

## **DEADLINE LOOMING IN THE DISTANCE FOR 403(B) PLANS: WHAT PLAN SPONSORS SHOULD BE DOING NOW**

Jun 05, 2018

Last year when the IRS announced that the initial remedial amendment period for 403(b) plans will end March 31, 2020, the natural reaction to this very important (but rather remote) deadline was to immediately put it on the to-do list, somewhere near the bottom, where it has been languishing ever since. If this describes your reaction, you are certainly not alone.

We think it is a good time to move this to the front burner and take some action. As you may recall, 403(b) plan sponsors were required to adopt a written plan document for existing 403(b) plans on or before December 31, 2009. At the time, there were no pre-approved 403(b) plans and no determination letter program was available for 403(b) plan sponsors to gain assurance that the document satisfied the requirements of section 403(b) and applicable regulations. In order to provide a system of reliance for 403(b) plans, the IRS announced the commencement of a 403(b) pre-approved plan program and, on March 31, 2017, it issued the first opinion letters and advisory letters for prototype and volume submitter plan documents under the program. If a plan sponsor retroactively adopts a pre-approved plan by the last day of the remedial amendment period, it will automatically be deemed to have corrected any form defects in the plan document it previously adopted and will be considered to be in compliance with applicable plan document requirements back to January 1, 2010.

Instead of adopting a pre-approved plan document, a plan sponsor could amend an individually designed plan to correct any form defects prior to the end of the remedial amendment period. Unfortunately, last year the IRS decided not to move forward with its original intention to establish a determination letter program for individually designed 403(b) plans. As a result, at this time, adoption of a pre-approved plan document is the only way to obtain assurance from the IRS that a 403(b) plan document is compliant.

### **Action Steps for Plan Sponsors**

- If your plan was established or restated in the last year, confirm whether or not your current document is a pre-approved prototype or volume submitter plan with an opinion or advisory letter. If so, it is likely that no further action is required.

- If the current plan document does not have an opinion or advisory letter, consider adopting, prior to the end of the remedial amendment period, a pre-approved plan document retroactively to January 1, 2010 or, if later, the plan's effective date.
- The IRS has posted a list of pre-approved prototype and volume submitter plan sponsors on its website. If your plan's current provider is on the list, it may be simplest to adopt that provider's pre-approved plan; however, consider contacting several providers to obtain additional information prior to making a decision.
- Be sure to adopt the pre-approved plan document prior to the end of the remedial amendment period.
- If the plan is individually designed and it is not feasible to restate the plan on a pre-approved plan document, consider having legal counsel review the plan document to determine if any amendments should be adopted to correct a form defect prior to the end of the remedial amendment period.
- As always, consider working with your legal counsel to assess the status of the plan and consider your options prior to taking action.

## RELATED PRACTICE AREAS

- Employee Benefits & Executive Compensation

## MEET THE TEAM



### **Denise Pino Erwin**

Denver

[denise.erwin@bcplaw.com](mailto:denise.erwin@bcplaw.com)

[+1 303 866 0631](tel:+13038660631)

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.