

403(b) Plans

New audit requirements for ERISA-covered 403(b) plans become effective for plan years beginning in 2009. The Department of Labor has issued regulations that eliminated the previous exemption granted to 403(b) plans from the Form 5500 reporting requirements. The removal of the exemption subjects ERISA-covered 403(b) plans to the same Form 5500 reporting and audit requirements as 401(k) plans. Therefore, "large" ERISA-covered 403(b) plans (generally plans with 100 or more participants as of the beginning of the plan year) will be required to be audited and have the audited financial statements for the plan attached to the Form 5500. "Small" 403(b) plans (generally fewer than 100 participants as of the beginning of the plan year) will be eligible to use a new short Form 5500 and will qualify for a waiver of the audit requirement.

However, the DOL has recently provided some transition relief including the requirement for large plans to be audited. Specifically, the new rules say 403(b) plans do not need to treat annuity contracts and custodial accounts as plan assets for purposes of Form 5500 reporting provided that:

1. The contract or account was issued to a current or former employee before January 1, 2009;
2. The employer ceased to have any obligation to make contributions and ceased making contributions prior to January 1, 2009;
3. There is no involvement by the employer in the old contracts or accounts; and the individual owner of the contract is fully vested in the contract or account.

Accordingly, current or former employees with only contract or accounts that are excluded under the above transition relief do not need to be counted as participants for Form 5500 reporting purposes.

tonneson+co

Certified Public Accountants & Consultants

401 Edgewater Place, Suite 300, Wakefield, MA 01880-6208 t. 781.245.9999 f. 781.245.8731 www.tonneson.com