



403(b) Cycle 2: Restating Soon to a Document Near You!

S. Derrin Watson

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Your Co-Hosts

► Joanne Pecina



► Maureen Pesek



► Tim McCutcheon



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Your Presenter Today



- ▶ S. Derrin Watson, J.D., APM



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403(B) DOCUMENTS: WHERE WE'VE BEEN

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2009 document deadline



- ▶ 403(b) plans required to have written plan document
 - ▶ Good faith attempt to comply with 2007 final regulations
- ▶ If plan established after 2009, written plan must be adopted no later than plan effective date
- ▶ If no 2009 document, must correct under VCP
- ▶ Only 403(b) plans exempt from written document requirement:
 - ▶ Church 403(b) plans that don't use Retirement Income Account

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Cycle 1



- ▶ Formal beginning of Cycle 1: January 1, 2010
- ▶ IRS announced first preapproved plan submissions in 2013
 - ▶ Volume submitter
 - ▶ Prototype
- ▶ No determination letter available
- ▶ Ultimate employer restatement deadline: June 30, 2020
 - ▶ End of cycle 1

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Reliance



- ▶ You generally have reliance on Cycle 1 opinion letter
- ▶ No reliance if you color outside the lines of prototype
- ▶ Volume submitter: If you color outside the lines, you have no reliance to that extent
 - ▶ But you can still rely on the rest of the document

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- ▶ Allows retroactive amendment to correct document defects
- ▶ Cycle 1:
 - ▶ Starts: January 1, 2010 (or, if later, plan effective date)
 - ▶ Ends: June 30, 2020

FIRST REMEDIAL AMENDMENT PERIOD

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RAPs for individually designed plans



- ▶ New plan: 12/31 of second calendar year after year plan established
- ▶ Amended plan: 12/31 of second calendar year after year plan amended
- ▶ Change in requirements: 12/31 of second calendar year after publication in Required Amendments List
 - ▶ Example: Final hardship regulations published in 2019 RAL
 - ▶ RAP expires 12/31/2021
- ▶ Government plans have longer

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RAPs for preapproved plans



- ▶ End of cycle 2 if amended timely and in good faith
- ▶ Interim amendment deadline
 - ▶ 12/31 of year after amendment effective
- ▶ Discretionary amendment
 - ▶ Last day of plan year amendment put into effect
- ▶ Governmental plans have longer
- ▶ Statute or guidance can specify deadline:
 - ▶ Example, SECURE deadline is last day of first plan year beginning in 2022.

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Retirement income accounts



- ▶ Preapproved RIA plans must have separate basic plan and adoption agreement
- ▶ Cycle 1 preapproved RIA plans limited to churches
 - ▶ Not available for QCCOs
 - ▶ Not available for non-QCCOs
- ▶ Cycle 1 preapproved RIA plans generally don't have:
 - ▶ Coverage
 - ▶ ACP
 - ▶ 401(a)(4)
 - ▶ Compensation limit

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403(B) DOCUMENTS: WHAT'S NEW

Rev. Proc. 2021-37

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- ▶ IRS anticipates setting up DL program (Form 5300) for 403(b) plans similar to qualified plans
- ▶ No details yet

IDP DETERMINATION
LETTERS

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Combine preapproved programs



- ▶ Ditch separate prototype/volume submitter programs
- ▶ Single preapproved plan program
- ▶ Reliance options
 - ▶ Standardized
 - ▶ Nonstandardized
- ▶ Document options
 - ▶ Basic plan/Adoption agreement
 - ▶ Single plan document
- ▶ Retirement income accounts must still have separate document

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Document submission period



- ▶ May 2, 2022 to May 1, 2023
- ▶ IRS issues opinion letters: June 30, 2025?????
- ▶ Employer adoption deadline: June 30, 2027?????
- ▶ What we are missing:
 - ▶ Application form (but can use Appendix in Rev. Proc. 2021-37)
 - ▶ Cumulative List of Changes
 - ▶ What will be included (and not included) in Cycle 2 documents
 - ▶ List of Required Modifications

