

403(B) SEMINAR NEW AUDIT & COMPLIANCE REQUIREMENTS

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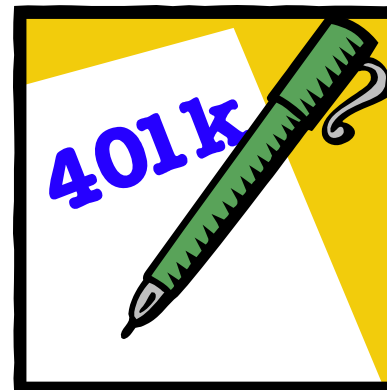
Feeley & Driscoll, P.C. | 200 Portland Street | Boston, MA 02114
January 20, 2010 | www.fdcpa.com

Learning Objectives

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After this session, you will understand:

- ❑ The Impact of the 403(b) Regulations
- ❑ ERISA vs. Non-ERISA Plans
- ❑ Plan Document Requirements
- ❑ Form 5500 Filing Requirements
- ❑ What to expect from an audit
- ❑ How to plan for and manage the audit



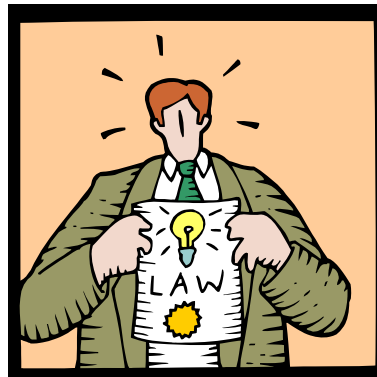
Final 403(b) Regulations - Overview

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IRS regulations

- Issued July 26, 2007
- First comprehensive regulations in 43 years
- Effective for taxable years beginning after 2008
 - ▣ Jan. 1, 2009 for calendar-year plan
 - ▣ July 1, 2009 for June 30 plan year-end



Final 403(b) Regulations - Overview

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DOL regulatory changes

- Form 5500 filing requirements revised by DOL
- Effective for plan years beginning on or after Jan. 1, 2009
- 403(b) pension plans now subject to Title 1
- Certain 403(b) plans will be subject to an independent audit, similar to 401(k) plans



Impact Of Final 403(b) Regulations

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Title 1 of ERISA defines a retirement plan “as any plan, fund or program **established by an employer** that provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond”.



Impact Of Final 403(b) Regulations

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ERISA Title 1

- Many 403(b) plans of tax-exempt 501(c)(3) organizations are subject to ERISA

- ERISA Title 1 does not apply to:
 - ▣ Governmental plans
 - ▣ Certain church plans
 - ▣ Tax-exempt employers with 403(b) plans *not* considered to constitute the establishment or maintaining of an “employee pension benefit plan” under ERISA



Impact Of Final 403(b) Regulations

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ERISA Title 1

- Requirements
 - ▣ Annual reporting (Form 5500)
 - ▣ Independent audit (generally >100 participants)
 - ▣ Summary plan description
 - ▣ Summary annual report
 - ▣ Deposit deadlines
 - ▣ Joint survivor requirements (document)
 - ▣ Eligibility and vesting requirements



Impact Of Final 403(b) Regulations

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ERISA vs. non-ERISA plan

- DOL safe harbor exemption under final 403(b) regulations
 - ▣ Deferral-only function by employer does not constitute an ERISA 403(b) plan

- A deferral-only function is defined by ERISA, if:
 - ▣ Employee participation is voluntary
 - ▣ Employee can enforce vendor contract without employer's assistance (individual contracts)
 - ▣ Employer receives no unreasonable direct or indirect consideration
 - ▣ Employer's involvement is limited



Impact Of Final 403(b) Regulations

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ERISA vs. non-ERISA plan (Cont.)

- Employer involvement is considered limited as follows:
 - ▣ Letting vendors publicize products to employees
 - ▣ Requesting information
 - ▣ Summarizing or compiling employee information
 - ▣ Collecting and remitting deferrals to vendors
 - ▣ Maintaining records (e.g. deferral/plan records)



Impact Of Final 403(b) Regulations

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ERISA vs. non-ERISA plan (Cont.)

