

TIAA's New Volume Submitter Plan is Being Rolled Out

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Better Outcomes, Less Risk

TIAA has received IRS approval for their new FIS Volume Submitter plan document, and has started the process of transitioning clients to this new IRS pre-approved document. Other 403(b) recordkeeping providers have also received IRS approval, and will be working with their clients to convert them to their volume submitter plans.

What is the Significance of this Change?

Overall, the volume submitter plan document reduces the legal risk and long-term cost of maintaining a 403(b) plan. Here's why:

- The new volume submitter plan has been reviewed and approved by the IRS. This is new for TIAA – and for all 403(b) plans; Until now the IRS did not review or approve 403(b) plans. This means that an employer who adopts the volume submitter plan will be protected from IRS agents' claims, upon audit, that the plan document does not meet IRS requirements.
- The IRS has also specified that the IRS' approval of the new volume submitter plan can be used to retroactively cure improper plan provisions, as far back as 2010.
- TIAA and other recordkeeping providers have responsibility to amend their volume submitter plans to keep up with changes in the law and regulations – and to notify sponsors of the change. This will also reduce the compliance burden of keeping a plan document current.

Employers have until March 31, 2020 to adopt the new volume submitter plan and take advantage of these protections.

Limits to Volume Submitter Plan Protection

There are limits to the protection provided by the volume submitter plan. So, here are a few caveats to bear in mind.

- Errors in administering the plan are not covered by the IRS' approval of the volume submitter plan.
- Additional provisions added by an employer to the adoption agreement (beyond merely selecting options offered on the adoption agreement) are not covered by the IRS approval. Such customized provisions, when applied to a specific employer, can cause the plan of an employer to fail an IRS coverage or nondiscrimination requirement.

So, for example, excluding certain classes of employees (e.g., hourly employees) or adding a customized definition of compensation are

provisions that are not covered by the IRS' approval and can cause a plan, as implemented, to fail IRS tests. That doesn't mean an employer cannot have such custom provisions – it is just that they should be reviewed by ERISA counsel.

Because the volume submitter plan document has been vetted by the IRS, certain employers may find the specific provisions available in the document to be too constraining or to not quite fit with the employer's unique plan provisions. Unfortunately, there is no program for an individual employer to get IRS approval of an individually-drafted plan. So, plan sponsors will need to figure out how to get the available provisions of the volume submitter plan to “work” for them, or they will need to establish or maintain a customized plan document without IRS approval.

What to Expect in the Transition Process (TIAA Clients)

While approaches may vary for different recordkeeping providers, TIAA is already moving forward with the process of completing new adoption agreements under the volume submitter plan, based on employers' current plan provisions. Employers will be contacted by

TIAA and will receive proposed documents from TIAA (without any initial employer involvement in preparing the proposed documents). Employers can then review the documents provided by TIAA and proceed with adopting the new plan. Furthermore, it should be noted that TIAA is no longer supporting the Ascensus plan document; therefore, any sponsor request to amend their Ascensus plan document will trigger a conversion by TIAA to the FIS volume submitter document.

This presents both a challenge and an opportunity.

The Challenge

Employers need to carefully review the proposed new documents provided by TIAA (or the recordkeeper supporting their plan). Although TIAA's plan documentation team will try to accurately convert current plan provisions to the new document, our initial experience is that errors will occur, and the ultimate responsibility for the accuracy of the new document rests with the plan sponsor.

Conducting a proper and thorough review will require a good understanding of the meaning and implications of the provisions of the plan documents (both the prior plan and the new volume submitter) and an understanding of

how the plan is intended to operate. In other words, HR staff and outside resources will have to work together to make sure the conversion is an accurate “translation” of the current plan.

The Reality and the Opportunity

This conversion process represents a good opportunity for your HR staff to “get to know” your plan document.

Unfortunately, it is not uncommon for administrators to be unaware of how specific provisions of the plan document actually operate. This can occur as a result of staff changes, as new staff members accept the description of a plan’s provisions provided by their predecessors rather than as actually written, or because the plan documents are just too complex to be understood by most administrators.

The new volume submitter plan gives employers the opportunity to carefully review a plan’s provisions and make sure the written document syncs up with administrative practices. It also gives plan administrators a chance to review provisions and assess whether there is a better way to meet the employer’s objectives. Here too, some joint effort of HR staff and outside resources will be important.

Conclusion

Converting to a volume submitter plan can provide your institution with added protection relative to complying with IRS guidelines. However, retirement plan documents can be difficult to understand and navigating a volume submitter plan document can be especially challenging. We strongly encourage you to engage ERISA counsel in the process of reviewing your plan and, if appropriate, in converting over to a volume submitter plan. The good news is that the March 31, 2020 deadline for obtaining IRS protections under the volume submitter plan gives employers two years to complete this conversion process.

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