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A New Day Dawning for 403(b) Plans

Major changes are underway to bring filing and audit requirements for 403(b) tax-sheltered annuity plans in line with those of 401(k) plans.

If your organization offers such a plan, you'll need to get busy, as changes are effective for taxable years beginning after December 31, 2008.

First, Some Background

Until recently, 403(b) plans were exempt from Form 5500 reporting and audit requirements. But recent amendments to Department of Labor regulations mean that ERISA-covered 403(b) plans are now subject to the same reporting and audit requirements as 401(k)s.

But, while your organization may face significant challenges in meeting these new plan requirements, the process will help ensure the financial integrity of the plan.

There are quite a few changes, to be sure, but it does bring these plans in line with the same regulations and protections in place for 401(k)s. From a regulatory perspective, there are a lot of retirement dollars out there in 403(b) plans that really don't have anyone protecting them.

Will You Be Impacted?

In general, the new reporting and audit requirements will impact 403(b) tax-sheltered annuity plans sponsored by charitable organizations, schools, hospitals and universities. "Governmental plans" under ERISA section 3(32) and "church plans" under ERISA section 3(33) will generally be excluded from the new requirements.

In addition, plan size comes into play. If your 403(b) has 100 or more eligible participants, you'll need to file audited financial statements for the plan. Smaller plans (fewer than 100 participants) may be eligible to use abbreviated reporting forms without having to file audited financial statements. ERISA-covered plans with fewer than 100 *eligible* participants may be able to use a new Short Form 5500, so long as they meet certain rules.

In the end, the U.S Department of Labor estimates that approximately 7,000 "large" 403(b) plans will be subject to the new audit requirements. Another 9,000 "small" 403(b) plans may be eligible to use new abbreviated reporting forms.

Burden or Benefit?

Once participants understand that this is not some onerous administrative chore devised by the IRS but is really something put in place to protect their money, participants will see the value and feel pretty good about this new annual requirement.

That said, some nonprofits may very well perceive the added reporting and auditing requirements as just one more bit of bad news in this time of a nosediving economy and its impact on both their investment portfolio and the general level of giving.

It will be a concern for some nonprofits, especially the smaller ones with not a lot of money in their plan. But larger plans may be able to have the plan actually pay for the audit. Sometimes the plan documents will have wording to the effect that 'the plan shall bear all administrative costs ...' The audit is a perfectly legitimate cost of administering the plan, but it is critical that any charges to the plan be specifically in accordance with the ruling plan documents.

The Challenges Ahead

The good news is that plan administrators do have time on their side. The first required audit is for years beginning in 2009, which equates to an audit actually being performed sometime in mid-2010.

But that doesn't mean you can rest easy. It will be a challenge ... 403(b) plans have never been required to retain accounting records before. It is going to be difficult for organizations to properly accumulate all plan participant accounts so they can do a full accounting.

Indeed, a hallmark of 403(b) plans is their portability — employees can carry them on to another NFP. Missing participants and 'orphan' accounts make it hard for organizations to really know whose dollars are in their plans. That's a big difference between 403(b) plans and 401(k) plans.

Questions to be Answered

In addition to becoming familiar with a host of new reporting and audit requirements, plan administrators will need to determine the answers to some fundamental questions.

Do we have proper records? To prepare your plan's required financial statements, you'll need to establish a proper set of financial books and records, including the following:

- Contribution and disbursements records
- Individual participant account balance records
- Investment schedule
- A general ledger and trial balance

Start by contacting your plan's service provider and ensuring that it will be able to provide you with the information needed for your plan's Form 5500.

Are participant records complete and accurate? Here, it's important to realize that "plan participants" include employees who are eligible to participate in the plan but decline participation as well as former employees/beneficiaries who have balances remaining in the plan. You may need to take steps to track down the records of former employees.

Do we have a current plan document and investment policy? An up-to-date plan document should cover issues such as eligibility, benefits, distribution availability and other limitations, as well as information relating to the annuity contracts or custodial agreements used by the plan. Your investment policy should describe the types of investments the plan can make and the appropriate authorizations for investment transactions.

What comparative data will we need? In the initial reporting year, plans that require an audit will need to include comparative financial information from the 2008 plan year. This information includes the current value of plan investments, as well as employer contributions owed to the plan, accounts payable and accrued expenses through the end of the plan year. Plan in advance to obtain this information.

Do we have proper controls? Effective policies and processes — both within your organization and your plan's service provider — are critical. Ask your service provider if it will be making available a "SAS 70" report on the internal controls established to process your plan's transactions. Also, you should perform a review of your own internal controls over the plan.

Who will do the work? If your plan meets the audit requirement (i.e., 100 or more eligible participants) you'll need to select an independent auditor, preferably one with prior experience working with employee benefit plans, to provide an unqualified opinion on the plan's financial statements. CFOs can do an awful lot of work now to minimize the work that will have to be done by the auditors, making it more cost-effective for them in the long run.

In the end, we encourage organizations to make full use of their accounting firm's expertise. We can help you identify the most cost-effective ways to proceed, but the key is to not wait until 2010 to start pulling records ... the time is now.

Our Firm has dedicated resources that are available to help in this process, including our team leader, James E. Merklin, who has been serving on the national AICPA's 403(b) Plan Task Force which has created resources to help you, which are available on the Bober Markey Fedorovich website at www.bobermarkey.com/employee_benefit_plans/403_b_plan_resources. We stand ready to help you, please give us a call.

Employee Benefits Advisor is produced quarterly by Bober Markey Fedorovich's Employee Benefit Plans Services Team. If you would like additional information about the services that we can provide to employee benefit plan sponsors or administrators, please call or email our team leader James E. Merklin, CPA, CFF, CFE, M.Acc. at (330) 762-9785 or jmerklin@bobermarkey.com.

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