



403(b) plans: Some basics, then time for action!

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Remember in 2009 when the IRS required all plan sponsors to adopt written plan documents for their 403(b) plans? That was fun and the beginning of a shift for employers to take an active role in administering 403(b) plans. More recently, the IRS created a program to pre-approve plans and issued letters and opinions for vendors to safely share their plans with plan sponsors. Accordingly, the IRS has announced the creation of another remedial amendment period during which plan sponsors of pre-approved plan must adopt restated plan documents before March 31, 2020 ([Rev. Proc. 2017-18](#)). Here are some basic “to-do’s” for school districts to consider.

What is a 403(b) plan?

- Named for Section 403(b) of the Internal Revenue Code, this is generally a type of defined contribution retirement plan that permits participants to defer taxation of salary and earnings on the deferred amounts. They have also been referred to as tax-deferred or tax-sheltered annuities, because the types of investments offered are more limited (e.g., annuity contracts with insurance provider, custodial accounts) than traditional 401(k)s.
- 403(b) plans are sponsored primarily by public schools, universities and colleges, school corporations, churches and 501(c)(3) tax-exempt organizations. Nonprofits, like unions or trade associations, cannot sponsor 403(b) plans.
- 403(b) plans are required to have a written plan document that describes the plan’s permissible features under Section 403(b). Plan documents may be customized or use pre-approved language.

What is the IRS remedial amendment period? Do I have to use it?

- This is a window of time provided by the IRS during which plan sponsors may correct the form of their plans retroactive to January 1, 2010 (or a later date for a new plan), by adopting a pre-approved plan before March 31, 2020.
- Adoption of the retroactive restated plan ensures the plan document complies with 403(b); the plan sponsor and administrators must comply with the operational requirements. Scrutinizing the plan document during the restatement process will help you learn and evaluate your level of operational compliance.
- If your plan document is currently a pre-approved plan, it must be restated before March 31, 2020, even if there are no corrections. If you amended your plan between January 1, 2010, and the present, your plan can acknowledge the effective date of other amendments.
- Not all 403(b) plans will fit perfectly into a pre-approved model. Custom plan provisions will not have the security of IRS approval. Maintaining a custom plan requires independent monitoring of all plan provisions under 403(b) to mitigate the risk of non-compliance.

What if my plan errors are operational errors? How do I know?

- The plan sponsor may self-correct plan provisions that are currently inconsistent with Section 403(b) retroactively to January 1, 2010. Corrections could include the addition of necessary provisions or amendment of faulty provisions. Some errors can be retroactively self-corrected while other operational errors require correction through the IRS' Voluntary Correction Program (VCP) and corresponding corrective action.
- The failure to adopt a written plan before 2009 cannot be self-corrected through this restatement period. Use of the VCP is required.
- Some common errors include incorrect use of compensation definition, employee eligibility, contribution limits, missing or mismatch payroll data, treatment of forfeitures, proper distributions, loan values and defaults, hardship distribution documentation, vesting periods and delayed contributions. You will need to develop formal internal controls to catch these errors.
- The Department of Labor and IRS audits could severely penalize your plan based on the facts and circumstances of such management failures and the size of the plan.

How do I get started?

- Employers are encouraged to plan their methods of obtaining Section 403(b) compliant plans and operations before the close of the remedial period. For some, that is as simple as confirming compliant operations and adopting a restated plan document with the assistance of counsel or a plan administrator. Others might want to look under the hood a bit harder. Check out the IRS' [list of responsibilities and duties](#) in operating a 403(b) plan to get you started. It's good to know what the IRS expects and looks for, as 403(b) plan audits have increased in recent years.
- Don't procrastinate! March 2020 sounds like the distant future, but a well-planned restatement should begin sooner rather than later. Once you add on time to gather documents, work with counsel or administrators, update participant communications as needed and obtain approval by your board, you won't be surprised that your phone is ringing now.

Your 403(b) plan is just one part of the benefits you provide to employees. Take care of your 403(b) before other benefit obligations demands your attention.

Authors
