

# Employee Benefits Action Alert

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## ▶ IRS Guidance Provides Model Language for 403(b) Plans

On July 27, 2007, the IRS released final regulations for tax sheltered retirement plans under Internal Revenue Code Section 403(b). The regulations require Section 403(b) plan sponsors to make a number of significant changes in how they currently operate their Section 403(b) plans. While the final regulations contain many new requirements, the scope of this Alert is limited to the plan document requirements contained in the final regulations. A summary of the other major changes required by the final regulations is contained in our August 28, 2007 Action Alert which is available at <http://www.damonmorey.com/publications.htm>.

The final regulations are generally effective for tax years beginning after December 31, 2008, however, due to the significant changes required by the final regulations, Section 403(b) plan sponsors should begin giving consideration to how they will bring their plans into compliance with the final regulations.

One of the most significant changes required by the final regulations is that plan sponsors must have a written plan document. Prior to the final regulations, most Section 403(b) plans were not required to have a formal written plan document and were administered through annuity contracts.

Under the final regulations, the written plan document must contain all of the material terms and conditions of the plan including eligibility rules, benefits, benefit limitations and the time and form of payment of benefits. In addition, the document must specify the annuity contracts available under the plan and must coordinate the administration of the plan among the annuity contract vendors.

Recognizing that many plan sponsors, particularly public schools, do not currently have written plan documents, the IRS released Revenue Procedure 2007-71 which provides model plan language for public schools to use to create plan documents to comply with the final regulations.

The model plan language is intended to be used for a basic plan under which contributions are limited to pre-tax employee elective deferrals (without any Roth, employer matching or other employer non-elective contributions).

### Executive Summary:

This Alert will highlight the following:

- ▶ **IRS Guidance Provides Model Language for 403(b) Plans**

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# Employee Benefits *Action Alert*

While designed for use by public schools, organizations that are exempt from tax under Section 501(c)(3) may use the model language, subject to modification based on the organization's plan design, to comply with the final regulations.

It is important to note that Section 403(b) plans are required to comply in both form and operation with the requirements of the final regulations as well as to operate in accordance with the terms of the plan document.

Accordingly, it is important for Section 403(b) plan sponsors to begin to identify their current operational processes, identify all current contracts and vendors, and create a plan document or amend existing documents to comply with the final regulations by January 1, 2009.

Damon & Morey's employee benefit attorneys have significant experience working with Section 403(b) plans and can assist your organization in bringing your organization's Section 403(b) plan into compliance with the final regulations.

Please contact Pamela J. Fielding or any one of the attorneys in our office for further information.

## The Authors



**Pamela J. Fielding** is Special Counsel and Chair of the firm's Employee Benefits Practice Group. She has nineteen years of experience advising clients in all aspects of employee benefits law, including the design, drafting, compliance, and administration of defined benefit, 401(k), ESOPs, health and welfare, and executive compensation plans. She has advised clients on employee benefits in mergers and acquisitions; COBRA and HIPAA compliance; fiduciary duties; and multi-employer withdrawal liability. She has also represented employers in connection with ERISA litigation matters, IRS and DOL audits, and PBGC proceedings.

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