

Internal Revenue Service Extends 403(b) Plan Deadline

December 12, 2008

On December 11, the Internal Revenue Service (IRS) issued IRS Notice 2008-140, which provides relief for 403(b) plans that do not have a written plan in place by January 1, 2009. The IRS has decided to extend the deadline for plan sponsors to adopt new written plans or to amend existing plans to satisfy the requirement of the final 403(b) regulations in order to give plan sponsors additional time to put the appropriate plan documents in place.

The IRS has announced that it will treat these plans as satisfying the requirements of 403(b) and its final regulations during the 2009 calendar year if the following conditions are met:

- By December 31, 2009, the plan sponsor has adopted a written plan that is intended to satisfy the requirements of 403(b) and the related final regulations.
- During 2009, the plan sponsor operates the plan in accordance with a reasonable interpretation of 403(b) and the related final regulations.
- By the end of 2009, the plan sponsor makes its best effort to correct on a retroactive basis any operational failure during the 2009 calendar year to conform to the written plan.

Also, the IRS announced that it plans to issue further guidance on 403(b) plans, including a revenue procedure establishing programs for 403(b) plans to obtain IRS approval of their plan documents, and allowing these plans to make remedial amendments to fix plan provisions on a retroactive basis under rules that are similar to those that apply to 401(a) qualified plans.

If you have any questions regarding the issues raised in this Morgan Lewis LawFlash, please contact any of the following attorneys in our Employee Benefits Practice:

Chicago

Brian D. Hector 312.324.1160 bhector@morganlewis.com

Dallas

Riva T. Johnson 214.466.4107 riva.johnson@morganlewis.com
Heath Miller 214.466.4118 hmillar@morganlewis.com

New York

Craig A. Bitman 212.309.7190 cbitman@morganlewis.com

Philadelphia

Robert L. Abramowitz	215.963.4811	rabramowitz@morganlewis.com
I. Lee Falk	215.963.5616	lfalk@morganlewis.com
Amy Pocino Kelly	215.963.5042	akelly@morganlewis.com
Vivian S. McCardell	215.963.5810	vmccardell@morganlewis.com
Steven D. Spencer	215.963.5714	sspencer@morganlewis.com
Mims Maynard Zabriskie	215.963.5036	mzabriskie@morganlewis.com

Pittsburgh

John G. Ferreira	412.560.3350	jferreira@morganlewis.com
Lauren Bradbury Licastro	412.560.3383	llicastro@morganlewis.com
R. Randall Tracht	412.560.3352	rtracht@morganlewis.com

Washington, D.C.

Althea R. Day	202.739.5366	aday@morganlewis.com
Gregory L. Needles	202.739.5448	gneedles@morganlewis.com

About Morgan, Lewis & Bockius LLP

Morgan Lewis is an international law firm with more than 1,500 lawyers in 22 offices located in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis, please visit www.morganlewis.com.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend in emails, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered Attorney Advertising in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2008 Morgan, Lewis & Bockius LLP. All Rights Reserved.