- Plans will not meet DOL safe harbor exemption and be subject to ERISA, if:
 - One of the safe harbor exemption requirements is not met
 - The plan provides for employer contributions
 - The employer acts on behalf of participants in facilitating or resolving issues with vendors, e.g. threatens to move employee accounts from vendor
 - The level of employer involvement is, or could be concluded as is, more than what is limited under the exemption requirements
 - Example: Approval of distributions



Impact Of Final 403(b) Regulations

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Plan document requirements

- Written plan documents must be in place by Dec. 31, 2009
 - Extended from Dec. 31, 2008

- Written plan must satisfy the following provisions:
 - Must contain all material terms and conditions for eligibility, contributions and applicable limitations
 - Form and timing of distributions
 - Identify annuity contracts and custodial accounts available under the plan
 - Incorporate by reference
 - Optional provisions (loans, hardships, etc.)



Impact Of Final 403(b) Regulations

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Plan document requirements (Cont.)

- ▣ Written plan must satisfy all nine conditions of final IRS regulations:
 1. Plan is not under another qualified plan [401(k)/403(a)/457(b)]
 2. Fully vested vs. non-vested portion
 3. Non-discrimination requirements
 4. Elective salary deferrals limited
 5. Contracts are non-transferable (creditor protection)
 6. Plan complies with required minimum distribution rules
 7. Plan allows rollovers
 8. Plan satisfies incidental benefit rules
 9. Plan complies with annual additions limit



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Plan document requirements (Cont.)

- Plan is permitted to allocate to employer or other person responsibilities of:
 - ▣ Performing functions to administer plan
 - ▣ Performing functions to comply with regulations
 - ▣ Cannot be allocated to participants
 - ▣ Allocation must identify who's responsible for compliance



Impact Of Final 403(b) Regulations

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Plan document requirements (Cont.)

- Plan permitted to include all material provisions by referencing other documents, including insurance policies or custodial accounts
 - Employer needs to ensure no conflicts with other documents referenced
 - Conflict = Plan will govern

- Plan funded through multiple contract issuers
 - Employer must adopt a single plan document to coordinate administration, rather than adopt a separate document for each issuer



Impact Of Final 403(b) Regulations

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Plan document requirements (Cont.)

- Purpose of written plan document
 - ▣ Provides comprehensive summary of responsibilities
 - ▣ Facilitates allocation of plan responsibilities among:
 - Employer (plan sponsor)
 - Issuer of contract
 - Any other involved parties
 - ▣ Benefits participants by setting forth their rights
 - ▣ Enables government agencies to determine compliance with applicable law
 - ▣ Enables government agencies to determine which employees are eligible to participate



Form 5500 – 403(b) Plans

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New Form 5500 requirements

- Effective for plan years beginning on or after Jan. 1, 2009
 - ▣ Form 5500 required to be electronically filed starting in 2009

- Due 7 months after plan year-end (12/31 plan year due 7/31)
 - ▣ Can be extended an additional 2 ½ months (12/31 plan year extended to 10/15)

- Prior filings only included first three pages of the Form 5500
 - ▣ Only certain sections applied

- Additional schedules applicable in addition to the first three pages
 - Schedule A
 - Schedule D
 - Schedule I
 - Schedule C
 - Schedule H
 - Schedule R



Form 5500 – 403(b) Plans

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Form 5500 (first three pages)

- Need to complete entire form
- Participant counts
 - Determines if it is a small or large plan (audit implications)
 - General rule:
 - Small plan = Fewer than 100 participants at the beginning of the plan year
 - Large plan = 100 or more participants at the beginning of the plan year
- Identify the benefits provided by the plan (use codes)
- Identify the plan funding and benefit arrangement
- Identify which schedules are applicable and included



Form 5500 – 403(b) Plans

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Schedule A – Insurance information

