



Written Plan Relief

403(b) Plan Sponsors Get Relief From Immediate Compliance

By: Robert C. Sproule, Esq.
Senior Counsel, MetLife

why MetLife Resources prepared this paper on Written Plan Relief

On December 11, 2008, the Internal Revenue Service issued Notice 2009-3 (“the Notice”) which provides relief from the 403(b) written plan requirement that was generally effective January 1, 2009. If a 403(b) plan sponsor complies with the requirements described in the Notice, the sponsor can generally wait until December 31, 2009 to adopt a written plan.

MetLife is committed to providing ongoing communications to help you make decisions regarding your 403(b) plan. We have prepared this discussion on the delayed written plan requirement as it impacts an employer’s 403(b) plan. We hope this information assists you as you design and conform your 403(b) plan to meet IRS guidelines.

For more information, please call **(800) 788-5861** to have a local MetLife representative contact you.

About The Author

Robert C. Sproule, Esq., serves as Senior Counsel for MetLife with focused knowledge on laws relating to employee retirement benefits for government and nonprofit employees. He holds a BS from Cornell University, an MBA from Lehigh University and a JD from Indiana University School of Law where he graduated Summa Cum Laude.

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Written Plan Relief

Final tax regulations published in 2007 generally required a 403(b) plan sponsor to adopt and maintain a written plan as of January 1, 2009. The written plan document required under the final tax regulations is similar to the plan document requirement applicable to other tax-qualified retirement plans, such as 401(k) and profit sharing plans.

The IRS indicated that although many 403(b) plan sponsors may have adopted a written 403(b) plan before the deadline, it was aware that some sponsors may not have a written 403(b) plan in place by January 1, 2009. Because of this, the IRS indicated that it was appropriate to provide certain limited relief.

The Notice does not require a written plan adopted on or before December 31, 2009 to be retroactive to January 1, 2009.

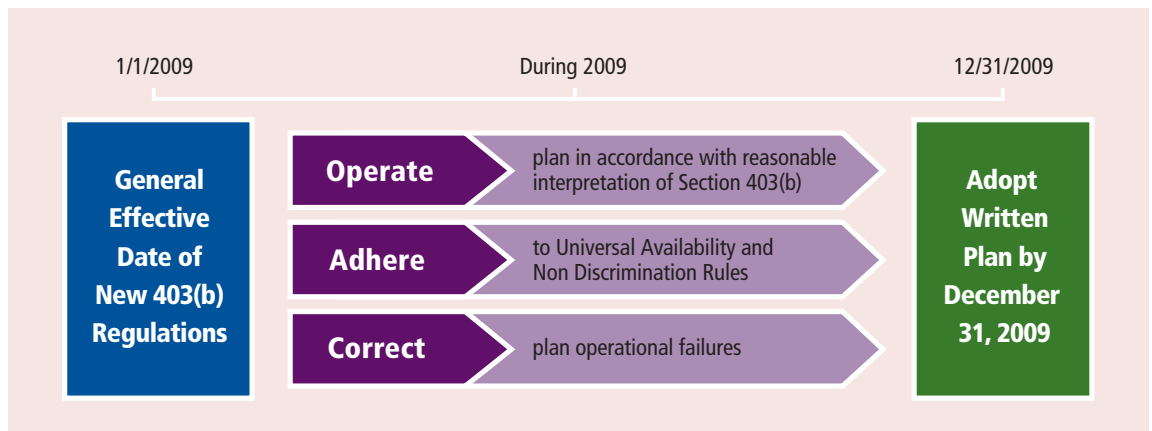
IRS Notice 2009-3

The Notice provides that a 403(b) plan will not be treated as failing to satisfy the requirements of the final regulations during the 2009 calendar year if the plan sponsor adopts a written plan on or before December 31, 2009 as long as the two following requirements are satisfied:

- During 2009, the sponsor must operate its 403(b) plan in accordance with a reasonable interpretation of Section 403(b), taking into account the final regulations; and
- Before the end of 2009, the plan sponsor must make its best efforts to retroactively correct any operational failure during the 2009 calendar year to conform with its written plan in accordance with the procedures of the IRS Employee Plans Compliance Resolution System.

A reasonable interpretation of Section 403(b), as described in the first bullet above, requires plan sponsors to adhere to principles, such as universal availability and nondiscrimination, during the period before adopting a written plan. The other requirement, as referenced in the second bullet, directs plan sponsors to retroactively correct any operational mistakes by December 31, 2009. See Illustration 1.0.

