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together

New IRS Guidance Affecting 403(b) Plans:
*What You Can Now Do When Things Go Wrong
with Your 403(b) Plan*

Webinar 1 of 2

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June 19, 2013

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403(b) Plans

- Expanded Corrections Programs
- Common Errors Corrected under EPCRS
- 403(b) Fix-It Guide

Opening of EPCRS to 403(b) Plans

- Employee Plans Compliance Resolution System (EPCRS) revised
 - Rev. Proc. 2013-12
- EPCRS Corrections Programs
 - Self-Correction Program
 - Voluntary Correction Program
 - Audit Closing Agreement Program

EPCRS Corrections Programs: SCP

- Self-Correction Program (SCP)
 - Insignificant operational failures
 - *Even on audit*
 - Significant operational failures if corrected within two years following the year of the error
 - Correct without contacting the IRS
 - No fee
 - Memo to file

EPCRS Corrections Programs: VCP

- Voluntary Correction Program (VCP)
 - Qualification errors and operational failures
 - Any time before plan is notified of an audit
 - Submission to IRS that identifies errors and proposes corrections and changes to administrative procedures
 - Compliance fee based on number of participants
 - IRS will issue compliance letter

EPCRS Corrections Programs: Audit CAP

- Audit Closing Agreement Program (Audit CAP)
 - IRS discovers failure on audit
 - Effect certain changes and enter into closing agreement
 - Sanction is negotiated percentage based on amount directly related to amount of tax benefits preserved

Common Errors to Correct Under EPCRS

- Failure to timely adopt a written plan
 - December 31, 2009 deadline
 - IRS's Voluntary Correction Program Submission Kit
 - Compliance fee reduced by 50% if VCP submitted by end of 2013

Common Errors to Correct Under EPCRS

- Failure to comply with terms of a written plan
 - Same correction method as qualified plans
 - Retroactively amend plan under VCP
 - Retroactively correct administrative errors under SCP or VCP

403(b) Plan Fix-It Guide

- IRS identified common errors in 403(b) plans
- Failures include:
 - Organization is not eligible to sponsor 403(b) plan
 - Failure to timely adopt a written plan
 - Failure to follow terms of the plan

403(b) Plan Fix-It Guide: Universal Availability

- Failure: Violating universal availability
 - Not providing all eligible employees the opportunity to make elective deferrals
- Requirements
 - In general, plan sponsor must provide all employees the opportunity to make elective deferrals
 - Exceptions for certain classes of employees
 - If plan sponsor includes employee from an excludable group, it may have to include all employees from that group

403(b) Plan Fix-It Guide: Universal Availability

- Correction
 - Offer employees the opportunity to make or change elections
 - Provide any improperly excluded employees the opportunity to participate in the plan
 - Make corrective contributions for improperly excluded employees
 - May be able to correct on SCP

403(b) Plan Fix-It Guide: 415(c) Limits

- Failure: Exceeding Code Section 415(c) limits
- Requirements
 - 415(c) limit for 2013: \$51,000 or 100% of includible compensation
 - Age 50 catch-up contributions are excluded

403(b) Plan Fix-It Guide: 415(c) Limits

- Correction
 - Transfer amounts in excess of 415(c) limits to separate annuity
 - Distribute amounts in excess of 415(c) limits by end of year in which excess occurred
 - May be able to correct on SCP

403(b) Plan Fix-It Guide: 15 Years of Service Catch-Up

- Failure: Incorrectly applying 15 years of service catch-up
- Requirements
 - Employee must have 15 years of service with the same employer
 - Determination of “same employer” for purposes of 15 years of service catch-up (example: different schools within the same school district)

403(b) Plan Fix-It Guide: 15 Years of Service Catch-Up

- Correction
 - Refund excess deferrals plus earnings
 - Report corrections on Form 1099-R
 - May be able to correct on SCP

403(b) Plan Fix-It Guide: Elective Deferrals

- Failure: Not limiting elective deferrals to annual limits
- Requirements
 - 2013 402(g) limit: \$17,500
 - 2013 catch-up contribution limit: \$5,500
 - 2013 15 year catch-up contribution: \$3,000

403(b) Plan Fix-It Guide: Elective Deferrals

- Corrections
 - Refund excess deferrals plus earnings
 - Report corrections on Form 1099-R
 - May be able to correct on SCP

403(b) Plan Fix-It Guide: Post Severance Contributions

- Failure: Including employee contributions in 5-year post severance contributions
- Requirements
 - Employers may make post severance contributions for up to 5 years following an employee's termination

403(b) Plan Fix-It Guide: Post Severance Contributions

- Corrections
 - Refund excess deferrals plus earnings
 - Report corrections on Form 1099-R
 - May be able to correct on SCP

403(b) Plan Fix-It Guide: Loans Under 72(p)

- Failure: Not limiting loan amounts and enforcing repayment under Code Section 72(p)
- Requirements:
 - Legally enforceable agreement
 - Limit to 50% of participant's vested account balance or \$50,000
 - Repay within 5 years (exception for residential loans)
 - Substantially level payments over life of loan

403(b) Plan Fix-It Guide: Loans Under 72(p)

- Correction
 - Review plans and loan agreements for compliance
 - SCP: Operational failure (plan allowed for loans in operation but not in written document)

403(b) Plan Fix-It Guide: Hardship Distributions

- Failures
 - Insufficient documentation establishing hardship
 - Insufficient requirements for hardship distributions
- Requirements:
 - Immediate and heavy financial need
 - *IRS deemed certain distributions to qualify: Medical care previously incurred, costs related to purchase of a principal residence (excluding mortgage payments), tuition and related educational payments, payments to prevent eviction or foreclosure, funeral expenses*
 - Amount must not be more than necessary to satisfy the need

403(b) Plan Fix-It Guide: Hardship Distributions

- Requirements (continued)
 - Plan must allow for hardship distributions and specify how hardship is determined
 - Financial need cannot be alleviated by other means (reimbursement or compensation from insurance, cessation of elective deferrals)
- Correction
 - Amend plan retroactively to allow for hardship distributions
 - May be able to correct under SCP

Questions?

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