403(b) Plan Informational Attachment #1

Written Plan Requirement

One of the major changes brought about by the 2007 final 403(b) regulations is the new written plan requirement. A written plan facilitates the allocation of responsibilities among the employer, contract issuer, and any other party involved in implementing the plan. A written plan also benefits participants by providing central documents setting forth their rights under the plan. A written plan does not need to be a single document, but may bundle several documents describing the basic terms for eligibility, benefits, applicable limits, available investments, and the delegation of administrative responsibilities. The deadline for having a written 403(b) plan is January 1, 2009. Under IRS Notice 2009-3, the deadline is extended to December 31, 2009, provided the employer:

- adopted a written plan intended to satisfy the requirements of Code section 403(b) (including the final regulations) effective as of January 1, 2009;
- operated the plan in accordance with a reasonable interpretation of Code section 403(b), considering the final regulations during 2009; and
- corrected the plan operation to match the written program before the end of 2009, placing the participants in the same position they would have been in if the program had been adopted on January 1. The correction should be based on the general principles in section 6 of Revenue Procedure 2008-50.

Coordinating Catch-Up Contributions

Your 403(b) plan may provide to employees who have attained age 50 by the end of the calendar year the opportunity to make salary deferrals beyond the standard limits (age 50 catch-up). Also, if you are a qualified organization[1], your 403(b) plan may provide to employees with at least 15 years of service the opportunity to make additional salary deferrals (15 year catch-up). While the age 50 catch-up is subject to an annual limit, the 15 year catch-up is subject to a use test, lifetime limit, and an annual limit[2]. When both catch-up opportunities are available, final 403(b) regulations clarify the order contribution limits apply. Deferrals exceeding the standard limit ($16,500 for 2010) are first applied to the 15 year catch-up (to the extent permitted), and then to the age 50 catch-up. See the example below for how this ordering works:

Example: In the 2010 calendar year, Bob, age 52, defers $22,000 of his salary under a 403(b) plan. The plan provides both the 15 year and age 50 catch-up deferral opportunities. Under the use test, Bob is eligible for a 15 year catch-up of $3,000. Of the total $22,000 deferred for calendar year 2010, the maximum standard deferral of $16,500 is first applied, followed by application of the 15 year catch-up deferral of $3,000, and finally application of the remaining $2,500 to the age 50 catch-up deferral.

If you have questions about this Informational Attachment, you can e-mail the IRS at retirementplanquestions@irs.gov. To find out more information about 403(b) plans, visit the IRS 403(b) web site.

[1]Qualified organization means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii).

[2]See Code section 402(g)(7)(A)