

Individually Designed 403(b) Plans will be Eligible for Determination Letters

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Plan sponsors of individually designed 403(b) plans will soon be able to submit determination letter applications to the IRS. (Individually designed plans are plans using custom documents that have not been preapproved by the IRS through a separate program.) Revenue Procedure 2022-40 implements a new determination letter program for individually designed 403(b) plans which largely mirrors the existing program for qualified plans. Beginning June 1, 2023, individually designed 403(b) plan sponsors will be eligible to submit such applications for determinations in the case of an initial plan determination, plan termination, and other circumstances periodically specified by the IRS.

This change is especially important for 403(b) plan sponsors that were unable to transition their complicated legacy documents to preapproved plan documents because they can now obtain their own determination letter. Favorable determination letters will provide such plan sponsors with some comfort by reducing risks associated with IRS audits and legal flaws in the retirement plan document.

The IRS is anticipating that this program will be very popular. In an attempt to avoid an initial onslaught of applications, the application period for initial plan determinations will open on a staggered basis (from June 1, 2023, to June 1, 2025, depending on the plan sponsor's EIN). Determination letters upon a 403(b) plan's termination can be obtained beginning June 1, 2023, regardless of the employer's EIN.

This program is certainly a welcome development for sponsors of individually designed 403(b) plans. Although the new 403(b) program is likely the most significant development, it is worth mentioning that Revenue Procedure 2022-40 also made some modifications to the favorable determination letter process applicable to qualified plans.

Any plan sponsors of individually designed 403(b) plans interested in obtaining a favorable determination letter for their plans or who have questions relating to the process should contact the authors of this alert or their Miller Canfield attorney.