



IRS Announces Opening of Cycle 3 Pre-Approved Defined Contribution Plan Restatement Period and Other Important Guidance Related to Deadlines for 403(b) and Defined Benefit Restatements

On June 1, 2020, IRS Announcement 2020-7 (“Announcement”) was released, officially announcing the opening of the Cycle 3 pre-approved defined contribution plan restatement period. The IRS also confirmed extended deadlines for 403(b) and defined benefit plan restatements in IRS Notice 2020-35. These pieces of important IRS guidance provide clarity for plan document providers, TPAs, plan sponsors and others involved with qualified retirement plans.

Opening of Cycle 3 Pre-Approved Defined Contribution Plan Restatement Period

In the Announcement, the IRS indicated it expects to issue opinion letters for pre-approved defined contribution plans on June 30, 2020 or soon thereafter. This confirms what ASC has anticipated in terms of timeframes. The IRS further established in the Announcement that pre-approved defined contribution plans must restate and adopt Cycle 3 plan documents by July 31, 2022. Since the IRS will soon issue opinion letters for these pre-approved plan documents, the July 31, 2022 deadline is consistent with prior IRS guidance that employers will have approximately two years to restate and adopt new pre-approved plan documents. Starting August 1, 2020 through July 31, 2022, an employer that modifies the language of a pre-approved document may apply for a determination letter using Form 5307.

ASC Insight – Late in the review process of the Cycle 3 pre-approved plans, the IRS raised new issues relating to discretionary matching contributions and automatic contribution arrangements. ASC and other practitioners successfully negotiated with the IRS to minimize the impact of the new IRS positions. However, mass submitters will need to modify certain provisions that had been approved in previous pre-approved plan documents.

Extension of Pre-approved 403(b) Restatement Period

On March 27, 2020, the IRS announced on its website that it was extending the last day of the initial remedial amendment period for 403(b) plans from March 31, 2020 to June 30, 2020 and that it intended to issue guidance in the future to formally address the

change. This extension applied to both 403(b) plans using pre-approved plan documents as well as those using individually designed plan documents.

In light of the March 27 IRS announcement of the deadline extension for 403(b) plans, IRS Notice 2020-35 formally extends the end of the initial remedial amendment period for 403(b) plans to June 30, 2020.

ASC Insight – We are aware of some differences in interpretation of the 403(b) restatement deadline under IRS Notice 2020-35. Some in the industry have interpreted this Notice to provide for a July 15, 2020 extension for the 403(b) restatement period. Notice 2020-35 provides a breadth of relief for various deadlines applicable to employment taxes, employee benefits, exempt organizations, etc. and generally provides for an extension of July 15, 2020 for certain time-sensitive actions due to the COVID-19 emergency to the extent not otherwise provided for under the Notice. However, in Section III, Relief Granted, subsection B.2(e) affirms that the initial remedial amendment period for 403(b) plans is postponed until June 30, 2020 as previously announced on the IRS website on March 27, 2020.

Extension of PPA Defined Benefit Restatement Period

In the same March 27 website announcement that extended the 403(b) restatement period, the IRS also announced an extension of the deadline for Cycle 2 (“PPA”) pre-approved defined benefit plans from April 30, 2020 to July 31, 2020.

IRS Notice 2020-35 affirms the extension for the PPA restatement period for pre-approved defined benefit plans to July 31, 2020 and also extends (1) the deadline for pre-approved defined benefit plans to submit determination letter applications under the PPA remedial amendment cycle and (2) the timeframe for actions that are otherwise required to be performed with respect to disqualifying provisions during the remedial amendment period from April 30, 2020 to July 31, 2020.

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