

## 403(b) Plan Restatement Deadline is March 31, 2020; Be Sure to Check New Governance Terms Too

Tax-exempt employers that sponsor or offer Internal Revenue Code Section 403(b) plans (including non-ERISA plans) have until March 31, 2020 to complete the amendment and restatement of those plans.

Although not necessarily required in all cases, the timely restatement of a plan can provide the plan sponsor with assurance (not previously available) that the form of the plan satisfies Internal Revenue Code and Internal Revenue Service requirements applicable to such plan. Under certain circumstances, a plan sponsor can make retroactive corrections to its plan to conform the plan to changes that became effective on or after January 1, 2010.

Sponsors that have not already done so should begin the restatement process immediately. This is particularly true for sponsors of individually-designed plans. The process typically starts by the employer/sponsor asking the plan's investment provider or recordkeeper for its pre-approved plan document. Next, the terms of the existing plan document are restated/transferred onto the form of the pre-approved plan. During this process, particular care should be taken to ensure that the text/terms of the restated plan accurately reflect both the intended and required administration of the plan. The restated plan must be approved and executed on or before March 31, 2020.

Care should also be taken in the restatement process to ensure that the governance terms in the new plan document are consistent with the plan sponsor's governance practices and prior delegations of authority. For example, if the plan sponsor has delegated authority and responsibility for plan investment selection and monitoring to an internal committee, the new plan document should be reviewed carefully to ensure that it does not contain terms that are contrary to any such prior delegation. If contrary terms exist, prior delegations of authority may need to be ratified/confirmed by current action of the appropriate governing body of the plan sponsor.

If you have any questions about this memorandum, or if you need assistance with the restatement of an Internal Revenue Code Section 403(b) plan, please contact any member of our [Employee Benefits and Executive Compensation Practice Group](#) listed below.

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