

403(b) Bulletin for Advisors and Consultants

Tools and resources for assessing 403(b) plans



Introduction

In 2009, significant changes were made to the 403(b) landscape. Plan sponsors must take on new responsibilities in the administration and oversight of their 403(b) plans. As their role in the investment selection, reporting and documentation of the plan increases, so will plan sponsors' reliance on experienced retirement plan specialists who can provide guidance and advice to see them through these new challenges.

Many plan sponsors are unsure whether or not their plan is covered by ERISA (the Employee Retirement Income Security Act of 1974) and how the new Form 5500 reporting requirements could affect them. They may be unsure about their responsibilities as a plan fiduciary. This 403(b) Bulletin includes resources to help advisors and employee benefit consultants assess the current state of an existing 403(b) plan and determine if the plan is in compliance with both IRS and Department of Labor regulations. The bulletin includes a basic fiduciary checklist, questions and answers about reporting responsibilities, and details about ERISA coverage.

We hope this bulletin will provide you with information that can help you better serve your clients and prospects. And as always, we are just a phone call or an email away.

ERISA Title I Coverage for 403(b) Plans

If your 403(b) plan is covered by Title I of ERISA, you must file Form 5500. Generally, 403(b) plans established or maintained by a tax-exempt organization are covered by Title I of ERISA. However, plans sponsored by governmental entities, like public schools, and non-electing church plans are specifically exempt from ERISA, and are therefore exempt from the requirement to file.

In 2007, the Department of Labor issued a bulletin¹ explaining the requirements for determining whether or not a 403(b) plan is exempt from ERISA. These requirements include:

- The plan is funded solely by salary deferrals of employees (that is, there are no employer contributions)

- Participation in the plan must be completely voluntary for employees
- Employees' rights under the contract or account are enforceable solely by the employees, without employer involvement

To maintain the ERISA exemption, employers may be involved in the 403(b) plan's administration only in these ways:

- The employer may permit vendors to publicize products to employees, and summarize or compile the information about the vendors and make it available to employees
- The employer may collect salary reductions and remit to the vendors
- The employer may hold group annuity contracts in the employer's name
- The employer may make multiple vendors available to employees to ensure employees have reasonable choices, considering relevant circumstances

Certain plan activities will result in loss of ERISA exemption. For example, if a plan sponsor authorizes plan-to-plan transfers, negotiates fees or contract provisions, processes distributions, makes determinations about hardship distributions or Qualified Domestic Relations Orders, or determines loan eligibility, the sponsor is exercising authority over the plan and is therefore operating a plan subject to ERISA.

ERISA coverage provides more opportunities for the plan sponsor to make decisions about the plan. For example, sponsors of ERISA plans may limit the number of vendors used, limit in-service withdrawals, or implement other changes designed to enhance the benefit for employees.

¹ Field Assistance Bulletin Number 2007-2, <http://www.dol.gov/ebsa/regs/fab20072.html>

Compliance with Reporting Requirements

Questions and Answers for 403(b) Plan Sponsors

With recent changes in the law, many 403(b) plan sponsors must now assume responsibilities that are nearly identical to those of private sector qualified retirement plan sponsors. Prior to the 2009 plan year, only limited information and no financial reporting was required for 403(b) plans. But, as of the 2009 plan year, certain ERISA-covered 403(b) plans are required to file a full Form 5500 annually and to provide the IRS with an audited accounting of the plan's assets.

Does the plan need to file a 2009 Form 5500?

If the 403(b) plan is covered by Title I of ERISA, then it is required to file a Form 5500 and related schedules for the 2009 plan year and thereafter.

Which Form 5500 version should be filed? If the plan covers fewer than 100 participants on the first day of the plan year and meets certain other conditions, it may file a Form 5500-SF (Short Form 5500), a new simplified form for small plans invested in certain asset types. Large plans, those with 100 or more participants, must file the full Form 5500. Refer to the question below, *Who do I count as participants?*, to determine if the plan is considered a large or a small plan.

When should the Form 5500 be filed? Form 5500 is generally due by the last day of the seventh month of the year following the end of the plan year. For calendar-year plans, the 2009 5500 is due July 31, 2010. Prior to the due date, the plan sponsor may request a two-and-a-half-month filing extension.

How is the Form 5500 submitted? Form 5500 must be submitted using the new EFAST2 electronic filing system. Plan administrators who will sign the form, whether or not filing the form themselves, must obtain EFAST credentials. Individuals or companies that will transmit the form must also have EFAST credentials. To register for the required user identification and PIN, visit: http://www.dol.gov/ebsa/faqs/faq_efast.html.

Who do I count as participants? Start with the number of employees as of the first day of the plan year. Subtract from that figure the number of employees who have not met the plan's requirements for participation (if your plan document contains such an exclusion).

Transitional Relief for 403(b) plans under Department of Labor Field Assistance Bulletin Number 2009-2: For the 2009 plan year, participants (and their account balances) in the following categories may also be excluded from the count, provided that:

- The contract or account was issued to a current or former employee before January 1, 2009
- The employer ceased to have an obligation to make contributions to the contract or account (including elective salary deferrals) and, in fact, ceased to make contributions before January 1, 2009
- All of the rights and benefits under the contract or account are legally enforceable by the individual participant against the custodian without any involvement by the employer
- The participant is fully vested in the contract or account balance

Does the 403(b) plan require an audit for 2009?

