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Retirement Plans Recent News and Developments from the IRS

By Nelly Gizdova, Principal



As part of their fiduciary responsibilities, plan sponsors must stay abreast of upcoming regulations and developing issues affecting retirement plans. A

good way to do that is by checking out the *Retirement Plans* pages on the IRS website.

The web pages are organized by topic and summarize the relevant regulations; they provide examples and links to the full text of the issued revenue procedures. The FAQ pages are quite helpful as they provide short and to-the-point answers to specific questions.

Following is a summary of the most recent IRS developments relevant to retirement plans.

Voluntary Correction Program User Fees Changes

Effective January 2, 2018

When applying for a correction of an error under the Voluntary Correc-

tion Program (VCP), plan sponsors need to file Form 8951 Compliance Fee for Application for Voluntary Correction Program and enclose full payment of the appropriate compliance fee. The VCP fees have been changed for VCP submissions made in 2018.

IRS Revenue Procedure 2018-4 simplified the user fees charged for most submissions made under the VCP and made most alternative or reduced fees introduced by previous revenue procedures no longer applicable.

The user fees determined under Rev. Proc. 2018-4 are based on total net plan assets, in which the plan's net assets amount is typically taken directly from its most recently filed Form 5500.

For plans not required to file a Form 5500, plan sponsors should consult Rev. Proc. 2018-4, Appendix A.09, to assist them in calculating the plan's net assets amount.

For SEP/SARSEP/SIMPLE IRA plans, the amount of plan assets is the total value of all plan participants' IRA ac-

count balances associated with the plan.

VCP fees based on net plan assets (for submissions made on or after January 2, 2018)

Net plan assets	Fees - Rev. Proc. 2018-4
\$0 to \$500,000	\$1,500
Over \$500,000 to \$10,000,000	\$3,000
Over \$10,000,000	\$3,500

The fee changes are effective for VCP submissions mailed to the IRS on or after January 2, 2018. Plan sponsors should continue to use Form 8951 (9-2016 version), Compliance Fee for Application for Voluntary Correction Program, until revised.

Filers should disregard the information on the form stating that VCP fees are determined based upon the number of plan participants and should not check boxes on Lines 8(a) through 8(c), as they no longer apply.

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For more information,
please contact Nelly Gizdova
at ngizdova@uhy-us.com

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Exceptions to Asset-based VCP fees

- The IRS won't issue refunds for pre-January 2, 2018, VCP submissions that are withdrawn and then resubmitted under the new fee schedule.
- The IRS can impose a sanction larger than the VCP user fee for SEP/SARSEP/SIMPLE IRAs if excess amounts remain in the SEP/SARSEP/SIMPLE IRAs or if the failures are egregious or intentional.
- The new fee schedule doesn't apply to Group VCP submissions or submissions for orphan or 457(b) plans. In certain cases, the IRS can waive the fee for terminating orphan plans, provided a written request is included with the VCP submission. For Group VCP submissions the fees remain unchanged: the initial fee is \$10,000, with an additional \$250 fee due for each plan affected in excess of 20 plans, up to a maximum compliance fee of \$50,000 for the group submission. Errors affecting 457(b) plans are resolved outside of VCP and are not subject to VCP user fees.

Overpayments of VCP Submission User Fees

The IRS has noted an increase in submissions with incorrect user fees (typically higher than what is required). To avoid the overpayment of user fees, plan sponsors should review the most recent issued annual Employee Plans Revenue Procedure for applicable user fees and use the most current Form 8951 (9-2016 version), Compliance Fee for Application for Voluntary Correction Program.

Form 5310 Retroactive User Fee Change

IRS issued Revenue Procedure 2018-19 which changes the user fee with

respect to applications on Form 5310, Application for Determination for Terminating Plan. The user fee is reduced from \$3,000 to \$2,300, effective retroactively to January 2, 2018. Applicants who paid the \$3,000 user fee listed in Rev. Proc. 2018-4 will receive a refund of \$700.



Pre-approved DB Plans with Opinion/Advisory Letters

On March 30, 2018, the IRS issued opinion and advisory letters for pre-approved master and prototype and volume submitter defined benefit plans that were restated for changes in plan qualification requirements in the 2012 Cumulative List and were filed with the IRS during the submission period for the second six-year remedial amendment cycle.

Employers using these pre-approved plan documents to restate their plans for the plan qualification requirements included on the 2012 Cumulative List will be required to adopt the plan document by April 30, 2020.

The IRS will accept applications for individual determination letters under the second six-year remedial amendment cycle for defined benefit pre-approved plans, starting May 1, 2018, and ending April 30, 2020.

Pre-approved 403(b) Plans

Adoption of Pre-approved 403(b) Plans

Plan sponsors can obtain IRS pre-approval of a 403(b) prototype or volume submitter plan document as complying with Internal Revenue Code Section 403(b). The application for a 403(b) plan opinion or advisory letter must include all required documents and may include additional documents at the applicants' discretion.

