



UPDATE Employee Benefits and Compensation

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The Time Is Now...To Fix Your 403(b) Plan

In a recent revenue procedure, the Internal Revenue Service (IRS) has offered much needed relief to 403(b) plan sponsors. Most significantly, the IRS is allowing plan sponsors that do not have a written plan to submit a document under the IRS Voluntary Compliance Program (VCP) for a substantially reduced fee *if the submission to the IRS is made by December 31, 2013*. Sponsors of 403(b) plans that are currently being audited (or are notified of an audit) before April 1 will be able to use the VCP, which is generally unavailable to plans under audit. Additionally, 403(b) plans that have been administered incorrectly have new remedies for resolving these operational issues under the VCP. It is usually easier and less costly to be proactive with the IRS before mistakes and oversights are spotted on audit.

FAILURE TO ADOPT A WRITTEN PLAN

Prior to 2009, 403(b) plan sponsors were not required to maintain a plan document; however, due to regulations issued pursuant to Section 403(b) of the Internal Revenue Code, plan sponsors were required to adopt a written plan on or before December 31, 2009. A plan sponsor that failed to do so can now submit a plan to the IRS under the VCP. A 403(b) plan that receives a VCP Compliance Statement will be treated as if it had been timely adopted. During 2013, a reduced VCP fee applies for untimely adopted 403(b) plans, ranging from \$375 (for plans with no more than 20 participants) to \$12,500 (for plans with more than 10,000 participants). Effective in 2014, these fees will double. After April 1, 2013, if the IRS discovers the lack of a written plan during an audit, the problem can still be corrected, but the fee will be more significant.

OTHER ISSUES IN 403(B) PLAN COMPLIANCE AND OPERATION

Some 403(b) plan sponsors may find that their plan has not been administered in a manner consistent with the law or the terms of the plan document or that they are missing records. While sponsors of other qualified plans have been able to use IRS-approved corrections for many years, their application to 403(b) plan sponsors was limited. The IRS has now provided more extensive corrections for 403(b) plan issues. The revenue procedure provides solutions to common violations such as improperly excluding employees from participation and failing to make required distributions. Many minor violations can now be self-corrected without any IRS submission, provided that the steps set forth by the IRS are followed. More significant errors

can also be corrected, but the plan will have to be submitted to the IRS under the VCP.

These recent actions by the IRS are designed to provide practical solutions to assist 403(b) plan sponsors with their compliance issues.

If you have any questions regarding these new procedures, please contact one of the members of Robinson & Cole's [Employee Benefits and Compensation Practice Group](#):

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