



Employee Benefits Alert

February 10, 2009

403(b) Plans

The deadline for documentary compliance with the new Code section 403(b) regulations has been extended to December 31, 2009, by which time there may be a prototype or determination-letter program. Operational compliance is still required as of January 1, 2009, though church plans need not comply until 2010. However, certain operational failures that occur in 2009 may be corrected.

403(b) Documentary Compliance. In 2007, the Treasury issued final regulations that require the sponsors of Section 403(b) plans to maintain their plans according to the terms of a written plan document that satisfies certain requirements. The regulations required that the written plan document be drafted and effective by January 1, 2009. The new guidance still requires the written document of a non-church plan to be effective by January 1, 2009, but the document may be adopted as late as December 31, 2009.

403(b) Operational Compliance. If, during 2009, the plan is not operated in accordance with the plan document as ultimately adopted, the failures may be corrected. However, all corrections must be made during 2009, be retroactive to January 1, 2009, and be consistent with the general principles set forth in the IRS' Employee Plans Compliance Resolution System ("EPCRS").

403(b) Plan Determination Letter and Prototype Program. The IRS is considering adopting a prototype program, which would enable sponsors to adopt pre-approved plans. Some vendors have already begun developing prototypes in anticipation of the development of such a program. If you are interested in eventually adopting a pre-approved prototype plan, your tax advisor may be able to recommend a vendor. However, it is important to keep in mind that the IRS has not yet approved these plans.

The determination letter program will be developed some time after the prototype program and will permit sponsors who do not adopt prototype plans to ensure their compliance with applicable regulations.

Please contact employeebenefits@capdale.com if you have any questions.

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A leading law firm, Caplin & Drysdale provides employee benefits counseling and exempt organization counseling to companies, organizations, and individuals throughout the United States and around the world. The firm also provides general tax law counseling, corporate law counseling, political activity law counseling, white collar defense and complex civil litigation services.

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