

ALERTS**Compensation And Benefits Law Alert - IRS Sets Deadline For 403(b) Plan Sponsors To Retroactively Correct Document Defects**

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The IRS has set a March 31, 2020, deadline for sponsors of 403(b) plans to adopt pre-approved 403(b) plans or amend individually designed 403(b) plans to correct plan document defects retroactive to the later of Jan. 1, 2010, or the original effective date of the plan. The much-anticipated guidance regarding this remedial amendment period, previously referenced in Revenue Procedure 2013-22, was issued in Revenue Procedure 2017-8. Defects that may be corrected during the remedial amendment period pertain to any plan provision, or lack of provision, which causes a plan document to fail to comply with the requirements of Code Section 403(b) at any time during the period beginning Jan. 1, 2010 (or, if later, the effective date of the plan), through March 31, 2020.

The 403(b) final regulations require plan sponsors to maintain compliant written plan documents. Under IRS Notice 2009-3, 403(b) plan sponsors were required to adopt a compliant written plan document by Dec. 31, 2009, which was effective as of Jan. 1, 2009. Accordingly, the newly announced remedial amendment period for the correction of 403(b) plan defects will not permit the correction of a 403(b) plan sponsor's failure to adopt a written plan document by Dec. 31, 2009. However, a 403(b) plan sponsor can correct the failure to adopt a written plan document by the end of 2009 by utilizing IRS correction procedures.

The IRS issued procedures for obtaining opinion and advisory letters for pre-approved 403(b) plans (prototype plans and volume submitter plans) in Revenue Procedure 2013-22. The IRS has been accepting applications for opinion and advisory letters for pre-approved plans since June 28, 2013. Opinion and advisory letters for pre-approved 403(b) plans have not yet been issued by the IRS, but it is anticipated that such letters will be issued soon.

During the remedial amendment period, sponsors of 403(b) plans should consider confirming that plan documents have been in compliance since Jan. 1, 2010 (or the effective date of the plan, if later). Some 403(b) plan sponsors may wish to consider adopting a pre-approved 403(b) plan for this purpose, which would provide the added benefit of an opinion or advisory letter on which to rely.

For more information, please contact the attorney with whom you work, or the following members of Barnes & Thornburg LLP's Employee Benefits group: Lori Shannon at lori.shannon@btlaw.com or (312) 214-5664; Michael Paton at michael.paton@btlaw.com or (317) 231-7201; or Mina Amir-Mokri at mina.amir-mokri@btlaw.com or 312-214-4804.

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