

## Publications

### 403(b) Plan Remedial Amendment Period Announced

#### Related Attorneys

Margaret "Peggy" M. Baron

Victor J. Ferguson

Suzanne R. Galyardt

Elizabeth Howard

Emily S. Pan

Christine M. Poth

#### Related Services

Employee Benefits and Executive Compensation

#### Related Industries

Tax-Exempt Organizations

**AUTHORED ARTICLE** | 9.15.2017

*This article appeared in the September edition of **Foundations**, a Vorys newsletter that provides practical insights into everyday legal matters faced by tax-exempt organizations.*

After years of anticipation, sponsors of 403(b) plans have finally received guidance from the IRS regarding preapproved 403(b) prototype and volume submitter documents. In **Revenue Procedure 2017-18**, the IRS officially announced that the last day of the current remedial amendment period is March 31, 2020. Thus, if a plan does not meet the requirements of section 403(b), it will be deemed to be compliant for the entire remedial amendment period if the plan's sponsor adopts a pre-approved 403(b) plan by March 31, 2020.

### History of 403(b) Plan Document Guidance

A 403(b) plan can be sponsored by a church, a tax-exempt 501(c)(3) organization, or a public school and until the IRS issued final regulations in 2007, 403(b) plans were not required to be maintained pursuant to a written plan document. The final regulations required 403(b) plan sponsors to adopt a written plan document before January 1, 2010. The IRS made available a model 403(b) plan for public school sponsors and assured these adopting sponsors that the model plan will be considered to comply with the requirements of section 403(b). However, the same assurances did not apply to non-public school sponsors that adopted either the model 403(b) plan or an individually designed 403(b) plan. This placed 403(b) plan sponsors in a difficult position—they were now required to formally document their plan in writing, but they could not rely on a preapproved plan (or even an individually-designed determination letter) to ensure compliance.

In other guidance published after the final regulations, the IRS indicated its intent to establish both a preapproved prototype/volume submitter program and a determination letter program for 403(b) plans similar to the programs in place for 401(a) qualified plans. The IRS also indicated that it will treat a 403(b) plan sponsor's document as compliant for 2009 if it adopts a written plan that is intended to satisfy the requirements of 403(b) by December 31, 2009. Moreover, the IRS

indicated that if the sponsor timely adopts a written plan and either applies for a determination letter or adopts a prototype plan when available, the sponsor will have a remedial amendment period in which to amend the plan to correct any form defects retroactive to January 1, 2010 or the 403(b) plan's effective date, if later.

The IRS' plans to establish a determination letter program for 403(b) plans were never realized. In 2013, the IRS first announced the commencement of a 403(b) preapproved plan program. The first opinion letters and advisory letters were issued on March 31, 2017.

### Next Steps for 403(b) Plan Sponsors

Section 403(b) plans cannot apply for individual determination letters from the IRS. Therefore, the only remaining mechanism that a 403(b) plan sponsor can use to ensure its plan document complies with the 403(b) requirements is to adopt a preapproved plan on or before March 31, 2020. The IRS has released a list of preapproved 403(b) plan document providers which can be found [here](#). Any employers who sponsor 403(b) plans with form issues should consider adopting a pre-approved 403(b) plan document.

For additional information, please contact your Vorys attorney or one included on this alert.