

Making Sense of the New 403(b) Regulations

You may have heard about the new 403(b) regulations that will impact your retirement plan. This article will help you get started on preparing for your plan to be compliant and, if required, audit ready by the end of the year. The accompanying article by Jeffrey Chang of Chang, Ruthenberg and Long addresses some of the legal issues for you. You will no doubt have many questions about these requirements. We welcome your questions.

REGULATION OVERVIEW:

Final regulations regarding 403(b) plans were published on July 26, 2007. Except for some special effective date rules, the new regulations are effective January 1, 2009. The primary impact of the new regulations is better alignment of 403(b) plans with section 401(k) plans. Benefits of 403(b) plans remain the same, but plan sponsors will have more responsibilities. The changes are numerous and failure to comply could result in additional taxable income to participants.

These revisions include a requirement that §403(b) contracts must be maintained pursuant to a written plan. Although some §403(b) contracts which are subject to the Employee Retirement Security Act of 1974 (ERISA) are already maintained pursuant to written plans, there will likely be a cost associated with satisfying the written plan requirement for those employers that do not have existing plan documents.

Under the new regulations, contracts must be issued under a plan. This plan contains all the material terms and conditions such as:

- Eligibility
- Benefits
- Contributions
- Applicable limitations
- Contracts available under the plan
- Time and form of benefit distributions
- Nondiscrimination rules
- Plan termination
- Information sharing agreements with vendors

In the same manner as other qualified employee benefit plans, the 403(b) arrangement will be subject to the Department of Labor (DOL) audit requirements. If your organization has 100 or more eligible participants at the beginning of the plan year, audited financial statements will probably be required and will be a required attachment to the plan's Form 5500.

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PREPARING FOR THE AUDIT REQUIREMENT:

Plan sponsors must be cognizant of the new requirements and what conforming to the new rules entails. It is important that the following tasks are scheduled to begin now as complying with the audit requirement presents many challenges and will be very time consuming.

1. Gathering and reviewing all your plan documents
2. Gathering (creating) signed election forms for all the employees
3. Provide service agreement with administrator (fee disclosure)
4. Hold advisory/investment committee meetings and drafting minutes to document discussions
5. Determining the reporting package available from the plan administrator
6. Determining the trust opening balances (Form 5500 requires disclosure of comparative balances)
7. Identify the multiple vendors involved
8. Identifying loans issued to participants
9. Hardship distributions documentation
10. Obtaining the ERISA required Fidelity Bond from a surety/insurance company
11. Documentation of timely deposits for employee contributions
12. Producing a census report

The rules and regulations governing benefit plan compliance grow increasingly complex. Early consideration of the significant accounting procedures and internal controls could help make the audit more efficient and less overwhelming. Contact Brad Gai at 925-210-2180 or bgai@rina.com so that he can assist you with your first 403(b) plan audit.

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