The IRS may request additional information if it is deemed necessary for the application review. Plan sponsors should be aware that the IRS will only review the basic plan document and adoption agreement of the prototype or volume submitter plan document, and the review (and consequently, the favorable opinion or advisory letter) will not cover any ERISA requirements or provisions contained in investment arrangements or other documents incorporated by reference in the plan document.

A current list of pre-approved 403(b) plans is available on the IRS website (includes Prototype and Volume Submitter plans that were submitted to the IRS for opinion or advisory letters from June 28, 2013, to November 15, 2017). Employers may adopt pre-approved 403(b) retirement plans from March 2017 to March 31, 2020.

The overall effective date for 403(b) pre-approved plans are plan years beginning on or after January 1, 2010.

403(b) Pre-approved Plan Program - Eligible Plan Sponsors and Key Plan Provisions

Plan sponsors considering adoption of a pre-approved 403(b) plan should refer to the plan sponsor eligibility and responsibility require-

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ments and list of mandatory provisions for all 403(b) pre-approved plans provided on the IRS website.

The IRS has also provided further information and resources regarding additional required provisions for 403(b) prototype plans, including provisions that must be included in the adoption agreements of all 403(b) prototype plans, non-standardized 403(b) prototype plans, and 403(b)(9) retirement income accounts provided by a church.

As part of their review of the 403(b) prototype plan adoption agreement, employers should review the sample 403(b) plan language provided by the IRS as part of the Section 403(b) Pre-approved Plans Sample Plan Provisions and Information Package, Listing of Required Modification and Revenue Procedure 2007-71 (for public school 403(b) plans).

Self-correction of Defective Provisions

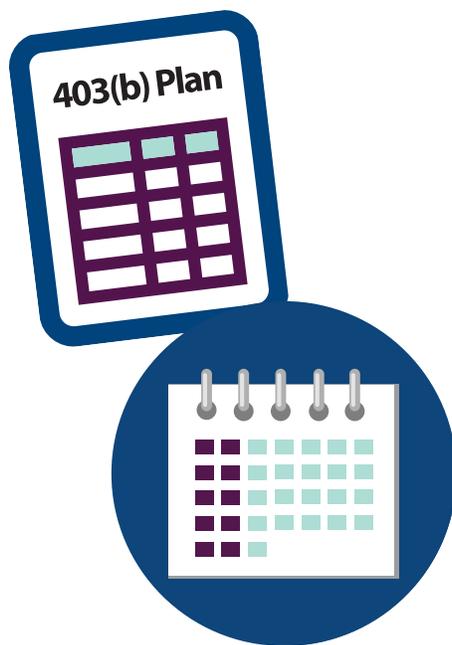
Plan sponsors may self-correct 403(b) plan provisions that violate IRC Section 403(b) requirements by adopting plan amendments during the Remedial Amendment Period (RAP) ending March 31, 2020. The self-correction should be completed by either adopting a 403(b) pre-approved plan that has a 2017 opinion or advisory letter or amending their individually designed plan. The adoption of a pre-approved 403(b) plan (that has received a favorable opinion of advisory letter) has the benefit of automatically correcting any defects in the plan sponsor's prior written 403(b) plan.

The self-correction may involve adding required provisions or correcting defective provisions, and must be retroactive to the later of January 1, 2010, or the plan's effective date. A retroactive correction will also be required if

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Plan sponsors must have adopted a written 403(b) plan document by December 31, 2009 (or the effective date of the plan, if later) to be able to self-correct during RAP.

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the plan has been administered based on the defective provision.

Plan sponsors must have adopted a written 403(b) plan document by December 31, 2009 (or the effective date of the plan, if later) to be able to self-correct during RAP. If that requirement is not met, the correction of the plan violations must be done under the IRS VCP in which case the plan sponsors would be treated as if they have adopted a written plan by the required deadline.

Effective Date Addendum

In cases when certain plan provisions were not in effect for the entire restatement period (effective date of the pre-approved plan to the adoption date), or certain plan options were changed during the restatement period, adopting employers may use an effective date addendum to show plan operational changes that have occurred at different points in time. The reliance on a pre-approved 403(b) plan's opinion or advisory letter is not affected by the use of an effective date addendum if the addendum lists dates that accurately reflect the plan operation and complies with the scope of the plan's letter.

The IRS has indicated in its Tax Exempt and Government Entities Division Priorities announcements for years ending September 30, 2016, and 2017, that the Employee Plans division will focus resources on Employee Plans Team Audit, multiemployer plans, and IRC 403(b) and 457(b) plans. The increased scrutiny in those areas is a result of a historical pattern of non-compliance, and it will also allow for greater coverage of the retirement plan participant universe.

It is always useful to be aware of the tools and programs the IRS has made available for plan sponsors to correct errors resulting from non-compliance with the IRC rules or plan provisions. But it is better to never have to use the VCP, as most of the errors eligible for VCP correction can be prevented by well-developed plan administration and monitoring procedures. For more information, or if you need assistance with the design and implementation of sound plan administration processes and controls, please contact Nelly Gizdova at ngizdova@uhy-us.com or 410-423-4800.

For these and other IRS developments affecting the retirement plan industry go to irs.gov/retirement-plans.

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