



Determination Letter Opportunity for 403(b) Plans

On November 7, 2022, the IRS announced that it is expanding its individually designed retirement plan determination letter application program currently used by qualified retirement plans to include submissions on behalf of individually designed Code Section 403(b) retirement plans.

According to [IR 2022-196](#) and [Rev. Proc 2022-40](#), beginning June 1, 2023, Section 403(b) retirement plan sponsors will be able to submit a determination letter application to request an initial determination as to the status of an individually designed Section 403(b) retirement plan based on the sponsor's Employer Identification Number (EIN). In addition, as of that date, 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.

The procedures include changes that will apply to submissions for all individually designed retirement plans. Most notably, the additional changes to the procedures for submitting and processing determination letter applications for individually designed retirement plans include the following:

- 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.
- The 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.

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