- Complete if plan holds insurance products for investments
 - ▣ Pooled separate accounts
 - ▣ Investments in general accounts of insurance companies

Schedule C – Service provider information

- Complete if expenses paid by the plan to any service provider exceeds \$5,000
- Complete if there is a termination of an accountant or actuary
- Significant changes to this form in 2009



Form 5500 – 403(b) Plans

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Schedule D – DFE/participating plan information

- Complete if plan holds direct filing entities as investments
 - ▣ Pooled separate accounts
 - ▣ Common collective trusts
 - ▣ Master trust investment accounts
 - ▣ 103-12 investment entities

Schedule H – Financial information (large plans)

- Balance sheet and income statement for the plan
- Indicates what type of audit opinion the plan received
- Yes/No questions relating to transactions during the year and other ERISA requirements



Form 5500 – 403(b) Plans

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Schedule I – Financial information (small plans)

- Abbreviated balance sheet and income statement for the plan
- Yes/No questions relating to transactions during the year and other ERISA requirements

Schedule R – Retirement plan information

- Discloses information about benefit payments made from plan
- Questions relating to funding information for plans subject to minimum funding requirements
- Question relating to coverage tests performed for the plan



Form 5500 – 403(b) Plans

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Work with your third-party administrator to develop a plan to file the Form 5500 and applicable schedules, accurately and timely!



What Constitutes A “Participant”?

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- **Active participants**
 - ▣ Any individuals who are currently in employment covered by a plan and who are earning or retaining credited service under a plan
 - ▣ Any individuals who are currently below the integration level in a plan that is integrated with Social Security, and/or eligible to have the employer make payments to a 401(k) (*participants only have to be eligible for the plan, not necessarily participating in a 401(k)*)

- **Inactive participants**
 - ▣ Any individuals who are retired or separated from employment covered by a plan and who are receiving or entitled to receive benefits

- **Deceased participants include:**
 - ▣ Any deceased individuals who have beneficiaries who are receiving or are entitled to receive benefits under the plan

- **Plan document may exclude certain types of employees:**
 - ▣ Union
 - ▣ Non-resident aliens



Rules That Dictate Eligibility

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- 201.6 ERISA, Title I, Sect. 202, and [IRC Sec. 410\(a\)](#) establish minimum standards for plan participation as a matter of law and as a requirement for plan qualification. A plan may require a minimum age and years of service for participation in the plan, ***but these minimums may not exceed the later of age 21 or one year of completed service***
 - ▣ Defined in your plan document



80/120 Rule

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- Under 29 CFR 2520.103-1d, if a plan has between 80 and 120 participants (inclusive) as of the ***beginning*** of a plan year, it may elect to file the same category of form it filed the year before (for example, Form 5500, Schedule I, “Financial Information—Small Plans”) and avoid the audit requirement. ***This means that for plans with between 80 and 120 participants at the beginning of the plan year that filed a Form 5500 , Schedule I:***
 - ▣ Beginning of this year is NOT the same as end of last year
 - ▣ Eligible employees not participating still count
 - ▣ Consult with your TPA and get confirmation in writing
 - ▣ Terminated employees with balances still count

