

## Dealing With The New Annual Report And Audit Requirements For ERISA-Covered 403(b) Plans ("You Mean We Have to Count The Cats?")

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In an earlier article (see [Managing Your 403\(b\) Plan - It's Like Herding Cats](#)), we likened managing many employers' 403(b) plans to herding cats. And now for those not-for-profits with 403(b) plans that are subject to ERISA, it's time to count the cats. This article walks affected employers through the process of dealing with the requirement of filing a Form 5500 and, if the plan is large enough, having an independent audit conducted.

Although the reporting and auditing requirements for ERISA-covered 403(b) plans are similar to those that already exist for 401(k) plans and traditional pension plans, many 403(b) sponsors are likely to have a more difficult time with compliance due to the independent, decentralized, and often more loosely organized, nature of their 403(b) programs. In other words, how can one even begin to audit the assets of a 403(b) plan at both the participant level and the plan level without organized records of how many 403(b) annuities or custodial accounts are part of the plan, or where the investment are held? What's a 403(b) plan sponsor to do?

First, take a deep breath. Make it two. Then follow these steps:

- Step 1: Confirm that your 403(b) arrangement is indeed subject to ERISA (see *Determining Whether Your 403(b) Arrangement Is Subject To ERISA*). If it's not, you can breathe a sigh of relief. If it is, proceed to step 2. Keep breathing.
- Step 2: Determine whether you are eligible to file a Short Form 5500 (Short Form) or whether you must file a regular Form 5500 along with audited financial statements.

Basically, your 403(b) plan will be subject to the regular reporting and audited financial statements requirements if the plan has 100 or more eligible participants at the beginning of the plan year (i.e., as of January 1, 2009 if the plan operates on a calendar year basis). For this purpose, the number of "eligible participants" includes (a) all employees who are eligible to participate (even if they are not deferring) and (b) former employees or beneficiaries who have annuities or accounts that are still considered part of the arrangement.

Step 3: Even if you are eligible to file the Short Form, it will still be necessary to report the total value of plan assets as well as the total number of participants.

At this point, you may be scratching your head and wondering whether you have this information at your disposal. For affected plans, now is the time to designate someone on your staff to collect and keep track of all of the plan-related information, forms, contracts and contacts that will be needed for annual reporting purposes and for general 403(b) compliance purposes. If someone has to "count the cats," you might as well figure out who that someone is now!

Step 4: If, on the other hand, you must file the regular Form 5500 and audited financial statements, it is important that the following tasks are begun now, as complying with the audit requirement presents many challenges and will be very time consuming. And so:

1. Start gathering and reviewing all of your plan documents. (If you don't have a plan document, arrange to have one prepared).
2. Create an election form to be distributed to and signed by all employees.
3. If utilizing a third party administrator, review and adopt an appropriate service agreement (with adequate fee disclosures).
4. Hold advisory/investment committee meetings and drafting minutes to document discussions.
5. Determine what reporting package is available from the plan administrator.
6. Determine the trust opening balances (Form 5500 requires disclosure of comparative balances).
7. Identify the multiple vendors involved.
8. Identify loans issued to participants.
9. Make sure you have appropriate documentation of all policies for hardship distributions.
10. Obtain the ERISA required fidelity bond from a surety/insurance company.
11. Review and establish your documentation of timely deposits for employee contributions
12. Produce 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.

Step 5:           Get going! Don't be overcome by analysis paralysis. For most employers affected by these new rules, the idea of having to contact participants and investment providers to collect annuity or custodial account documents and information may seem daunting – but it's something that just has to be done. Having a coordinated team of employees and experienced auditors to deal with the challenge of "counting the cats" can make the overall process happen more quickly and smoothly. At that point, you can breathe a sigh of relief.