Along with the Form 5500, large 403(b) plans covered by Title I of ERISA must submit audited financial statements for plan years beginning on or after January 1, 2009. These statements must compare the value of plan assets at the end of the plan year with the value at the end of the prior plan year. For many plans, this will require the plan sponsor to gather asset information as of December 31, 2008, and December 31, 2009.

How can I help if the plan sponsor needs assistance in selecting an auditor for the plan?

Retirement plan advisors and consultants often know a licensed or certified public accountant who has experience with employee benefit plans. Also, the Department of Labor has suggestions about how to choose an auditor on its website, <http://dol.gov/ebsa/publications/selectinganauditor.html>.

What information is needed from the 403(b) service providers?

A review of payroll records for the last several years should show the companies to which the plan sponsor sent 403(b) contributions. Request information from these companies about amounts invested, transferred and contributed for the 2009 plan year, as well as account balance information from the end of the 2008 and 2009 plan years.

What if the 403(b) plan assets are held with multiple service providers?

With the new reporting requirements, maintaining 403(b) accounts with multiple providers makes reporting and administration more complicated. Advisors and consultants familiar with 401(k) plans generally believe that utilizing one provider will make plan administration easier and recommend selecting a single record keeper to substantially reduce the administrative burden as well as the costs associated with the independent audit requirement.

How does the plan sponsor get the plan's asset values from the 2008 plan year?

Gathering 2008 plan year information may be a significant challenge since providers and plan sponsors had not been required to provide this information in previous years. To help overcome this challenge, the Department of Labor provided transitional relief in Field Assistance Bulletin Number 2009-02 for plan sponsors making a good faith effort to comply with the annual reporting requirements.

For purposes of transitioning into the new reporting requirements, plan sponsors do not need to treat annuity contracts or custodial accounts as plan assets if the assets are from employees excluded under the four conditions mentioned on the previous page, under *Who do I count as participants?*

403(b) Plan Form 5500 Checklist

Use this list of 403(b) reporting changes to help navigate the steps plan sponsors need to take now.

WHO SHOULD FILE

My 403(b) plan is covered by Title I of ERISA

Refer to *ERISA Title 1 Coverage for 403(b) Plans* on Page 1 for details. If yes, you must file a Form 5500 and any associated schedules.

WHAT TO FILE

My plan has 100 or more participants

File a Form 5500, along with the plan's financial information, audited by a qualified professional.

My plan has fewer than 100 participants

File a Form 5500-SF if the plan meets conditions outlined by the IRS.

WHEN TO FILE

Form 5500 is due by the end of the seventh month following the end of the plan year. For calendar-year plans, file the 2009 Form 5500 by July 31, 2010, or request an extension of time to file prior to the due date.

DATA TO COLLECT

From each firm holding contributions made by or on behalf of your employees, request:

- Name and account balance at year end for each investor.
- Transactional information for the plan year for each investor.

403(b) Plan Fiduciary Highlights

Who is a fiduciary?

Anyone who exercises discretion in managing a plan or exercises authority or control respecting management or disposition of plan assets is a fiduciary under ERISA. Outside consultants, such as a CPA hired to conduct an audit of the 403(b) accounts, are generally not considered fiduciaries because they have no discretion or authority; they simply act at the direction of the

plan sponsor. One does not need to be a named fiduciary in the plan document or other records to be a fiduciary and have the associated responsibilities.

Fiduciaries have a legal duty to act on behalf of plan participants and beneficiaries, operating the plan solely in their interests. If a plan fiduciary fails to act in accordance with this fiduciary responsibility, the fiduciary is subject to significant personal liability.

Five Key Responsibilities for 403(b) Fiduciaries

We have a documented investment policy statement

It is important that the plan sponsor be able to document the reasons for the choices made with regard to the plan's investments, including fees and expenses. Sometimes, the methodology for the choice is as important as the investment returns.

We conduct reviews of the plan's investment options at least every 12 months

Regular reviews of the investments will help the plan sponsor respond to a changing market and protect participants' account balances.

As part of the investment review, we compare investment performance against an appropriate index, peer group or IPS objective

Choosing the correct target against which the plan sponsor measures investment performance is important.

The range of investments is diversified enough to be suitable for a broad range of participant demographics

Participants and beneficiaries have a variety of needs and goals for their money. Considering this variety will help the plan sponsor choose investments wisely.

We know the true cost to the participants of the plan's investments

A small variation in fees can result in a large difference in account balance at retirement. The plan sponsor should consider the cost of the investments and how these costs and other fees will affect participants.

We're here to help. If you have questions about filing a Form 5500 that are not covered by this bulletin, please contact The Standard.



Standard Retirement Services, Inc.
1100 SW Sixth Avenue
Portland OR 97204

www.standard.com
retirement.standard.com

RP-14963_partners (12/09)

The Standard is the marketing name for StanCorp Financial Group, Inc. and its subsidiaries. StanCorp Equities, Inc., member FINRA, distributes group annuity contracts issued by Standard Insurance Company and may provide other brokerage services. Third-party administrative services are provided by Standard Retirement Services, Inc. Investment advisory services are provided by StanCorp Investment Advisers, Inc., a registered investment advisor. StanCorp Equities, Inc., Standard Insurance Company, Standard Retirement Services, Inc., and StanCorp Investment Advisers, Inc. are subsidiaries of StanCorp Financial Group, Inc. and all are Oregon corporations.