



November 2009

EMPLOYEE BENEFITS UPDATE

Important Reminder: Upcoming Compliance Deadlines for 403(b) Plans

Organizations that sponsor or facilitate Section 403(b) retirement plans, including tax-sheltered annuity contracts and certain custodial account arrangements, may need to take certain actions by year end to comply with final IRS regulations impacting those arrangements. These final regulations subject 403(b) plans to certain expanded compliance requirements previously applicable only to tax-qualified retirement plans maintained by private-sector employers. Compliance is required in order to assure tax-deferred status continues to apply.

This bulletin is a brief reminder and overview of important new requirements for 2009 for 403(b) plans and certain applicable deadlines for a plan operating on a calendar year. Note that different effective dates may apply to certain types of plans and special exceptions apply to plans covering collectively bargained employees or ministers and to governmental and church plans.

ALL 403(b) PROGRAMS AFFECTED

- The critical distinction between programs that are subject to the Employee Retirement Income Security Act of 1974 (ERISA) and those that are not remains; new guidance has been provided by the U.S. Department of Labor (DOL) that is helpful in making this determination.
All programs are now subject to the plan document requirement noted below.
ERISA plans are subject to the expanded annual reporting requirement noted below.
Universal availability requirements for salary reduction contributions, including more detailed notice provisions, are applicable to all programs.

PLAN DOCUMENT REQUIREMENT

- A written plan document, designed to comply with 403(b) and the new regulations must be adopted on or before December 31, 2009.
During 2009, a 403(b) plan must be operated in accordance with a reasonable and good faith interpretation of the new regulations.

FORM 5500 ANNUAL REPORTING REQUIREMENT

- The sponsor and plan administrator of a 403(b) plan subject to ERISA must file a complete Form 5500 Annual Report and, in certain cases, an audit report, with the DOL effective for plan years beginning on and after January 1, 2009. The Form 5500 is due seven months after the end of the plan year (excluding extensions); July 31, 2010 for calendar year plans.
The Form 5500 will now require complete disclosure of the nature and amount of the 403(b) plan's assets as of the end of the 2009 plan year, as well as census and other compliance data, rather than the abbreviated information required in earlier years.



- The Form 5500 filing for “large” 403(b) plans (generally with 100 or more participants) must also include an audit report prepared by an independent auditor.
- Under recent DOL guidance, certain pre-2009 “dormant” annuity contracts and custodial accounts are not required to be treated as part of an employer’s 403(b) plan assets for purposes of the Form 5500 Annual Report and related audit, if certain conditions are satisfied.

Organizations that sponsor a 403(b) plan should contact the plan custodian and their independent auditors and verify that they are prepared to assist with the new reporting requirements.

EMPLOYER CONTRIBUTION AND NONDISCRIMINATION REQUIREMENTS – 2009 AND BEYOND

- The final 403(b) regulations replace and make more stringent certain transitional requirements previously applicable only to tax-qualified retirement plans maintained by private-sector employees designed to prevent discrimination in favor of certain highly compensated employees.
- The foregoing nondiscrimination requirements can impact and require a review of plan eligibility, plan contributions and plan compensation, particularly in the case of a sponsor with affiliated organizations.

Organizations that sponsor a 403(b) plan should contact the recordkeeper for the plan and verify that it is prepared to perform the tests required under the new regulations.

OUR SERVICES

Thompson Hine can assist organizations in meeting the compliance requirements for 403(b) plans. We can provide plan documents tailored to satisfy the organization’s objectives and plan document requirements. Also, we can provide assistance in meeting the Form 5500 annual reporting requirements. Finally, Thompson Hine is able to assist in ongoing compliance with the nondiscrimination requirements and advise on plan design and testing alternatives.

FOR MORE INFORMATION

If you would like more information, please contact your primary Thompson Hine Employee Benefits lawyer or email us at AskUs@ThompsonHine.com. For a list of our Employee Benefits lawyers, go to www.ThompsonHine.com/practices/Employee_Benefits_Executive_Compensation/lawyers/.

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