

March 10, 2020

Final Reminder: 403(b) Plan Remedial Amendment Period Ends March 31, 2020

Since December 31, 2009, the IRS has required all 403(b) plan sponsors to adopt a written plan document for their 403(b) plans. On March 31, 2020, the IRS “remedial amendment period” will be ending for plan sponsors to adopt plan amendments to reflect changes in the law and applicable regulations that have occurred since 2009. To use this correction period, the 403(b) plan sponsor must have adopted a 403(b) compliant plan by December 31, 2009 (or the effective date of the plan, if later). Plan sponsors are eligible to use the remedial amendment period window either by:

- Adopting a 403(b) pre-approved plan by March 31, 2020, that has a 2017 opinion or advisory letter; or
- Amending their individually designed plan to adopt all post-2009 changes in the law and applicable regulations by March 31, 2020.

If an eligible plan sponsor adopts a 403(b) pre-approved plan by the March 31, 2020 deadline, the IRS allows the plan sponsor to retroactively correct written plan defects in the form of its written 403(b) plan back to:

- January 1, 2010; or
- the plan’s effective date, if later.

In addition, if the plan was administered based on the defective provision, such operational errors also must be corrected.

By adopting a 403(b) pre-approved plan or the appropriate plan amendments by the March 31, 2020 deadline, a plan sponsor is able to correct written plan document defects that have occurred since January 1, 2010. Accordingly, 403(b) plan sponsors should consult with their service providers to confirm that they have adopted any required amendments by the March 31, 2020 deadline. If a 403(b) plan sponsor did not originally adopt a 403(b) compliant written plan document

Related Practices

Employee Benefits & Executive Compensation
Labor & Employment Relations



before December 31, 2009, the IRS offers its Voluntary Correction Program (VCP) to address the correction.

Related People

Mark Lotito

Senior Counsel

malotito@michaelbest.com

T 414.223.2507

Martin Tierney

Partner

mptierney@michaelbest.com

T 414.223.2533