

March 31 Deadline to Amend 403(b) Retirement Plans Approaches

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Employer sponsors of 403(b) retirement plans have until March 31, 2020, to amend their plan documents to comply with Internal Revenue Service (IRS) rules stating what provisions must be contained in those documents.

The most reliable way to satisfy those requirements is to adopt a plan document that has been pre-approved by the IRS and is offered by a financial institution or another vendor. Such documents are commonly referred to as "prototype" or "volume submitter" plans.

A 403(b) plan is a retirement plan for eligible employees of certain tax-exempt organizations, public schools, and ministers. In 2007, the IRS issued regulations requiring all 403(b) retirement plans to adopt by the end of 2009 a written plan document setting forth the plan's key provisions. Since then, the IRS has issued guidance on what items, such as eligibility criteria and vesting rules, should be addressed in each 403(b) plan document. It also established in 2013 a procedure for banks, financial institutions, and other approved vendors to obtain IRS pre-approval of form plan documents. In the revenue procedure establishing the pre-approval process in 2013, the IRS had stated that it would give employers a deadline to correct their plan document defects by approving pre-approved plans or individually designed plans that satisfy all IRS plan document requirements. Four years later, in Revenue Procedure 2017-18, the IRS stated that the deadline for amending 403(b) plans would be March 31, 2020.

If an employer amends its plan document by March 31, 2020, it may do so retroactively to the later of January 1, 2010, or the plan's effective date. Therefore, the employer will have corrected form defects that occurred as far back as the beginning of 2010, which the IRS has designated as the first day of the "remedial amendment period." The plan adopted must contain all provisions that are necessary to satisfy the IRS requirements on 403(b) plans.

The IRS issued additional guidance in Revenue Procedure 2019-39 regarding plan amendments. In that ruling, it stated that the March 31, 2020 deadline would be extended for a limited number of form defects to allow time for correction. For example, if a form defect occurred on or before March 31, 2020, in an individually designed plan, the deadline for amendment has been extended to the later of March 31, 2020, or the last day of the second calendar year following the calendar year in which the plan or amendment is put into effect. However, this extension is not available for form defects that are a result of failing to meet 403(b) requirements that were effective before 2019. The IRS gives the following example. If a discretionary amendment has a form defect and was made effective on January 1, 2018, then the plan must be corrected

by December 31, 2020. If, however, the amendment was made effective on January 1, 2017, the period for correction will still end on March 31, 2020. Thus, employers should pay close attention to when their plan or any amendments became effective in order to correct any form defects by the applicable deadline timely.

After March 31, 2020, employers will be required to update their 403(b) plan documents in accordance with a cycle of remedial amendment periods to be announced by the IRS. The amendment deadline applicable to an employer will depend upon several factors, including whether the 403(b) plan uses a pre-approved plan document or an individually designed document and whether the plan is a governmental plan or not. The submission period for pre-approved plans is not expected to begin in 2023. The IRS intends to require the restatement of pre-approved plans every six years and will issue additional guidance prior to the date that 403(b) pre-approved plans may next be submitted for IRS review.

Employers should review their 403(b) plans to determine whether they must amend their plan documents before March 31, 2020. Going forward, employers should routinely review their plans to ensure compliance with IRS rules regarding 403(b) plan documents.

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