Illustration 1.0: 403(b) Written Plan Relief



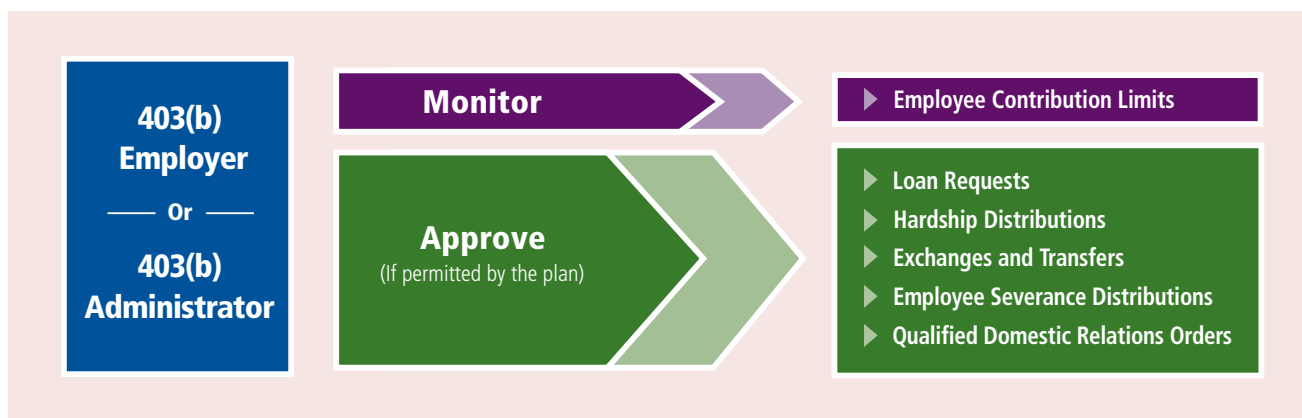
NOTE: IRS representatives verbally confirmed that the Notice does not require a written plan adopted on or before December 31, 2009 to be retroactive to January 1, 2009 and, similarly, the Notice does not require that plan amendments adopted on or before December 31, 2009 with respect to a previously adopted written plan, be retroactive to January 1, 2009.

Emphasis on Operational Compliance

IRS representatives have verbally confirmed that the Notice places greater emphasis on a 403(b) plan sponsor's operational compliance with the final 403(b) rules during 2009 and temporarily postpones compliance with the written plan form requirements. This means that a plan sponsor can concentrate its efforts on complying with the requirements of the final 403(b) rules without the additional complexity of adopting and complying with the terms of a written plan.

However, operational compliance also means that plan sponsors must still tackle a number of other administrative hurdles during 2009. This is because the relief provided by the Notice does not delay a plan sponsor's responsibility for assuring compliance with loan, hardship and other rules under the final 403(b) regulations. For example, beginning January 1, 2009, plan sponsors of most 403(b) plans, or their designated third party administrators, must begin approving participant loan applications and hardship distribution requests. See Illustration 2.0.

Illustration 2.0: 403(b) Employer Responsibilities



Relief Applies to 2009 Only

The relief provided by the Notice applies only to the 2009 calendar year and may not be relied on with respect to the operation of the plan or correction of operational defects in any prior or subsequent year. As a result, plan sponsors operating their plans on a basis other than a calendar year must adopt a plan no later than December 31, 2009, regardless of whether the end of the plan year occurs in 2009.

For example, if a plan sponsor's plan year ends June 30, the written plan must be adopted by December 31, 2009. In addition, plan sponsors that have adopted either new or revised plan documents in anticipation of the final regulations can correct those documents in 2009.

Interaction with ERISA

The relief provided under IRS Notice 2009-3 applies to 403(b) plans covered under the Employee Retirement Income Security Act of 1974 (ERISA), in addition to 403(b) plans not covered by ERISA.

Though 403(b) plans covered by ERISA are already required to have written plans, such plans may not fully comply with the final 403(b) regulations. For example, an old ERISA plan document might improperly exclude part-time employees or collective bargaining unit employees under the former universal availability rules. Consequently, employers that sponsor 403(b) plans covered by ERISA have until December 31, 2009 to amend their plans to comply with the final 403(b) regulations, provided the employer:

- complies with a reasonable interpretation of 403(b) during 2009, and;
- retroactively corrects any operational failures by December 31, 2009.

Conclusion

For plan sponsors that have not yet met the written plan requirement, the Notice allows them extra time to implement a written plan, provided that they otherwise comply with a reasonable interpretation of the provisions of the final 403(b) regulations. In effect, this relief gives plan sponsors the opportunity to work with their legal and tax advisors, as well as other employee benefit professionals, to design a written plan that adequately meets their needs and objectives.

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200 Park Ave., New York, NY 10166
www.metlife.com

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