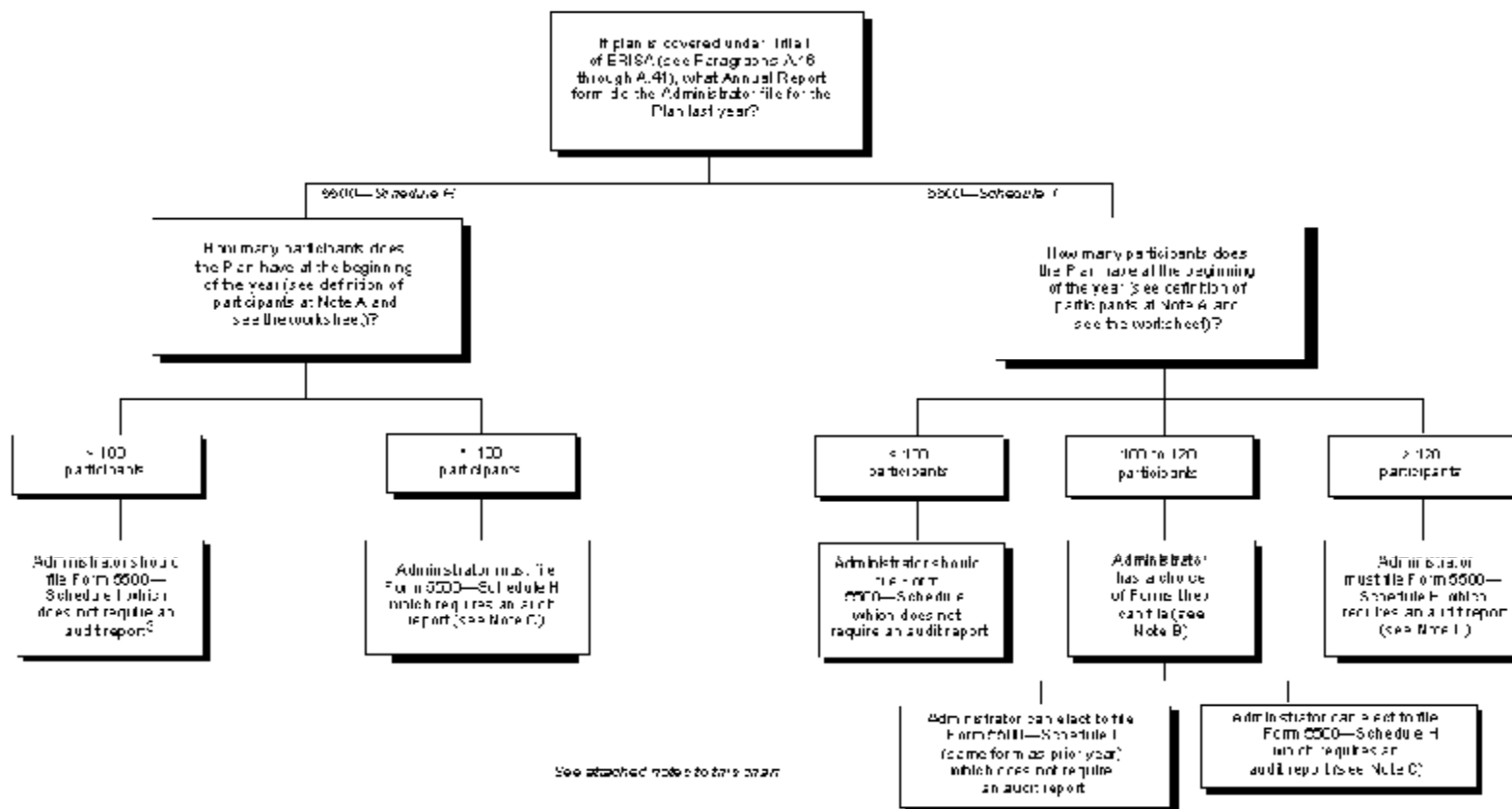
- Decision tree



Benefit Plan Audits

PENSION PLAN AUDIT DECISION TREE

Conditions generally requiring an audit of a pension plan financial statement and the required supplementary schedules



What Constitutes “Eligible Compensation”?

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- Earnings subject to participant deferral and match calculations
- Factors effecting eligible compensation
 - ▣ Bonuses
 - ▣ Overtime
 - ▣ Taxable fringe benefits (cash or non-cash)
 - ▣ Pre-tax health insurance
 - ▣ W-2
 - ▣ Commissions
 - ▣ Moving expenses
- Defined in the plan document
- Driver for deferral and matching calculations



What Is The Objective Of The Audit?

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- To express an opinion on whether the plan's financial statements are presented fairly, in all material respects, and in conformity with U.S. generally accepted accounting principles
- The auditor is responsible to plan and perform an audit to obtain ***reasonable , but not absolute assurance*** that the financial statements are fairly presented
- The audit is conducted in accordance with auditing standards generally accepted in the U.S.



