

# The New 403(b) Plan Documents Part I: Why March 2020 Is Important to 403(b) Employers



**NTSA**

**National Tax-Deferred Savings Association**

*Part of the American Retirement Association*

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# Agenda for Today

- This is Part I of a three-part series on the all new 403(b) pre-approved plan and the restatement process
- Part I will focus on:
  - Definitions as they relate to the restatement of 403(b) plans
  - Overview of the first ever RAP for 403(b)s –what does this mean and how to relay the importance to your clients
- Part II will dive a little deeper and cover the proper completion of the documents. It will be held on Wednesday, March 28.
- Part III will be a deep dive into the process with examples from employers that have already been restating! It will be held on Wednesday, April 18.

# Definitions

- What is a pre-approved plan?
  - A pre-approved plan is one that is approved by the IRS as to form
  - IRS reviews the plan, adoption agreement, administrative appendix, and vendor attachment
  - **IRS Does NOT review custodial agreements nor annuity contracts**

# Definitions

- What is a pre-approved plan? (continued)
  - Approval comes in the form of an IRS approval letter after the review process
- Must an employer adopt a pre-approved plan?
  - No!
- **BUT...**

# Definitions

- IRS has always focused heavily on documents
- If they do not adopt a “pre-approved plan,” upon audit the IRS will have to actually read the plan to see if it complies
- If the plan is IRS-approved, then the auditor will skip that step
- Reminder – many organizations offered a form of a document beginning in 2009 for K-14; other 403(b) employers including ERISA plans going back much further
- These plans will no longer comply
- ASBO documents will not be updated
- Many organizations called their plan a “prototype” or a “specimen document” but these were merely plans customized by someone

# Definitions

- So what's the big deal?
  - Reliance! – this is the employer's assurance that the plan contains all of the required provisions from the 403(b) regulations. No further IRS submission is required...the plan is approved!
  - CAUTION - if the employer maintains an old version of an ASBO plan and someone merely makes updates to that version, the employer WILL NOT have reliance

# Poll Question #1

If you are a TPA, do you maintain copies of all plan documents going back to inception of the plan?

- A. Yes
- B. No
- C. Never! Too much work.
- D. I am not a TPA

# Definitions

- Currently there are two types of pre-approved 403(b) plans:
  - Prototype plans
  - Volume submitter plans



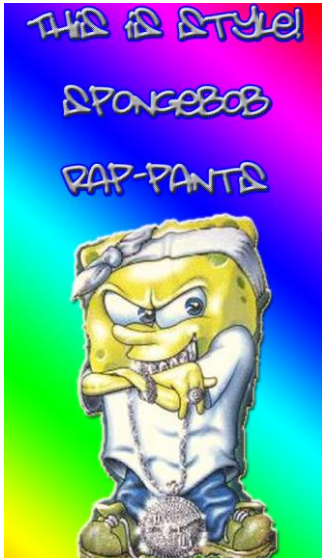
# Definitions

- Prototype plans
  - Prepared in a format that contains an adoption agreement separate from the plan
  - Generally no changes may be made after approval, not even typos!
  - IRS Approval Letters are referred to as “opinion letters”
  - Types of adoption agreements
    - Standardized
    - Non-standardized

# Definitions

- Volume submitter plans
  - In the past, generally prepared as a plan document with no adoption agreement
  - Many drafters included an adoption agreement
  - There may be changes made to the document, but only if the “document remains substantially the same.” This means that you need to be careful what you add and keep track of every change from the IRS-approved version!
  - IRS approval letters are referred to as “advisory letters”

# Remedial Amendment Period or 'RAP'



- This is generally a two-to-three year during which the employer must “restate” the plan
- Always retroactive to incorporate all changes made during that period
- For example, EGTRRA (effective for 2002) had a RAP period that ended **4/30/2010**
- The PPA RAP period ended **4/30/2016**
- This is referred to as the six-year RAP cycle
- 403(b)s will fall under their own six-year cycle, so the first will end 3/31/2020, next one should end 3/31/2026

# Why Is This So Important?

- IRS approval as to form
- This is also the time to clean up past mistakes
  - Remember this will encompass the years from 2010 through the year the employer restates
  - It is required by the IRS
  - If the employer does not restate by 3/31/2020, there could be tax consequences for employees
- At the very least, the employer would need to submit a correction through IRS' Correction Program (EPCRS) and pay a fee to so!



