



TaxNewsFlash

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Rev. Proc. 2022-40: Program for approving 403(b) retirement plans

The IRS today released an advance version of Rev. Proc 2022-40, announcing that the IRS will now allow 403(b) retirement plans, which are used by certain public schools, churches and charities, to use the same individually designed retirement plan determination letter program currently used by qualified retirement plans.

Read [Rev. Proc. 2022-40](#) [PDF 194 KB]

According to the accompanying IRS release—[IR-2022-196](#) (November 7, 2022)—Rev. Proc. 2022-40 includes the following notable additions for 403(b) retirement plans:

- Expansion for initial plan determination – Beginning June 1, 2023, 403(b) retirement plan sponsors may submit determination letter applications for all initial individually designed retirement plans based on the sponsor’s Employer Identification Numbers (EINs).
- Terminations – Beginning June 1, 2023, 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.

In addition, notable changes to procedures for submitting and processing individually designed retirement plans include:

- Prior letter issued to a pre-approved plan adopter not treated as an initial plan determination – 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](#).
- Scope of review – 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, currently [Rev. Proc. 2022-4](#).

These rules will apply to submissions of all individually designed retirement plans.

Revenue Procedure 2023-4, currently in development, will be released in the near future and will contain additional changes to procedural requirements for plan submissions, such as phasing in mandatory e-submission of determination letter requests. Forms 5300 and 5310 will also be updated to reflect these changes.

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