What Is The Audit Process?

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- Gathering information to understand the plan, its internal control environment, the flow of information within the plan
- Risk assessment; What could go wrong? How could it go wrong?
- Understanding the design and implementation of internal control
- Detailed testing of a plan's accounts and transactions
- Gathering sufficient audit evidence
- Documentation of testing and plan compliance
- Opine on the financial statements



Internal Control

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- Internal controls ensure the safeguard of plan assets, the preparation of accurate financial statements and compliance with laws and regulations
 - Plan administration, inclusive of investments, contributions, benefit payments, participant data, administrative expenses
 - Consideration of all outsourced service providers



What To Expect From The Audit Process

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1. Engagement agreement outlining fees, scope of audit, and expectations
2. Kick-off meeting
3. Planning - providing plan documents, amendments, service agreements, etc. for review by the auditor
4. List of schedules and documents required
5. Inquiries regarding plan provisions, daily operation, fraud, risk, etc.
6. Inquiries regarding internal controls
7. Fieldwork – auditors on site to review audit evidence, including payroll information, personnel files, etc.
8. Requests for documentation of participant-level information
9. Closing meeting
10. Correspondence with those charged with governance
11. Correspondence regarding internal control recommendations



What The Auditor Expects Of You

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- Time and availability
- Preparation
- Responsiveness
- Good faith efforts
- Documentation requested in a timely manner
- Coordination of communication with third-party providers/vendors
 - Full analysis of vendors
 - Full analysis of participant population
- Financial statements – Plan Administrator Responsibility



How To Prepare For The Annual Plan Audit

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- Prepare a desired timeline
- Know your responsibilities – the financial statements are those of plan management – only the opinion is the auditor's
- Contact service providers early each year to assure they have the necessary information on a timely basis. Be sure they know your expectations
- If not provided by the auditor, request a list of schedules and documents the auditor will require prior to the start of the process



How To Prepare For The Annual Plan Audit

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- Have a point person
- Involve HR, Payroll and Finance departments
- Review, verify and reconcile information before it is provided to the auditor, to minimize the back and forth
- Establish lines of communication
- Suggestions on enhancing procedures for efficiency and minimization of risk



Selecting The Auditor

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Considerations:

- Size, location and history of the CPA firm
- Whether the firm is a member of the AICPA Employee Benefit Plan Audit Quality Center (EBPAQC)
- Number of employee benefit plan (EBP) clients
- Number of similar-type plan audits, including the size of each plan (by number of participants and/or amount of total assets)
- Number of EBP clients gained/lost in the past several years



Selecting The Auditor

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- ❑ States in which the firm is licensed to practice
- ❑ Firm references (especially from similar-type plans) and specific contact information
- ❑ The firm's latest peer review report, letter of comments and firm's response, if any (also available for AICPA EBPAQC members at <http://www.aicpa.org/ebpaqc>)
- ❑ Whether the firm is subject to current litigation
- ❑ Whether the firm is the subject of any DOL, AICPA, or state society ethics findings or referrals



Selecting The Auditor

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- Whether the firm meets the independence standards of the AICPA and DOL
- The firm's working paper retention and access policies and requirements
- If filed with the SEC 11-K, whether firm is registered with PCAOB
- Whether the firm has insurance coverage (errors & omissions, workers' compensation, etc.)



What is Audited?

1 OF 9

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- Significant Transaction Classes
 - ▣ Investments and investment income
 - ▣ Participant data
 - ▣ Contributions
 - ▣ Benefit payments
 - ▣ Administrative expenses
 - ▣ Financial reporting
 - ▣ Related parties and prohibited transactions



What is Audited?

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- Investments – Limited-scope or full-scope audit
 - Limited scope: Assets are held by a bank, insurance company or trust company, and are certified as to **completeness and accuracy**
 - Auditor has no responsibility to test investments, investment activity or related transactions



What is Audited?

