

**MEMO# 35940**

November 29, 2024

# IRS Issues Announcements Regarding 403(b) Pre-Approved Plan Opinion Letter Program

[35940]

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Issues Announcements Regarding 403(b) Pre-Approved Plan Opinion Letter Program

On November 22, 2024, the IRS issued Announcement 2024-38, providing information regarding the 403(b) pre-approved plan opinion letter program.<sup>[1]</sup> In 2021, the IRS announced the opening of the second 403(b) pre-approved plan cycle, with applications for opinion letters accepted from May 2, 2022 through May 1, 2023.<sup>[2]</sup> The new Announcement provides information regarding this cycle, including IRS's intention to issue opinion letters and the deadline for employers to adopt a pre-approved plan.

Announcement 2024-38 includes the following information:

- IRS intends to issue opinion letters for 403(b) pre-approved plans for the second cycle on November 29, 2024, or as soon as possible thereafter. (Section 1)
- An employer intending to maintain a 403(b) pre-approved plan for the second cycle must adopt that pre-approved plan on or before December 31, 2026. (Section 3)
- An adopting employer of a second cycle 403(b) pre-approved plan may file for an individual determination letter (if otherwise eligible) between January 1, 2025 and December 31, 2026. (Section 4)
- IRS will issue guidance clarifying that the restatement rule in Rev. Proc. 2019-39 and Rev. Proc. 2016-37 continues to apply to all pre-approved plans, including the second cycle (and future) 403(b) pre-approved plans and the fourth cycle (and future) qualified pre-approved plans (the existing restatement rule does not specifically address its application to future pre-approved plans). (Section 5)
- IRS reminds adopting employers that a 403(b)(9) retirement income account must either be established or maintained by a church, or a convention or association of churches, including an organization described in § 414(e)(3)(A). (Section 6)

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**Notes**

[1] IRS Announcement 2024-38 is available at <https://www.irs.gov/pub/irs-drop/a-24-38.pdf>.

[2] For a summary of Rev. Proc. 2021-37, which announced the opening of the second cycle, see ICI Memorandum No. 33780, dated September 21, 2021, available at <https://www.ici.org/memo33780>. In Rev. Proc. 2023-37, IRS updated the procedures for pre-approved 403(b) plans. See ICI Memorandum No. 35514, dated November 27, 2023, available at <https://www.ici.org/memo35514>.

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