

It's Time for Tax-Exempt Entities to Restate Their 403(b) Plans

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Under a new IRS program, tax-exempt entities who sponsor 403(b) retirement plans can adopt pre-approved documents that include determination letters that confirm the tax-qualified status of their plans. Plan sponsors need to adopt pre-approved plans before March 31, 2020, in order to qualify for the program.

Under a 403(b) plan, eligible employees can elect to make pre-tax contributions towards the cost of their own retirement benefits. The accumulated savings is most often used to purchase an annuity when the participant retires. Until now, a plan sponsor could not receive a determination from the IRS that its 403(b) plan satisfied all applicable tax requirements.

However, on January 13, 2017, the IRS announced the opening of a "remedial amendment period" under which plan sponsors can adopt pre-approved plan documents retroactively to the later of January 1, 2010, or the date that the plan was first adopted. Various entities such as insurance companies, financial service providers and companies that sell standardized retirement plan documents have already received approval of their forms of 403(b) plan documents. Most plan documents can be customized to reflect the terms of an existing 403(b) plan. The IRS will not review or provide determination letters for individually designed 403(b) plan documents.

By adopting a pre-approved document that has a determination letter, a 403(b) plan sponsor can protect against an assertion (for example, in the course of an IRS audit) that its plan document is not tax-qualified and that the plan sponsor and participants are not eligible to receive the tax benefits afforded under the Code. Therefore, it is highly recommended that sponsors of 403(b) plans adopt an IRS-approved plan document before March 31, 2020. Although the deadline for adoption is almost three years away, plan sponsors should begin discussions with their legal counsel regarding the conversion of their current documents to a pre-approved plan.

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