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Torrillo & Associates

Benefit Plan Audit Specialists

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403(b) Plans Can Now Receive A Determination Letter



The Treasury Department and Internal Revenue Service announced the expansion of their determination letter [program for approving retirement plans](#). The IRS will now allow 403(b) retirement plans, which

are used by certain public schools, churches and charities, to use the same individually designed retirement plan determination letter program currently used by qualified retirement plans.

[Revenue Procedure 2022-40](#) details the expansion of the determination letter program and includes other changes affecting individually designed retirement plans.

Highlights of these changes:

Revenue Procedure 2022-40 contains the following notable additions for 403(b) retirement plans:

- Expansion for initial plan determination – Beginning June 1, 2023, 403(b) retirement plan sponsors may submit determination letter applications for all initial individually designed retirement plans based on the sponsor's Employer Identification Numbers. (For further details, see section 12 of [Revenue Procedure 2022-40](#).)
- Terminations – Beginning June 1, 2023, 403(b) retirement plan sponsors may also request a determination letter upon plan termination on a [Form 5310, Application for Determination for Terminating Plan](#), or at any time thereafter without regard to their EIN.

Notable changes to procedures for submitting and

processing individually designed retirement plans include:

- [Prior letter issued to a Pre-approved Plan adopter](#) not treated as an initial plan determination – A determination letter issued to an adopter of a pre-approved retirement plan as a result of filing a [Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans](#), is no longer considered in determining whether a plan sponsor is eligible to submit that plan for a determination letter for an initial plan determination on a [Form 5300, Application for Determination for Employee Benefit Plan](#).
- Scope of review – IRS generally will consider in its review qualification requirements and section 403(b) requirements that are in effect, or that have been included on a Required Amendments List, on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted, subject to any specified modifications on the annual Employee Plans revenue procedure that provides the administrative and procedural rules for submitting determination letter applications, currently [Revenue Procedure 2022-4](#).

These rules will apply to submissions of all individually designed retirement plans.



Revenue Procedure 2023-4, currently in development, will be released in the near future and will contain additional changes to procedural requirements for plan submissions, such as phasing-in mandatory e-submission of determination letter requests. Forms 5300 and 5310 will also be updated to reflect these changes.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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