

Last Day of Remedial Amendment Period for 403(b) Plans is March 31, 2020

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Eligible employers sponsoring Code Section 403(b) retirement plans have until March 31, 2020 to self-correct any defects as to the written form of those plans. In recently issued [Revenue Procedure 2017-18](#), the IRS fixed March 31, 2020 as the last day for the current remedial amendment period for 403(b) plans, which began January 1, 2010 for plans existing on or before December 31, 2009. Plan sponsors who have timely adopted 403(b) retirement plan documents, now, will have until March 31, 2020 to retroactively correct any plan document defects, either by adopting a pre-approved plan document or amending their existing plan. This is welcome news for 403(b) plan sponsors and advisors to those plans who have waited nearly four years for the IRS to announce an end date to the current remedial amendment period.

Background

In March 2013, the IRS issued [Revenue Procedure 2013-22](#), which established the program and procedures for issuing opinion and advisory letters for pre-approved 403(b) plans, and also provided a remedial amendment period for eligible employers to retroactively correct defective plan provisions violative of Code Section 403(b) written plan rules either by timely adopting a pre-approved plan or by timely amending their existing plan. It was in this prior guidance that the IRS announced January 1, 2010, or the plan's effective date, whichever is later, as the first day of the remedial amendment period. Rev. Proc. 2013-22 provided that any defects in the form of a plan causing the plan to fail to satisfy IRC 403(b) and its regulations, i.e., a defective plan provision or the absence of a required one, must be corrected on or before the last day of the remedial amendment period. The IRS, in this prior guidance, however, did not provide an end date to the remedial amendment period. Rather, the IRS expressly reserved that it would provide the date of the last day of the remedial amendment period in subsequent guidance. Rev. Proc. 2017-18 is that much anticipated subsequent guidance.

IRS sets March 31, 2020 as Last Day of the Remedial Amendment Period for 403(b) Plans

The recent release of Rev. Proc. 2017-18, effective January 1, 2017, has now clarified the prior guidance from Rev. Proc. 2013-22 by setting the date of March 31, 2020 as the last day of the remedial amendment period. Now, a plan that fails to satisfy written plan requirements of Code Section 403(b) on any day during the period beginning on the later of January 1, 2010, or the plan's

effective date, and ending on March 31, 2020, will be deemed to have satisfied those requirements if all 403(b)-compliant plan provisions have been adopted and made effective retroactive to the later of January 1, 2010 or the plan's effective date, before March 31, 2020. The revenue procedure noted that the Department of Treasury and IRS intend to issue guidance with respect to the timing of 403(b) plan amendments made after March 31, 2020 at a later date.

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National Law Review, Volume VII, Number 65

Source URL: <https://natlawreview.com/article/last-day-remedial-amendment-period-403b-plans-march-31-2020>