



Ivins Phillips Barker
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IPB Insights

403(b) Plan Fix-It Window - Yes Please!

If you maintain a 403(b) plan, take note: The IRS has opened a generous window for plan document retroactive corrections – going back as far as *January 1, 2010*. This window slams shut, however, on *March 31, 2020*.

This gives you six weeks to cure 403(b) plan document errors caused by missing or defective plan provisions that arose over the past decade. The correction period applies to both individually designed plans and prototype plans. A corrective plan amendment or restatement should be sufficiently comprehensive to address all applicable plan provisions dating back to *January 1, 2010*.

After *March 31st*, 403(b) plan sponsors will be subject to remedial amendment period cycles similar to those for qualified 401(k) plans.

Q: Where does the *January 1, 2010* date come from?

Treasury regulations governing 403(b) plans became effective in 2009. These rules required that 403(b) plan sponsors adopt a written plan document no later than *January 1, 2010*. For periods after that date, the IRS has issued guidance creating (and extending) an initial remedial amendment period for 403(b) plans, with an ultimate deadline of *March 31, 2020*.

Q: What does this mean for my 403(b) plan?

The initial remedial amendment period is a unique opportunity to correct any plan document defects arising in the past decade. We expect many plan sponsors to restate their 403(b) plans before *March 31, 2020* to ensure documentary compliance. Alternatively, you could restate an individually designed plan onto a prototype platform before this date.

Q: What happens after March 31st?

After March 31st, your 403(b) plan will be subject to a series of remedial amendment period cycles (similar to the system for 401(k) plans), as set forth in Rev. Proc. 2019-39. For future legislative and regulatory changes, you will generally have two full plan years in which to adopt a plan amendment. (Governmental plans may be eligible for slightly longer periods in some cases.) The IRS has pledged to issue an annual Required Amendments List to assist you in this process.

Q: Can I use this to address an operational failure?

No. The remedial amendment periods – including the initial March 31, 2020 deadline – only apply to plan document corrections. Operational failures will need to be addressed separately under the IRS voluntary corrections program in Rev. Proc. 2019-19.

Q: What's the difference between 403(b) and 401(k) plans?

A 403(b) plan is a tax-sheltered annuity utilized as a savings vehicle by tax-exempt 501(c)(3) organizations and educational institutions. It is funded by individual annuity contracts issued by an insurance company or by mutual fund custodial accounts. A 401(k) plan is a tax-qualified plan generally maintained by a for-profit employer, with assets held in trust. Although 403(b) and 401(k) plans originally were quite distinct, many of these differences have been eroded by Congress over time. Both types of plans are now subject to similar – but not identical – rules with respect to nondiscrimination testing, annual reporting, and fiduciary obligations.

For questions regarding this update, please contact [Robin Solomon](#).