

## Employee Benefits Plan Alert

# Findings on Reviews of Restated 403(b) Plans

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Our Employee Benefits Services Group (EBSG) has expended a lot of time reviewing restated 403(b) plan documents that record keepers, third party administrators, or other plan document preparers have provided to plan sponsors to review.

Typically, the plan document consists of an Adoption Agreement (AA), a Basic Plan Document (BPD), and other supporting documents such as Appendices, Checklists, other forms that are used to identify “grandfathered” provisions, amendments made to the plan, administrative matters/processing, etc.

Eventually, when the plan document process is completed and the plan is finalized, a Summary Plan Description (SPD) will be created by the plan document preparer to be provided to the plan administrator who will disseminate it to the plan participants.

### Findings

Our plan document reviews of 403(b) changes have determined errors in several and varying circumstances, including:

**Relevant Dates** - Several plan documents failed to appropriately identify the effective date of the restated plan, or failed to complete a listing of any amendments that have been made to the plan since it was originally effective. Plan documents require the completion of a listing of amendments that have been made to the plan identifying the specific effective date (e.g., January 1, 20XX) of the provision. Failure by the plan sponsor or employer to realize that the restated 403(b) plan will require adoption by March 31, 2020 would cause the plan to not be in compliance with the “form” requirements for the plan to provide its favorable tax treatment.

**Carryover Provisions** - Sometimes the exact provisions of the prior plan have failed to be carried over to the new plan document. These are oversights in the transition process. We have identified the following types of errors: failure to include after-tax contributions; marking the employer contributions as discretionary when they are not discretionary; adding an eligibility requirement (e.g., age 18) when the prior plan did not have an age requirement.

**Optional Provisions** - Certain plans have maintained an extremely high number of loans available to a participant, have not selected a cash-out provision, or maintained the \$1,000 cash-out threshold in lieu of raising the amount to \$5,000; permitting or not permitting transfers of assets from other retirement plans into the plan, electing ROTH Deferrals to be used as a type of employee contribution.

### Change(s) to Retirement Plans

Some employers periodically review their retirement program and make changes for several reasons. Changes that we are aware of include: the merger of plans (e.g., the employer maintained an employee contribution only plan and an employer contribution only plan); evaluation of adding auto-enrollment and

escalation clauses; reducing the number of loans and hardship distributions available from the plan, evaluating the costs, fees and services being provided by the current record keeper and other service providers to the plan.

IRS Revenue Procedures 2013-22 and 2016-37 discuss the procedures used by the IRS to issue opinion and advisory letters for 403(b) pre-approved plans, and the applicable six-year remedial amendment cycle.

## Contact Us

The Employee Benefit Services Group (EBSG) at PKF O'Connor Davies is available to assist employers with the review of plan documents and can also assist with the various compliance reporting and other requirements imposed by federal agencies. We also provide a full spectrum of compliance services for qualified retirement plans, 403(b) plans, non-qualified deferred compensation plans, and welfare plans.

For more information, please contact your client services partner or either of the following:

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