

403(b) Plans

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 Regulations include a requirement that Section 403(b) contracts must be maintained pursuant to a written plan. Although some Section 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. The plan must contain 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. Some 403(b) plans are not covered by ERISA and not subject to ERISA audit requirements (e.g. government plans, church plans).

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