

Important Year-End Information for 403(b) Plans and Deferred Compensation Plans

[James A. Houle](#) | December 11, 2008

403(B) RETIREMENT PLANS

IRS regulations issued in July 2007 required that 403(b) retirement plans must have a written plan document in place on or before December 31, 2008. With only 20 days remaining before that deadline, the IRS issued Notice 2009-3 on December 11, 2008, which provides relief for certain 403(b) retirement plans that fail to meet the deadline. In Notice 2009-3 the IRS announced that 403(b) plans that cover employees of public schools, colleges and universities, and other tax exempt organizations will now have through December 31, 2009, to adopt a written plan or amendment that complies with the requirements of the 403(b) regulations.

This one-year extension of the deadline is welcome relief to many schools and nonprofit organizations that have found it difficult to get their 403(b) plan custodian or document provider to assist them with making the needed amendments in late 2008. If your organization has a 403(b) plan that needs to be amended and you intend to take advantage of the extended deadline, please do not let your plan amendment slide until late 2009 before acting. It is likely we will see the same bottleneck in late 2009 as 403(b) plans rush to be amended before the new deadline of December 31, 2009. We recommend that all clients who decide to take advantage of the IRS extension start the process of amending their plans in early 2009.

DEFERRED COMPENSATION PLANS

As described in earlier Bernstein Shur Advisors , all clients who have a nonqualified deferred compensation plan (which includes so-called 457(f) plans sponsored by nonprofit organizations) definitely need to have their plans reviewed before the end of 2008 for compliance with new tax Section 409A. This also applies to deferred compensation that is payable under an employment contract with a single employee. If the provisions of a deferred compensation plan fail to comply with Section 409A before 2009, then the employee will be taxed on all of his or her deferred compensation in 2009, even though the deferred compensation is not received until a later year. In addition, the employee will have to pay a 20% excise tax in 2009 on the amount of deferred compensation. The payment of early income taxes plus the 20% excise tax will be a significant cost in many situations. If you have not already had your deferred compensation plan reviewed for compliance with Section 409A, it is critical you do so before the end of 2008.

To assist you with a 403(b) plan or deferred compensation plan review, please contact Jim Houle or Steve Gerlach in Portland, Maine (207 774-1200), or Andrea Johnstone in Manchester, NH (603 623-8700).