

## IRS Announces Last Day of Remedial Amendment Period for 403(b) Plans

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The **Internal Revenue Service** recently issued *Revenue Procedure 2017-18*, which provides that the last day of the remedial amendment period for Code Section 403(b) retirement plans will be March 31, 2020. As discussed below, this means that a sponsor of a Code Section 403(b) plan who timely adopted a Code Section 403(b) retirement plan document that was intended to comply with the Code will have until March 31, 2020 to retroactively correct any defects to the form of the plan document, either by amending its plan document or adopting a pre-approved plan document.

### **Background**

Under final Treasury regulations that were issued in 2007, effective January 1, 2009, a sponsor of Code Section 403(b) retirement plan is generally required to maintain its plan pursuant to a written plan document that complies with the requirements of these final Treasury regulations in both form and operation.

In March of 2013, the IRS issued Revenue Procedure 2013-22, which set out new procedures for the IRS to issue opinion and advisory letters for pre-approved plan documents for Code Section 403(b) retirement plans (*i.e.*, prototype and volume submitter plan documents). The IRS does not issue determination letters on individually designed Code Section 403(b) retirement plans.

Revenue Procedure 2013-22 also included information about a remedial amendment period that would allow a plan sponsor to retroactively correct defects in the form of its Code Section 403(b) plan document, provided that the correction is made prior to the end of the remedial amendment period. For this purpose, a “defect” is a provision, or absence of a required provision, that causes the plan to fail to satisfy the requirements of Code Section 403(b). Generally, the remedial amendment period is available only if an employer adopted a written plan document intended to satisfy the requirements of Code Section 403(b) on or before January 1, 2010 or, if later, the first day of the plan’s effective date. Revenue Procedure 2013-22 provided that any defect must be corrected on or before the last day of the remedial amendment period. However, the guidance did not state when the last day of the remedial amendment period would occur.

### **The Last Day of the Remedial Amendment Period Announced**

With the issuance of Revenue Procedure 2017-18, the IRS announced that the last day of the remedial amendment period for Code Section 403(b) retirement plans will be March 31, 2020. Therefore, if the form of a Code Section 403(b) retirement plan does not satisfy the requirements of Code Section 403(b) during the remedial amendment period but is properly retroactively amended by March 31, 2020, the plan will be considered to have satisfied the requirements for the entire remedial amendment period (which begins on January 1, 2010 or, if later, the effective date of the plan). Generally, a Code Section 403(b) retirement plan will automatically satisfy the IRS requirements that the form of the document complies with the Code Section 403(b) if the plan sponsor adopts a pre-approved plan document on or before the last day of the remedial amendment period.

According to Revenue Procedure 2017-18, the Department of Treasury and IRS intend to issue future guidance with respect to the timing of Code Sec. 403(b) retirement plan amendments made after Mar. 31, 2020.



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