
IRS Releases Proposed 403(b) Prototype Document Program

April 14, 2009 (PLANSPONSOR.COM) – As PLANSPONSOR's 2nd annual 403(b) Summit was opening, the Internal Revenue Service (IRS) unveiled the next step in the tax agency's efforts to move 403(b) plans closer to their 401(k) cousins.

Robert J. Architect, IRS Senior Tax Law Specialist, told 403(b) Summit attendees at the meeting which began Tuesday afternoon in Orlando, Florida, that the tax agency considers issuance of the draft revenue procedure and sample plan language supporting it to be significant steps in the evolution of 403(b) regulations. Determination letter reviews for the prototypes could begin as soon as the first quarter of 2010.

"This is the date that 403(b) enters the modern era," said Architect, who has been the tax agency's chief spokesman about 403(b) regulation issues. "We don't foresee the future. The future is today."

Architect said the agency has released:

- * Draft Revenue Procedure 2009-34 that explains how the IRS proposes to run the 403(b) prototype program;
- * 65 to 70 pages of sample plan language to support the proposed prototype (see IRS Publishes Sample 403(b) Prototype Document Language); and a request for public comments by June 1, 2009, about the prototype proposal.

Architect said the IRS anticipates that a prototype submission would primarily come from plan providers and other entities that anticipate having at least 30 plans adopting its prototype. After a prototype is approved, Architect said the adopting plan sponsors would sign an adoption agreement that would set out how they are customizing the benchmark plan provisions to their own plans, the same as 401(k) plan sponsors do now.

He said that when the prototype reviews begin, the IRS will be concentrating on whether the document has the proper form. He made a particular point out of saying the IRS will not be reviewing plan funding mechanisms. "That would really bog the program down so we don't review these," Architect said.

He indicated that the prototype plans would not provide for vesting and would not apply to church plans or those from church-related organizations.

Architect wrapped up his comments by urging the assembled 403(b) sponsors and advisers to maximize the transitional relief provided by the IRS to the end of December 2009 to get their required written plan documents in order. "Use the time constructively

up to 12/31/2009," Architect said. "I hope we don't receive letters saying 'Please, please I need more time.'. This is the 'more time.'."

The proposed Revenue Procedure is available here (see below for copy of link contents).

Interested persons are invited to comment on the draft revenue procedure, the sample plan language draft (http://www.irs.gov/pub/irs-tege/draft_lrm_403b_prototypes.pdf), or any other aspect of the § 403(b) prototype plan program, generally.

Written comments should be submitted by June 1, 2009, to CC:PA:LPD:PR (Announcement 2009-34), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Announcement 2009-34), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, D.C.

Alternatively, comments may be submitted via the Internet at Notice.Comments@irscounsel.treas.gov.

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IRS Publishes Sample 403(b) Prototype Document Language

April 14, 2009 (PLANSPONSOR.com) – The Internal Revenue Service has published some sample prototype 403(b) language – and wants to know what you think.

The draft information package contains samples of plan provisions that satisfy certain specific requirements of the Internal Revenue Code applicable to section 403(b) plans, and as provided in Announcement 2009-34, "interested persons" are invited to submit comments to the IRS on the sample plan provisions.

In publishing the language, the IRS notes that the sample language is designed for use in a new Employee Plans Section 403(b) Prototype Plan Program. "The Section 403(b) Prototype Program will operate generally in the same manner as the current Master and Prototype Program for plans qualified under section 401(a) of the Internal Revenue Code," according to the announcement. The IRS notes that a sponsoring organization (generally a service provider) using the prototype document will submit a section 403(b) plan document to the IRS for review, and if the plan satisfies the requirements of section 403(b), the IRS will issue a favorable Opinion Letter to the sponsor with respect to the plan document. The sponsor may then offer the approved plan document for adoption by employers.

The IRS notes that the draft sample language is based on language previously developed for other IRS prototype plan programs (see Listing of Required Modifications for Defined Contribution Plans, Cash or Deferred Arrangements, Traditional IRAs and Roth IRAs) as well as the model section 403(b) plan language published in Revenue Procedure 2007-71.

The IRS notes that this information package "...contains samples of plan provisions that have been found to satisfy certain requirements of section 403(b) of the Internal Revenue Code, the final regulations issued July 26, 2007, Revenue Procedure 2007-71, and Revenue Procedure _____ [section 403(b) prototype plan revenue procedure].", and that "this language may or may not be acceptable in different plans depending on the context in which used," the IRS noted. "We have prepared this package to assist prototype sponsors who are drafting section 403(b) prototype plans, and to enable us to process and approve section 403(b) prototype plans more quickly," the agency explained.

Package Parts

Part I of the package contains sample plan provisions appropriate for section 403(b) prototype plans that are limited to elective deferrals. Part II contains additional sample provisions for section 403(b) prototype plans that accept contributions other than elective deferrals.

The IRS notes that certain section 403(b) plans may be covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA), but that since the IRS does not have jurisdiction over Title I, this package does not contain sample Title I plan provisions. However, the IRS also notes that prototype sponsors "may find that certain plan provisions developed to enable section 401(a) master and prototype plans comply with Internal Revenue Code qualification requirements that have parallel Title I requirements may be helpful in drafting plan provisions intended to comply with Title I (see, e.g., Listing of Required Modifications for Defined Contribution Plans).

However, even if such provisions are used, IRS opinion letters do not provide reliance for section 403(b) prototype plans with respect to Title I requirements, the Service cautioned.

The 403(b) Plan Draft Listing of Required Modifications and Information Package (LRM) is online at http://www.irs.gov/pub/irs-tege/draft_lrm_403b_prototypes.pdf

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