

Second Remedial Amendment Cycle for § 403(b) Pre-approved Plans: Issuance of Opinion Letters, Plan Adoption Deadline, Opening of Determination Letter Program, and Related Issues

Announcement 2024-38

Section 1. Purpose and Scope

The Internal Revenue Service (IRS) intends to begin issuing opinion letters regarding the satisfaction in form of § 403(b) pre-approved plans with respect to the requirements of § 403(b) of the Internal Revenue Code, including the 2022 Cumulative List of changes in those requirements.¹ Opinion letter applications were filed with the IRS for the second remedial amendment cycle (Cycle 2) under the remedial amendment cycle system for § 403(b) pre-approved plans established under Rev. Proc. 2019-39, 2019-42 IRB 945. The IRS expects to issue the opinion letters by November 29, 2024, or as soon as possible thereafter.

This announcement provides a deadline for when an employer intending to maintain a Cycle 2 § 403(b) pre-approved plan must adopt that plan and the period during which the IRS will accept an application for an individual determination letter from an adopting employer of a Cycle 2 § 403(b) pre-approved plan that is eligible to submit a determination letter request.

This announcement also discusses a procedural restatement rule that applies to all pre-approved plans and provides a reminder for adopting employers of § 403(b)(9) retirement income account plans of a requirement provided by § 403(b)(9).

Section 2. Background

Rev. Proc. 2019-39, in relevant part, sets forth a system of recurring remedial amendment cycles and recurring remedial amendment periods for correcting form defects in § 403(b) pre-approved plans. Section 13.04 of Rev. Proc. 2019-39 includes a procedural rule regarding restatements for the first remedial amendment cycle (Cycle 1) for § 403(b) pre-approved plans providing that a plan that is restated using a Cycle 1 § 403(b) pre-approved plan will not be treated as superseding a previously adopted interim amendment. This restatement rule is analogous to the restatement rule for qualified defined contribution and defined benefit pre-approved plans that currently applies to the third remedial amendment cycle (Cycle 3) for qualified pre-approved plans pursuant to section 15.07 of Rev. Proc. 2016-37, 2016-29 IRB 136.

Rev. Proc. 2021-37, 2021-38 IRB 385, sets forth the procedures for a provider to apply for an opinion letter with respect to a Cycle 2 § 403(b) pre-approved plan.

Section 25 of Rev. Proc. 2023-37, 2023-51 IRB 1491, sets forth the procedures for an adopting employer of a § 403(b) pre-approved plan, including a Cycle 2 plan, to apply for a determination letter with respect to its plan.

Section 3. Deadline for Employer Adoption of Cycle 2 § 403(b) Pre-approved Plans

An employer intending to maintain a § 403(b) pre-approved plan for Cycle 2 for

¹ The 2022 Cumulative List of Changes in Section 403(b) Requirements for Section 403(b) Pre-approved Plans was published as Notice 2022-8, 2022-7 IRB 491.

§ 403(b) pre-approved plans must adopt that pre-approved plan on or before December 31, 2026. See section 5.02 of Rev. Proc. 2023-37.

Section 4. Determination Letter Program for an Adopter of a Cycle 2 § 403(b) Pre-approved Plan

An adopting employer of a Cycle 2 § 403(b) pre-approved plan may generally apply for an individual determination letter (if otherwise eligible) during the period beginning January 1, 2025, and ending December 31, 2026. Additional information regarding individual determination letter applications for § 403(b) pre-approved plans, including guidance on employer eligibility to apply for a determination letter for a pre-approved plan and the filing requirements for Form 5307 (or Form 5300, if applicable), may be found in section 25 of Rev. Proc. 2023-37.

Section 5. Clarification on Applicability of the Restatement Rule

The restatement rule in Rev. Proc. 2019-39 and Rev. Proc. 2016-37 does not specifically address its application to Cycle 2 (and future) § 403(b) pre-approved plans or Cycle 4 (and future) qualified pre-approved plans. Future guidance will clarify that the restatement rule in Rev. Proc. 2019-39 and Rev. Proc. 2016-37 continues to apply to all pre-approved plans, including Cycle 2 (and future) § 403(b) pre-approved plans and Cycle 4 (and future) qualified pre-approved plans.

Section 6. Reminder for Adopting Employers of § 403(b)(9) Retirement Income Account Plans

Section 403(b)(9) provides that a retirement income account must either be established or maintained by a church, or a convention or association of churches, including an organization described in § 414(e)(3)(A). Thus, for a retirement income account plan, the adopting employer may be a church, a church-controlled organization described in § 501(c)(3) that is a qualified church-controlled organization within the meaning of § 3121 (QCCO), a church-controlled tax-exempt organization listed in § 501(c)(3) that is not a QCCO, or a minister. However, pursuant to the “established or maintained” language of § 403(b)(9), if the plan is not established by a church, or a convention or association of churches, including an organization described in § 414(e)(3)(A), the plan must be maintained by a church, or a convention or association of churches, including an organization described in § 414(e)(3)(A).

Section 7. Paperwork Reduction Act

The collection of information contained in Rev. Proc. 2021-37 with respect to the § 403(b) pre-approved plan program has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0047.

Section 8. Drafting Information

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