



Pension Analyst

Compliance Bulletin

December 2008

IRS delays written plan requirement deadline for 403(b) plans

The IRS [final regulations for 403\(b\) plans](#) include a requirement for plan sponsors to have written plans in place by January 1, 2009. For a number of reasons, sponsors of many existing 403(b) plans have found it difficult to satisfy this requirement. As a result, the IRS has released an advance copy of [Notice 2009-3](#), which generally provides a one-year extension for meeting the documentation requirement. However, this Notice *does not* delay the effective date of the underlying plan operation rules provided in the final regulations; plan sponsors must still comply with those rules beginning January 1, 2009.

For 2009, the IRS will treat a 403(b) plan as being in compliance with the written plan requirement if all of the following requirements are met:

- On or before December 31, 2009, the plan sponsor adopts a written plan that is effective January 1, 2009, and complies with the final 403(b) regulations.
- During 2009, the plan sponsor operates the plan in accordance with a reasonable interpretation of the 403(b) rules.
- By December 31, 2009, the plan sponsor makes its best efforts to retroactively correct any operational failures that occur during 2009, in accordance with the general correction principles set forth in the Employee Plans Compliance Resolution System (EPCRS).

If you have questions about the application of this extension to your plan, please contact your Prudential Retirement representative for assistance.

Additional guidance forthcoming

The IRS notes that it is also working on several other projects related to 403(b) plan compliance. These projects include:

- The establishment of a prototype document program, similar to the preapproved document program that is currently available to qualified plans.
- The publication of sample plan language for use in drafting prototype plan documents, which would be more extensive than the [model plan language](#) that the IRS has published for use by public school employers.
- The establishment of a determination letter program for individually-designed plan documents.
- The establishment of a 403(b) plan retroactive remedial amendment process for years after 2009.
- Modifications to EPCRS to include additional 403(b) issues.

We will keep you apprised of any additional guidance that is provided by the IRS.

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