

Still Time to Fix Your 403(b) Plan

By: Alex Mattingly on August 12, 2019 on graydon.law

In 2013, the IRS established a program for issuing opinion letters for 403(b) pre-approved plans and began accepting applications for opinion letters. This program allows eligible employers that amend or restate their plans to retroactively correct defects in form of written 403(b) plans going back to the first day of the remedial amendment period, which is the later of January 1, 2010 or the plan's effective date. In other words, the IRS is giving its approval on the form of your restated plan document going back to the 2010 plan year. This program is great for eligible employers, but time is running out. Opinion letters are only effective for plans that are amended or restated before March 31, 2020.

While this program is beneficial for eligible employers, it is not without limits, and is not a fix-all for every 403(b) plan error. Correction is only available for defects in form, which occur when a provision (or the absence of a provision) causes the plan to fail to satisfy the requirements of 403(b). Also, a plan will only be considered to have satisfied the requirements of 403(b) retroactively if the provisions of the plan have been adopted and made effective in form and operation from the beginning of the remedial amendment period.

If your 403(b) plan still needs to be restated or if you have any questions, please contact a Graydon Employee Benefits attorney.