

Retirement

Insight

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403(b)



403(b) Plans

Many tax-exempt organizations provide retirement benefits to their employees under 403(b) arrangements. Section 403(b) of the Internal Revenue Code permits organizations that are tax exempt under code Section 501(c)(3), such as schools, hospitals, charitable employers and churches to provide retirement benefits under Code Section 403(b).

After over 40 years without any major modifications, the IRS has issued new regulations for 403(b) plans which require action by plan sponsors on or before January 1, 2009.

The intent of these rules is to minimize the differences between 403(b) plans and 401(k) plans and require that the plan sponsor take greater fiduciary responsibility.

Historically in the 403(b) market, the employer had responsibility for ensuring the contributions were made but other than that, actually had minimal involvement. The responsibility then shifted to the employee.

This responsibility is now changing and the employer must act now to review and determine the status and new requirements for ongoing administration of their 403(b) plan*.

*Certain collectively bargained agreements, church plans and governmental 403(b)s are exceptions to these regulations.



403(b) PLANS



Is Your Plan Subject to ERISA?

The first step in determining how these regulations affect your 403(b) plan is determining whether your plan is subject to ERISA.

Non-ERISA plans generally must meet the following requirements to qualify for this status and receive certain exemptions:

- Must be 403(b) annuity contracts or custodial accounts funded solely through salary reduction agreements
- Participation must be completely voluntary
- All rights under the annuity contract or custodial account are enforceable solely by the employee or beneficiary of said employee
- The involvement of the employer is limited to certain optional specified activities
- The employer receives no direct or indirect consideration or compensation with regard to the 403(b) contracts

Generally if your plan has provided for any employer contributions or the employer has any amount of discretion pertaining to approval of any distributions, then the net result may be that your plan is subject to Title I of ERISA.

Plan Document Requirement

First of all, 403(b) plans, including ERISA and non-ERISA plans, must now maintain and follow a written plan document that explains the material terms of the former retirement “program”. Among other things, this includes:

- Eligibility requirements, including Universal Availability Rules
- Benefits provided
- Contribution limits
- Investments available and policy
- Time and form of Benefit Distributions including
 - o Loans and Hardships, if applicable
 - o Normal Distributions
- Plan-to-plan transfers
- Acceptance of rollovers

Employees must also be provided with a written notice at least annually about their eligibility to participate in the plan. Providers are calling this the “Annual Meaningful Notice” requirement.



About 403(b) Plans



New 5500 Filing Requirements

Currently, non-ERISA plans do not have to file IRS Form 5500, the annual return of employee benefit plans. Under recently enacted final regulations released by the Department of Labor, 403(b) plans will be subject to the same Form 5500 filing as 401(k) plans. Non-ERISA plans will still not need to file a Form 5500. 403(b) plans of small employers (with fewer than 100 plan participants) will file a typical Form 5500 for small employers. 403(b) plans of large employers subject to ERISA will have to file a complete Form 5500, including an independent audit report of the benefit plan. In many cases, the Form 5500 may only require a limited scope audit of the plan.

Employee Transfers and Exchanges

Previously workers were allowed to easily transfer retirement savings from one 403(b) company to another as desired.

Now, only two types of transfers are now allowed:

1. Transfers to other investments within the same plan
2. Exchanges to another 403(b) provider outside the approved list, but only if there is an information-sharing agreement between the employer sponsor and the new provider

Timing of Contributions

A new rule requires plan sponsors to transmit all contributions to plan providers as soon as administratively responsible. "Reasonable" is now specifically defined for plans with less than 100 participants as no later than the 7th business day after being withheld from pay.

Non-Discrimination Testing

Since the final regulations repeal IRS Notice 89-23 (the good faith reasonable standard regarding non-discrimination requirements), employer contributions and employee after-tax contributions must both satisfy non-discrimination requirements in the same manner as any other qualified plan.

Plan Terminations Now Allowed

Under the new rules, 403(b) plans may now be terminated as long as all accumulated benefits are distributed to participants and beneficiaries as soon as administratively possible after termination. This process may create some challenges in that 403(b) accounts are typically owned and controlled by the individual and could be subject to surrender charges.

Summary

ERISA 403(b) plans now need to be monitored and administered as if they are 401(k) plans. The IRS, DOL, and the Treasury Department have issued comprehensive guidelines and have made it clear that these regulations are going to be enforced. The tasks for the sponsoring employer are manageable, however need to be reviewed and policies and procedures need to be enacted to ensure compliance with all regulations.





A Sound Retirement Plan Starts With Superior Plan Design

The Pension Studio provides employers with retirement plan design, administration, and ongoing employee communication. The Pension Studio was formed by professionals with an average of fifteen years of experience in the retirement planning and technology fields. This unique combination ensures leading-edge technology and features. Our ongoing commitment to technology allows employers of all sizes the advantages that larger plans have without losing the personalized services we value.



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