

April 14, 2009

IRS Posts Draft Prototype 403(b) Plan Language for Comment

The Internal Revenue Service has posted on its Web site [draft sample language for § 403\(b\) prototype plans](#). This is the latest step in the Service's announced process for assisting in the transition to the [July 2007 final regulations under § 403\(b\)](#).

- According to the covering memo, the contemplated § 403(b) prototype program would operate generally in the same manner as the current § 401(a) master and prototype program. A § 403(b) prototype plan sponsor would submit a § 403(b) plan document to the Service for review. (There is no discussion of what entities would be permitted to act as 403(b) prototype sponsors or whether that classification would differ from other prototype programs.) If the plan satisfies the requirements of § 403(b), the Service would issue a favorable opinion letter to the sponsor with respect to the plan document. The sponsor would then offer the approved plan document for adoption by employers.
- The draft sample language is in the familiar "list of required modifications" format utilized by the Service in its qualified plan and IRA prototype programs. The draft language blends the model § 403(b) plan language published in Revenue Procedure 2007-71 with sample language developed in the Service's prototype plan programs for defined contribution plans, cash or deferred arrangements, traditional IRAs and Roth IRAs.
- The baseline provisions contemplate a 403(b) plan that permits only salary reduction contributions. Additional provisions are provided for plans that permit other types of contributions as well, including a standardized and nonstandardized form of plan document. The prototype does not include provisions responsive to Title I of ERISA, for nongovernmental 403(b) plans subject to those rules.

Announcement 2009-39 (not available as of the writing of this alert) will solicit comments on the draft sample language.



If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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