

Law & Policy Group



IRS extends preapproved DB, 403(b) plan adoption deadlines

By Mercer's Ellen Stone, Margaret Berger and Brian Kearney
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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. Employers may find this assurance useful now that the IRS accepts determination letter (DL) requests only under limited circumstances. Updates to this GRIST reflect the March 27 announcement of a three-month extension of certain deadlines for preapproved DB and 403(b) plans:

- Employers that use preapproved DB plan documents now have until July 31 to adopt a preapproved document for the second six-year remedial amendment cycle.
- Employers now have until June 30 to correct any defects in 403(b) plan documents adopted by Dec. 31, 2009, or to adopt a preapproved 403(b) plan.

Preapproved plan process

Institutional 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 (nonsafe 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

On March 27, IRS extended the deadline for employers to adopt a new preapproved DB plan document to July 31 — a three-month delay from the April 30 deadline set forth in [Announcement 2018-05](#). Employers that meet this deadline can rely on the institutional sponsor's advisory or opinion letter for the second preapproved DB 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 DL availability. 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 July 31, 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 (with a narrow exception for some churches) to have a written plan document. Employers that adopted a plan document by Dec. 31, 2009, originally had until March 30, 2020, to fix any defects in their plan documents. However, on March 27, 2020, the IRS extended the deadline to June 30, 2020. This date is now the last day of the first remedial amendment period (RAP) for 403(b) plans.

Employers can fix any defects in their plan by amending their individually designed document or adopting a preapproved plan document. Employers that adopt a preapproved document by June 30 can rely on the institutional sponsor's advisory or opinion letter for the first 403(b) preapproved plan cycle, which ends on that same date. 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

- [Deadlines extended for 403\(b\) plans and preapproved defined benefit plans](#) (IRS, March 27, 2020)
- [List of preapproved 403\(b\) plans](#) (IRS, March 17, 2020)
- [Rev. Proc. 2019-39](#) (IRS, Sept. 30, 2019)
- [List of preapproved plans](#) (IRS, Sept. 27, 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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