

NAGDCA ANNUAL CONFERENCE 2009

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outside of the room when applying for  
Continuing Education Credits  
for the following certifications.  
(Check the appropriate certification)

- CFP
- CPE

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IRS Update  
Activities and Regulations

Moderator, Regina Hilbert  
Panelists, Cheryl E. Press,  
Robert J. Architect, and  
Marilyn R. Collister

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Contact Information

- Robert J. Architect – Internal Revenue Service
  - Senior Tax Law Specialist, Washington, D.C.
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- Cheryl Press – Internal Revenue Service
  - Senior Attorney, Office of Division Counsel/Associate Chief Counsel, Tax Exempt & Government Entities, Washington, DC
  - Cheryl.E.Press@irscounsel.treas.gov

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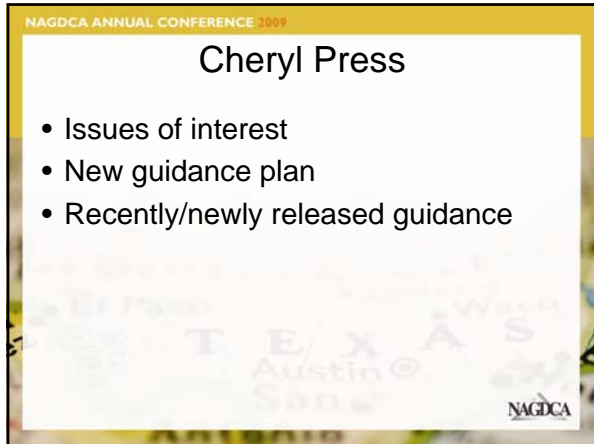
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## Cheryl Press

- Issues of interest
- New guidance plan
- Recently/newly released guidance



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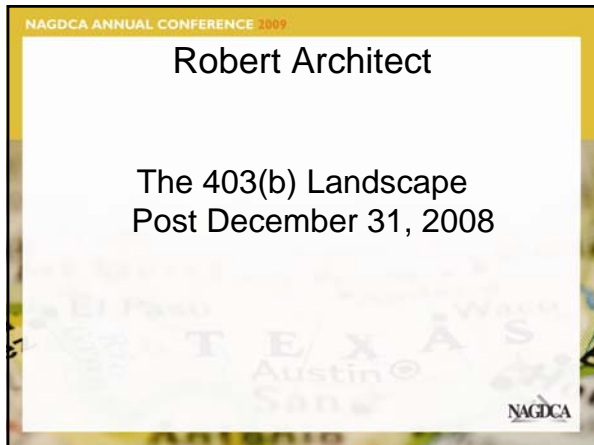
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## Robert Architect

The 403(b) Landscape  
Post December 31, 2008



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## Where Are The Regulations?

- 403(b) regulations became effective 1/1/09
- EO Controlled Groups – 1.414(c)(5) became effective 1/1/09
- But wait.....



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## The Written Plan Requirement

- Originally to be in place by 1/1/09 – no remedial amendment period for 403(b)
- As of 1/1/09, no pre-approved or determination letter program exists
- Not everyone was ready, so.....



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## Notice 2009-3 Issued 12/11/08

- Transition relief from the written plan requirement during the 2009 calendar year
- Not a mere free “push back” of the date plan is required by, since.....



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## Relief is Based on Plan Sponsor's Actions!

- Written plan must be adopted on or before 12/31/09. It must intend to satisfy 403(b), including the regulations
- During 2009, plan must operate in accordance with a reasonable interpretation of 403(b) and the regulations
- On or before 12/31/09, best efforts must be made to retroactively correct operational failures during 2009 to conform with the written plan



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### What are "Best Efforts" for 2009 Corrections?

