

# 403(B) DOCUMENT COMPLIANCE AND THE COMMENCEMENT OF THE THREE YEAR REMEDIAL AMENDMENT PERIOD

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**Practices & Industries**

Employee Benefits

Unlike profit sharing and 401(k) retirement plans, 403(b) retirement plans only became subject to IRS regulations requiring written plan documents in 2007. Compliance with the written document requirement was made difficult by the fact that the Code does not contain specifics about what terms must be included in a 403(b) plan document. For this reason, 403(b) plan documents have been drafted in “good faith” reliance on IRS model language and sample plan provisions issued from time to time.

Over the past year, the IRS has made significant changes to the way retirement plan sponsors ensure their 403(b) documents comply with the Code. On January 13, 2017, the IRS confirmed that it would not issue determination letters for 403(b) plans. The IRS opened a three year remedial amendment period (RAP) that gives 403(b) plan sponsors until March 31, 2020 to adopt necessary amendments and to correct document defects, retroactive to January 1, 2010. This essentially means that 403(b) plan sponsors can retroactively self-correct any defects in their 403(b) document, and conform the document to plan operations.

To do so, 403(b) plan sponsors must take one of two courses – restate the 403(b) plan onto a pre-approved plan document, or restate the 403(b) plan document as an individually designed plan. If adopting a pre-approved plan, the plan sponsor will have reliance upon an IRS opinion letter stating that the form of the plan meets the applicable Code requirements for favorable tax treatment.

The RAP is not available unless the plan was adopted on or before December 31, 2009 (or the effective date of the plan, if later). Plans that do not satisfy this timing requirement must correct the 403(b) plan document and operational errors under the IRS’ Voluntary Correction Program (VCP). Successful correction under VCP means the 403(b) plan will be treated as though the document changes were timely adopted.

While three years may seem like a long time, all amendments to the Plan dating back to January 1, 2010 must be included in the restated 403(b) plan document, along with the effective dates. Starting this process in the near future will ensure that all the document corrections are captured, and that any deviations from the

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Plan's operations are identified and corrected.

