The New 403(b) Pre-Approved Plan Documents... Are They Right For You?

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Presentation Overview

- Plan Documents
- Operational Compliance
- Resources
- Questions and Discussion
Plan Document

New Pre-Approved Plan Document

Background

• No 403(b) documents required by the IRS before 2009 regulations.

• IRS did not provide for approval of 403(b) documents.

• Program announced for pre-approved documents in 2013 and first documents available in 2017.

• IRS approval: what does that mean for you?
Plan Document

New Pre-Approved Plan Document

- Approved by IRS
- Adopt by March 31, 2020 for Remedial Amendment Period ("RAP")
- Changes and Updates
  - Merge Plans
  - Plan Changes
  - Review Operational Compliance
Plan Document

Remedial Amendment Period ("RAP")

2. Plan document deemed compliant from that date.
3. Must include changes in plan design for RAP period.
Plan Document

IRS Program for Pre-Approved 403(b) Plans: RAP

Can Correct Defects in Form, but Not Defects in Operation

Defects in Form
- Absence of a Required Provision
- Incorrect Required Provision
- Incorrect Discretionary Provision

Defect in Operation
- Failure to Comply with the Terms of the Document
Plan Document

IRS Program for Pre-Approved 403(b) Plans: Should I Adopt One?

**Advantages**
- Current and retroactive reliance (if adopted timely) as to the form of the plan.
- Pre-approved sponsor maintains plan.

**Disadvantages**
- Documents will be complicated.
- Not all plan designs may fit into the form of the document.
Restating Your Document: Best Practices and Tips

Gather all plan documents, amendments, SPDs, SMMs, since 2009.

Make certain that there was a plan document in place on December 31, 2009.

Review important plan definitions including: compensation, eligible employees, and distributions including hardship and loans.
Plan Document

Restating Your Document: Best Practices and Tips

- Review operational compliance and whether the plan’s operation is consistent with the terms of the document.
- Consider changes in plan design, such as merging two separate plans.
- Engage your service providers.
- Start the restatement process as early as possible.
- Assign a dedicated person to complete the process.
Plan Document

Restating Your Document: Pitfalls and Stumbling Blocks

- Discovery of compliance issues that cannot be fixed under the RAP
- Multi-vendor plan design
- Insufficient documentation and institutional memory back to 2010
Plan Document

Restatement Process:

01 Compliance Review

02 Consider Restatement Date (1.1.2010)

03 Complete Draft

04 Finalize Adoption Agreement

05 Board Resolution Adopting the New Agreement

06 Execute Adoption Agreement

07 Distribute New Summary Plan Description (SPD)
Operational Compliance

(Not a one and done deal!)
Common Operational Errors

Are the plan’s operations consistent with the terms of the plan document?

Common Operational Errors:

- Contributions made on an incorrect definition of compensation
- Contribution Limits [e.g., excess compensation limit under 401(a)(17)]
- Exclusion of employees who should be eligible [e.g., part-time]
Correction of 403(b) Plan Errors

Using EPCRS to Correct 403(b) Plan Errors

Three components of EPCRS:

- Self Correction
- Voluntary Compliance Program
- Audit Cap
Correction of 403(b) Plan Errors

Errors Corrected Under EPCRS

- Plan Document Failure
- Operational Failure
- Demographic Failure
- Employee Eligibility Failure
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