

To: Clients and Friends
From: Smith & Downey
Date: December 12, 2008
Re: 403(b) Plans – Plan Document Deadline Extension

Late yesterday, the IRS extended until 12/31/09 the deadline for adoption of 403(b) plan documents that satisfy the requirements of the final 403(b) regs.

The IRS will treat 403(b) plans as meeting the requirements of the 403(b) regs during 2009 if:

1. By 12/31/09, the plan has a compliant document.
2. During 2009, the plan is operated in accordance with a reasonable interpretation of the 403(b) regs.
3. By 12/31/09, best efforts are made to correct retroactively any operational failure during 2009 to conform to the ultimate compliant plan document.

(In the same notice, the IRS announced that it plans to establish a determination letter program for 403(b) plans and to establish a remedial amendment program that may be used to correct, retroactively, some erroneous plan provisions.)

For our clients who have been struggling to meet the 12/31/08 document deadline, this is welcome relief. However, it remains important for 403(b) plans to satisfy the operational requirements of the 403(b) regs beginning 1/1/09 (and of course to complete their document projects by 12/31/09).

Please contact us if we can be of assistance with your 403(b) compliance efforts.