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What the IRS won't consider



- ▶ Except as provided in the applicable Cumulative List, the IRS generally will not consider in its review of any Opinion Letter application any:
 - a) guidance issued after approximately 90 days (the exact date being stated in the Cumulative List) prior to the date the applicable Cumulative List is issued;
 - b) statutes enacted after approximately 90 days (the exact date being stated in the Cumulative List) prior to the date the applicable Cumulative List is issued;
 - c) statutes that are first effective in the year in which the On-Cycle Submission Period begins for which there is no guidance identified on the applicable Cumulative List (regardless of when they are enacted); or
 - d) § 403(b) Requirements (either statutory or regulatory) that become effective for the plan in a calendar year following the calendar year in which the On-Cycle Submission Period begins, regardless of when the § 403(b) Requirements are enacted or issued (for example, §403(b) Requirements first effective in 2023, for applications submitted during the On-Cycle Submission Period beginning in 2022)

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Investment arrangements



- ▶ Don't submit investment arrangements to IRS
 - ▶ But incorporate them by reference
- ▶ Approved documents must provide that if there is a conflict between the approved plan and the investment arrangement, the approved plan controls
 - ▶ An Adopting Employer may not rely on an Opinion Letter if any Investment Arrangement under the plan or any other document that may be incorporated by reference provides that the terms of the Investment Arrangement or other document shall govern in the event of any conflict between the terms of the Investment Arrangement or other document and the terms of the plan.
- ▶ All required provisions must be in plan document

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Reliance/DL



- ▶ No reliance if you color outside the lines
- ▶ Can submit 5307 to request individual determination letter for “amendments that are not extensive”
 - ▶ Can submit 5307 for reliance on special provisions relating to 415 limits for combination of plans

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RIAs: SECURE



- ▶ SECURE amended law to expand employees that could participate in RIA to full range in Code §414(e)(3)(B):
 - ▶ Church employees
 - ▶ Ministers,
 - ▶ Employees of a tax-exempt organization, controlled by or associated with a church or a convention or association of churches
 - ▶ QCCOs
 - ▶ non-QCCOs
 - ▶ Certain former employees
- ▶ Effective date: “years beginning before, on, or after the date of the enactment of” SECURE

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RIAs: Rev. Proc. 2021-37



- ▶ RIAs will be able to cover 414(e)(3)(B) employees
- ▶ Can amend Cycle 1 plans to cover 414(e)(3)(B) employees
- ▶ Nondiscrimination requirements apply to employees other than
 - ▶ Church employees
 - ▶ QCCO employees
- ▶ Adoption/participation agreement of MEP must specify type of adopting employer
- ▶ Retroactive to July 1, 2020
- ▶ Don't lose reliance on document (but no reliance on amendment)

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What about Cycle 1?



- ▶ SECURE says RIA amendment can be retroactively effective
- ▶ 2021-37 permits amendment retroactive to July 1, 2020
 - ▶ RAP to employer restatement deadline
- ▶ So what happens if effective date prior to July 1?
 - ▶ SECURE permits the amendment
 - ▶ Lose reliance on Cycle 1 document?

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Interim amendment deadline preapproved plan



- ▶ 12/31 of second calendar year beginning after year change in law effective
- ▶ Governmental plan: Later of
 - ▶ 12/31 of second calendar year beginning after year change in law effective
 - ▶ 90 days after the close of the 3rd regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment becomes effective.
- ▶ Applies to changes after June 30, 2020

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Provider submission notes



- ▶ Please submit via thumb drive
 - ▶ Microsoft Word
 - ▶ Adobe Acrobat
- ▶ For providers with Cycle 1 letters:
 - ▶ Must include a signed certification that all necessary amendments required by the IRS for the form of the Provider's plan to continue to satisfy the § 403(b) Requirements have been made and communicated to all Adopting Employers
 - ▶ Hardship
 - ▶ SECURE
 - ▶ CARES

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Thank you!



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- ▶ Derrin's books are available at ERISApedia.com
 - ▶ Who's the Employer (8th ed)
 - ▶ 403(b) Plan eSource
 - ▶ 457 Plan eSource
 - ▶ Plan Correction eSource (with Ilene Ferenczy and Alison Cohen)

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A Few Reminders



- ▶ ASPPA/NIPA certificates will be emailed within a day or two. ERPA certificates may take up to two weeks.
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For Further Study



Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.