# LRMs

- LRMs (Listing of Required Modifications) are issued by the IRS for any retirement plan that a prototype/volume submitter plan is available and contain sample plan/adoption agreement language
- For example there are LRMs for IRAs, SEPs, SIMPLE-IRAs, all types of qualified plans, and now 403(b) plans
- These are used by drafters of the pre-approved plans
- Unique to 403(b)s are some LRMs that are not based on the statute or regulations – they are referred to as “program requirements”
- In other words, IRS decided that there are some provisions that cannot be adopted by 403(b)s

# Amendment Versus Restatement

- A restatement is replacing the current plan document with one that is completely revised to encompass all of the legislation and other guidance that has been issued in the six-year period
- An amendment is where the employer is changing a provision in their adoption agreement, for example:
  - Changing the name of the employer
  - Adding a Roth-deferral option

# Amendment Versus Restatement

- Amendments are voluntary or mandated by IRS
  - Voluntary will include adding a Roth feature or amending for the newer qualified hurricane distributions/qualified wildfire distributions or the new hardship rules for 2019
  - Mandatory amendments will be indicated by the IRS with a deadline. Pension Protection Act (PPA) amendments were required by QPs, as well as WERRA and Heart Act amendments.
  - Even though some requested these amendments for 403(b)s, IRS took the position that they were not required until the end of the first RAP period...AND HERE WE ARE!

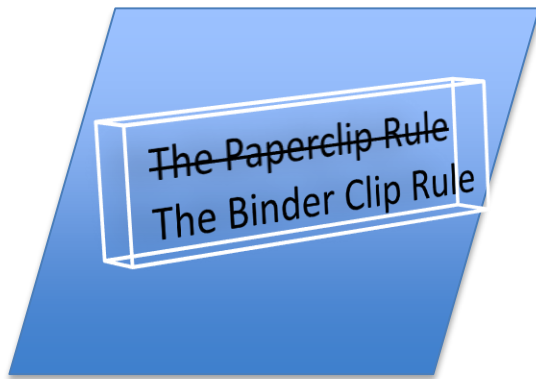
# What About 2009?

- Remember, employers had to have a compliant document for the year 2009
- Let's go back to reliance for a moment...
- This restatement will provide reliance to the employer back to 1/1/2010 **if** the employer (1) signs the document by 3/31/2020; **and** (2) had a valid 403(b) plan that was adopted by the end of 2009
- What happens if they did not?



# The “Paperclip Rule”

How does it work?



# Poll Question #2

Have you assisted an employer with the paperclip rule?

- A. Yes
- B. No
- C. I never heard of this rule

# Paperclip Rule

- ‘Paperclip rule’ for document failures
  - Preamble to the final regulations indicates rule; IRS provided the nickname of the ‘paperclip rule’
  - Gather all documents including annuity contracts, mutual fund company custodial agreements, benefit booklets, new-hire orientation materials, etc.
  - All policies and procedures (loan and/or hardship policies)

# Paperclip Rule

Once paper-clipped...

- Create a document that reflects all of the items that were treated as a part of the plan
- Correct any operational errors ASAP (this should have been corrected by the end of 2009)
- Check all policies and procedures (loan and/or hardship policies)

# Paperclip Rule

Does it work? **Maybe!**

Current auditors of 403(b) plans for 2009 documents have permitted this rule

Important to make sure you have enough procedures in place and copies of all underlying documents to make this work!

# Questions?