

LAW & POLICY GROUP**GRIST**

DEFINED BENEFIT, 403(b) PREAPPROVED PLAN ADOPTION DEADLINES APPROACHING

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Employers that use IRS preapproved plan documents for defined benefit (DB) or 403(b) plans have a few more months to adopt new plan documents for the current preapproved plan cycles. Preapproved plans give employers assurance that their plan documents comply with applicable Internal Revenue Code (IRC) requirements — which employers may find useful now that the IRS accepts determination letter (DL) requests only under limited circumstances.

PREAPPROVED PLAN PROCESS

Sponsors of preapproved plans submit their documents to the IRS for review every six years (the six-year cycles are staggered for defined contribution and DB plans). Once the IRS has finished reviewing the submissions for a particular cycle, the agency issues letters to sponsors stating that their plan documents have been approved. Sponsors then make their plans available for employers to adopt, which they may do during a window (usually about two years) announced by the IRS. Timely adoption of a newly approved document allows the employer to rely on the sponsor's letter for that cycle.

The IRS currently issues advisory letters for volume submitter (VS) plans and opinion letters for master and prototype (M&P) plans. However, the preapproved program will be streamlined for qualified plans, starting with the third preapproved plan cycle. The IRS will refer to all plans simply as “pre-approved plans” and issue only opinion letters.

Plans may be standardized (safe harbor) or nonstandardized (non-safe harbor). Employers that modify their plans lose reliance on the opinion letter; however, employers that modify nonstandardized plans can request a DL on IRS [Form 5307](#) if the modifications are minor.

These changes will not apply to preapproved 403(b) plans, which will continue to be either VS or M&P plans with advisory or opinion letters.

DB PLAN DEADLINE

In [Announcement 2018-05](#), the IRS set April 30, 2020, as the deadline for employers to adopt a new preapproved DB plan document and receive reliance on a sponsor's advisory or opinion letter for the

second preapproved plan cycle. These letters cover changes on the [2012 Cumulative List](#). A list of preapproved DB plan documents for the second cycle is available on the IRS [website](#).

Limited availability of determination letters. DLs generally aren't available for preapproved plans, except in certain cases involving limited modifications to VS plans. DL requests for these plans are also due by April 30, 2020 (and are made using IRS [Form 5307](#)).

Employers that make significant modifications to their preapproved documents can't rely on the sponsor's advisory or opinion letter. These employers can request DLs (using IRS [Form 5300](#)), but only under the limited circumstances that apply to individually designed plans — i.e., initial qualification, plan termination or other circumstances announced by the IRS.

403(b) PLAN DEADLINE

Final IRS regulations issued in 2007 require employers with 403(b) plans to have a written plan document (a narrow exception applies for some churches). Employers that adopted a plan document by Dec. 31, 2009, have until March 31, 2020 — the end of the first remedial amendment period (RAP) for 403(b) plans — to fix any defects in their plan documents.

The initial RAP for 403(b) plans is also the first preapproved plan cycle for 403(b) plans (the six-year cycles start after this cycle). Employers that wish to rely on a preapproved plan sponsor's advisory or opinion letter for the first 403(b) preapproved plan cycle must adopt a preapproved document by March 31, 2020. Adoption of a preapproved 403(b) plan document by this date will cure any defects in the employer's prior 403(b) plan document for the first RAP. A list of preapproved 403(b) plan documents for the first cycle is available on the IRS [website](#).

No determination letters for 403(b) plans. The IRS does not issue DLs for 403(b) plans. Adopting a preapproved plan is the only way for employers to receive assurance that their plan documents comply with the IRC's requirements for 403(b) plans.

RELATED RESOURCES

Non-Mercer Resources

- [List of Preapproved Plans](#) (IRS, Sept. 27, 2019)
- [List of Preapproved 403\(b\) Plans](#) (IRS, July 5, 2019)
- [Announcement 2018-05](#) (IRS, March 9, 2018)
- [Rev. Proc. 2017-18](#) (IRS, Jan. 13, 2017)

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- [IRS Creates Program for 403\(b\) Plan Document Compliance](#) (Oct. 18, 2019)

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