

# **A NEW DAY DAWNING FOR 403(b) PLANS**

*White paper by:*

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## A NEW DAY DAWNING FOR 403(B) PLANS

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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

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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 virtually the same reporting and audit requirements as 401(k)s, including a requirement that plan sponsors maintain written plan documents. (In the closing days of 2008, the IRS extended the deadline for written plan documents from January 1, 2009 to December 31, 2009.)

Why, you may ask? The DOL found violations in 78% of 403(b) plans that they reviewed. They want employers/plan sponsors to take more responsibility and be more accountable for the program they establish.

It is important to note that, while your organization may face significant challenges in meeting these new plan requirements, the process is intended to help ensure the financial integrity of your 403(b) plan and ultimately help secure the retirement income of the employees.

### WILL YOU BE IMPACTED?

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In general, the new reporting and audit requirements will impact 403(b) tax-sheltered annuity plans sponsored by charitable organizations, schools, hospitals and private 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.

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?

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

The added costs may be of real concern for nonprofits with small plans. But organizations with larger plans may be able to have the plan actually pay for the audit. If your plan permits it, this is a perfectly legitimate cost of administering the plan.

## THE CHALLENGES AHEAD

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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 — 403(b) plans have never been required to retain accounting records before, and some organizations may very well face difficulty in properly accumulating all plan participant accounts so that they can perform a full accounting. These are the first regulation changes in 43 years so gathering necessary data from the inception of the plan won't be an easy task, particularly if you have a mature plan.

Furthermore, a hallmark of 403(b) plans is their portability. Employees can carry them on to another nonprofit. Missing participants and “orphan” accounts make it hard for organizations to really know whose dollars are in their plans.

## QUESTIONS TO BE ANSWERED

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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(s) and ensuring that it will be able to provide you with the information needed for your plan's Form 5500. In addition, review and compare current and past payroll records, personnel files and consider interviewing long-term employees to gather information about possible plan participants.

**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. It is like putting together a puzzle only you don't have the picture on the front of the box to go by. In order to complete the puzzle, you need to first identify if you have all the pieces. The IRS has issued some guidance offering some flexibility to employers/plan sponsors for how far back to look when piecing things together but a plan subject to Title I of ERISA is a

different story. The DOL expects a “good faith” effort to build a complete list of participants from the inception of the plan.

**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. Remember that you will need to have written plan documents in place by December 31, 2009.

**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 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. In addition, your organization’s CFO can perform a substantial amount of work now to minimize the work that will have to be done by the auditors, making it more cost-effective in the long run.

**Are there steps we can take now?** The key is to not wait until 2010 to start pulling records and gathering information. In fact, plan sponsors who are not proactive in gathering information and amending or drafting plan documents may very well face the issue of having an auditor not be able to render an unqualified opinion on their plan.

The employee benefit plan professionals at Barnes Dennig can work with you to identify the most cost-effective ways to comply with filing and audit requirements for 403(b) plans. Contact us today to assist with any questions you may have – [bharvey@barnesdennig.com](mailto:bharvey@barnesdennig.com) or call any of our professionals at (513) 241-8313.

*Need help with 403(b) reporting? Contact Brian Harvey at Barnes Dennig at [bharvey@barnesdennig.com](mailto:bharvey@barnesdennig.com) or (513) 241-8313 or the DOL’s EFAST Help Line at 1-866-463-3278 or visit the American Institute of Certified Public Accountants’ website at [www.aicpa.org/EBPAQC](http://www.aicpa.org/EBPAQC).*