

June 24, 2020

Mr. Eric Slack  
Director, Employee Plans (SE:TEGE:EP)  
Internal Revenue Service  
999 N. Capitol Street, NE  
Washington, DC 20002  
Submitted via email

## **Re: Follow-up Comments regarding the section 403(b) plan remedial amendment period and Subsequent Correction Methods**

Dear Mr. Slack,

The American Retirement Association is again writing to comment on the section 403(b) plan remedial amendment period and the need for correction methods for plan sponsors that will find document failures in the future.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has nearly 28,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of America's private retirement system.

### **Summary/History**

The Internal Revenue Service ("IRS") and the Department of the Treasury ("Treasury Department") adopted final regulations for section 403(b) plans in 2007, effective in 2009, which subjected all employers who offered or maintained section 403(b) plans to adopt plan documents that satisfied the new regulations. The only exception from the plan document requirement was for churches and qualified church-controlled organizations that did not adopt a section 403(b)(9) plan.

These regulations required that all employers adopt a written plan document by the end of the 2009 year; make sure that the operation of such plan was based on the document adopted for the 2009 plan year and retroactively amend any operational failures that occurred prior to December 31, 2009.

The employers that were impacted significantly by the written plan document requirement were governmental employers, including public schools and nonprofit organizations under section 501(c)(3) of the Code, and churches participating in section 403(b)(9) pre-approved plans. As noted above, these organizations were not required to have any actual plan documents prior to 2009.

IRS then issued Rev. Proc. 2017-18, which introduced for the first time a remedial amendment period for section 403(b) plans that ended on March 31, 2020. On March 16, 2020, ARA requested an extension of the remedial amendment period for section 403(b) plans beyond the March 31, 2020 deadline for an additional year. On March 27, 2020, IRS announced on its website that this remedial amendment period would be extended until June 30, 2020. We very much thank the Service for this additional delay, which has assisted some employers in meeting their deadline. Unfortunately, mostly due to the COVID-19 pandemic, it has been impossible for many employers to finish this task.

## Reasons for Request

The COVID-19 pandemic has affected many tax-exempt and governmental employers with issues that are critical to their continued existence. Here are the most critical issues these employers are currently facing:

- Problems in setting up virtual Board meetings for approval of the section 403(b) plan document.
- Lack of funds to pay an outside firm to help with restatement of a plan document.
- Furloughs and layoffs have reduced the necessary staff needed to collect 10 years or more worth of data to be able to restate the plan retroactively to gain the benefit of the remedial amendment period relief.
- Many staff members crucial to acquiring essential data have retired or been furloughed amid the COVID-19 pandemic.
- Many firms, including public schools, have not been in their offices for two or three months where paper files are located. In many localities, employees are not permitted to enter their facilities to obtain the necessary files.

As mentioned in our letter dated March 16, 2020, there are employers that self-administered their plans, and are in the process of trying to find files and documents that they need in order to complete a restated plan document without having access to their paper files.

The ARA believes an additional extension of the restatement deadline would assist both employers and the IRS. An extension would provide a continuing incentive for more employers to adopt pre-approved plans which will provide the IRS with the assurance that more employers have compliant plan documents.

## Recommendations

To assist the section 403(b) employers, the industry, and create more documents that are compliant for the IRS upon audit, the **ARA recommends**:

1. An additional extension of the remedial amendment period until December 31, 2020.
2. Whether or not the IRS permits an extension of the remedial amendment period under beyond June 30, 2020, we believe that there needs to be a fee structure for employers that file for a plan document failure (whether for not having a plan document for 2009 or for not restating by the deadline of June 30, 2020) to be in line with the special reduced Voluntary Compliance Program user fees that applied to qualified plans prior to 2018.

We are respectfully asking that this correction fee not be set too high, especially for the small nonprofit employers and public schools. The result of charging a \$3,500 fee will unfortunately lead some of these employers to terminate their plan.

ARA looks forward to working with the IRS in designing a solution that will benefit all involved with the 403(b) restatement. We are happy to participate in a call or a face-to-face meeting to discuss the issues raised herein. Thank you for your consideration of these comments. Please contact Martin L. Pippins, MSEA, Executive Director of ASEA and Director of Regulatory Policy (mpippins@usaretirement.org; 703.516.9300 ext. 146), if you have any comments or questions regarding the matters discussed above.

Sincerely,

/s/  
Brian H. Graff, Esq., APM  
Executive Director/CEO  
American Retirement Association

/s/  
Martin L. Pippins, MSEA, EA  
Director of Regulatory Policy  
American Retirement Association

Cc: Louis Leslie, Senior Technical Advisor, Internal Revenue Service (SE:TEGE:EP)