- EPCRS – Rev Proc. 2008-50 - Section 6 - general principals
  - Main theme = restoration of benefits



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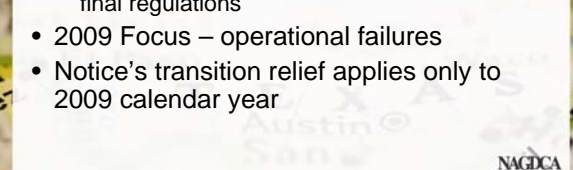
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### 2009 Compliance

- No written plan form failure defects in 2009 - includes
  - Absence of written plan or
  - Amendment of existing plan to comply with final regulations
- 2009 Focus – operational failures
- Notice's transition relief applies only to 2009 calendar year



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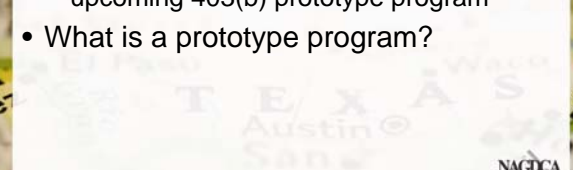
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### Announcement 2009-34

- Issued April 14, 2009
  - Announces **draft** revenue procedure for upcoming 403(b) prototype program
- What is a prototype program?



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### Draft Revenue Procedure Highlights

- Public comment period until June 1, 2009
- Adopting a prototype plan is voluntary, not mandatory
- No prototypes permitted with non-elective vesting schedules
- No prototypes available for 403(b)(9) retirement income accounts or those specifically designed for ministers or church-related organizations




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### Draft Revenue Procedure Highlights

- Both standardized and non-standardized prototypes available
- Retroactive remedial amendment opportunity available for timely adopters of prototypes




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### Draft Revenue Procedure Highlights

- Program reviews only plans and adoption agreements - **NOT** annuity contracts or custodial accounts under the plan
- See also supportive sample plan language on our website @ [www.irs.gov/ep](http://www.irs.gov/ep)

Next – a determination letter program for individually designed plans, and.....




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...403(b) EPCRS modifications  
to  
Revenue Procedure 2008-50

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Texas

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And, Meanwhile...

- Examinations continue
  - Universal availability is still main issue
- Concerns continue:
  - Plan termination not always simple
  - Confusion about 3121(w) churches vs. 414(e) religious organizations
- Notice 2009-3 *not* an aggressive “free for all”

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**CAUTION**

- Notice 2009-3 is not a free pass
- Use 2009 constructively and timely

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### The Written Plan – Essential Elements

- Eligibility (non-discrimination rules)
- Benefits
- Dollar limitations
- Available investments
- Time and form of distributions



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### The Written Plan – Optional Elements

- Loans
- Hardship distributions
- Auto enrollment
- Roth's



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### The Written Plan – Optional Elements

- Elective deferral catch-ups
  - 15 year plus service
  - Age 50 or older
- In-service contract exchanges
- Transfers
- Termination
- 5-year provision



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## 403(b) Failures and their Effect

- Not operating in accordance with plan terms
  - Affects all contracts (aggregation rule) of employee(s) for whom failure occurred
- Nondiscrimination failures – elective and non-elective
  - Non-elective failures not applicable to governments
  - Plan-wide affect

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## 403(b) Failures and their Effect

- Ineligible employer
  - Plan-wide affect
- Improper written plan or no written at all
  - Plan-wide affect (not in 2009)

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www.irs.gov/ep

Retirement Plans Community Topics

- Newsletters
- Published Guidance
- EP Forms/Pub Products
- Correcting Plan Errors
- Examinations/Enforcement
- EP Plans
- Types of Plans
- Governmental Plans
- More Topics...

• What's New

• Resources

• Ask Bob Architect!

Types of Retirement Plans

Find all sorts of information about these kinds of retirement plans:

- IRC 401(k) Plans
  - Check-up for Your 401(k) Plan
  - 401(k) Trends & Tips
  - 401(k) Rollover (Final version is available)
- IRC 403(b) Plans
  - Check-up for Your 403(b) Plan
  - 403(b)/457 Trends & Tips
- IRC 457 Plans

Internal Revenue Service  
U.S. Treasury Department

Individuals | Business | Charities & Non-Profits | Government Entities | Tax Professionals

Retirement Plans

IRC 403(b) Tax-Deferred Annuity Plans

A 403(b) tax-deferred annuity (TDA) plan is a retirement plan offered by your employer and can be designed and operated in a number of ways. General salary-reduction agreements and nonactive employee contributions.

• Annuities

• Investment Options

• Distribution/Payouts

• Contribution Limits

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## How Can I Find Out More?



employee plans news

[www.irs.gov/ep](http://www.irs.gov/ep)



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## Marilyn Collister

- Other items of interest
- Impact of recent guidance on plan sponsors and recordkeepers



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# Thank you!

Questions?



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