its best efforts to retroactively correct any operational failures during the 2009 calendar year to conform to the terms of the written § 403(b) plan, with such correction to be based on the general principles of correction set forth in the IRS's Employee Plans Compliance Resolution System (EPCRS) at section 6 of Rev. Proc. 2008-50 (2008-35 I.R.B. 464).

The relief under this notice applies solely to the 2009 calendar year, and may not be relied on for correction of operational defects in any prior or subsequent year.

The IRS will make available sample prototype plans for public comment. They will also present sample plan language for drafting prototype plans. Additionally, the IRS intends to establish a determination letter program for individually designed § 403(b) plans once the § 403(b) prototype program is established.

The programs described in the revenue procedure will also provide for a retroactive remedial amendment of § 403(b) plans for years after 2009. The Service will also modify EPCRS to include additional § 403(b) issues.