

## **IRS Provides Relief for Compliance with Written Plan Requirement for 403(b) Plans**

On December 11, 2008, the IRS issued a notice announcing relief for certain retirement plans that do not have a written plan in place by January 1, 2009. According to final regulations published July 26, 2007, sponsors of 403(b) plans are required to adhere to a written plan that satisfies the requirements of the final regulations in form and operation. Although sponsors originally were to have adopted a written 403(b) plan by January 1, 2009, the IRS and the Department of the Treasury are aware that not all sponsors are prepared to have a plan in place by this date, so they have announced this recent change.

Additionally, plan sponsors have no means to obtain assurance that the written forms of their plans satisfy the requirements aside from a private letter ruling. Thus, in efforts to facilitate the compliance with final regulations, the IRS and the Treasury have decided that pre-approved and individually designed plan programs should be established. Also they will provide relief to 403(b) plan sponsors who have made efforts to be in compliance with the final regulations by not considering a 403(b) plan as failing to satisfy the new requirements, provided that:

1. by December 31, 2009, the sponsor of the plan has adopted a written 403(b) plan intended to satisfy the requirements as outlined in §403(b) and the final regulations effective as of January 1, 2009;
2. during 2009, the sponsor operates the plan in accordance with a reasonable interpretation of §403(b) and the final regulations; and
3. by the end of 2009, the sponsor makes its best efforts to retroactively correct any operational failure during the 2009 calendar year to conform to the written plan.

The IRS plans to publish a request for comments on a draft revenue procedure on obtaining IRS approval of prototype 403(b) plans and on sample language for drafting prototype plans. Following the establishment of the 403(b) prototype program, the IRS will also implement a determination letter program designed specifically for 403(b) plans. Programs detailed in the revenue procedure will also provide for retroactive remedial amendment of 403(b) plans for years after 2009. Finally, the IRS will modify EPCRS to include additional 403(b) issues.

**Notice 2009-3** is available on [www.irs.gov](http://www.irs.gov). If you have any questions, feel free to contact Rose Doherty at 312-384-4223 or at [rdoherty@legacypas.com](mailto:rdoherty@legacypas.com)