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403(b) PLANS

Many tax-exempt organizations provide retirement benefits to their employees under 403(b) arrangements. The IRS Internal Revenue code permits tax-exempt organizations such as schools, hospitals, charitable employers and churches to provide retirement benefits through this type of plan.

Historically in the 403(b) market, the employer had responsibility for ensuring the contributions were made but besides this duty, actually had minimal involvement. The responsibility then shifted to the employee who would then be responsible for the investment selection and monitoring process.

After over 40 years without any major modifications, the IRS issued new regulations for 403(b) plans which required action by plan sponsors.

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

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

*Certain collectively bargained agreements, church plans and governmental 403(b) plans are exempt from these regulations.

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

All 403(b) plans, including both ERISA and non- ERISA plans, must now maintain and follow a written plan document that explains the material terms of the 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:
  - Loans and Hardships, if applicable
  - 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, ERISA 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. An exchange 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. This option must be made available to all participants in the plan.

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 nondiscrimination requirements), employer contributions and employee after-tax contributions must both satisfy nondiscrimination requirements in the same manner as any other qualified plan.

Plan Terminations 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, they still need to be reviewed and policies and procedures need to be enacted to ensure compliance with all regulations.

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THE PENSION STUDIO

The Pension Studio provides employers with valuable retirement plan design & administration, as well as ongoing evaluation to maintain compliance with the latest governmental regulations. The Pension Studio was formed by professionals with an average of fifteen years of experience in the retirement planning and technology fields. Today we continue this commitment to utilizing both leading-edge technology and employing a talented, highly trained staff. It is this unique combination of advanced technology and dedicated personnel that allows us to offer employers of all sizes the advantages of larger plans without losing the personalized services we value.

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