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- Full scope: Audit investments, investment activity and related transactions
 - Confirm existence and ownership, assure no liens, no pledges or other security interests
 - Reasonably conclude investment transactions are recorded, and investments are valued in conformity with GAAP
 - Disclosures are proper



What is Audited?

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Participant data

- Objectives of auditing procedures for participant data are to provide a reasonable basis to conclude whether:
 - ▣ All covered employees have been properly included
 - ▣ Accurate participant data for eligible employees was supplied to the third-party administrator
- Information must be provided for participants regardless of their current employment status
- Auditors need access to:
 - ▣ Payroll data
 - ▣ Personnel files
 - ▣ Deferral percentages
 - ▣ Third-party records detailing participant account balances and fund allocations



What is Audited?

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- 403(b) plan sponsors will need to ensure records are available, by participant. This could be a significant request, especially if each individual is given his/her own account number, and they are not linked together by sponsoring organization

- ERISA requires plan administrators to retain records that:
 - Support information included in the reports and disclosures for six years from the date the annual reports are filed; and
 - Are sufficient to determine the benefits due or which may become due



What is Audited?

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Contributions

- Completeness and accuracy of employee contributions
- Completeness and accuracy of employer matching or discretionary contributions
- Verification of year-end contribution receivable amounts
- Timeliness of contributions



What is Audited?

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Timeliness

- DOL regulations provide that participants' contributions to ERISA plans that are paid to or withheld by an employer become plan assets "as of the earliest date on which they can reasonably be segregated from the employer's general assets"
- In 1996 amendments to the regulations, the DOL shortened the outside time limit for contributing these amounts to plans [e.g., 401(k) plans, 403(b) plans subject to ERISA] from no later than 90 days after the beginning of the month following the month in which the contributions are withheld to **no later than 15 days** after the beginning of such month
- Timeliness of deposits has historically been a frequent DOL audit issue



What is Audited?

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Timeliness (Cont.)

- The employer must deposit the employee contributions in a timely manner
- The law requires that participant contributions be deposited in the plan as soon as it is reasonably possible to segregate them from the company's assets
- The “no later than the 15th business day of the month following the payday” rule is difficult to defend and is not a safe harbor
- If employers can reasonably make the deposits sooner, they need to do so



What is Audited?

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- Benefit Payments
 - Propriety of amount, timing, compliance with plan document, taxable vs. non-taxable

- Administrative Expenses
 - Completeness and propriety of amounts charged against the plan

- Financial Reporting
 - Consistency with GAAP, ERISA requirements, agreement of the FS with the Form 5500

- Related Parties and Prohibited Transactions
 - FS reporting requirements and ERISA regulatory compliance



First-Year Considerations

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- DOL requires comparative statements of net assets available for benefits
- 403(b) plans will need prior year statement of net assets available for benefits
- Must determine that the accounting principles used by the plan in the current and preceding year are consistent
- Must address the opening balances at the participant level
- Availability of SAS 70s must be addressed
- Going back in time presents a unique difficulty for 403(b) plans, given the possible recordkeeping shortfalls



Unique 403(b) Plan Audit Aspects

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- Although the audit is for 2009, the 2008 and prior years' information is needed for the 2009 opening balances
- 403(b) plans did not historically have strict reporting guidelines forcing documentation at the plan level
- Historically treated as a collection of individual contracts



Unique 403(b) Plan Audit Aspects

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- The final regulations, by default, impose greater fiduciary responsibilities with respect to 403(b) programs covered by ERISA

- Generally, fiduciary standards include:
 - Acting solely in the interest of participants
 - Following the plan document
 - Paying only reasonable expenses
 - Diversifying investments
 - Carrying out duties prudently (prudence requires expertise and process)



403b Audit Agenda

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- Appoint a key coordinator for the audit
- Accumulate plan documentation
- Coordinate information and reporting needs with custodians and third-party service providers
- Document financial reporting process and plan internal controls
- Establish responsibility for the preparation of the form 5500
- Select and engage independent auditor



403b Audit Agenda

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- ❑ Obtain information request from auditor
- ❑ Establish timeline and fieldwork testing schedule with auditor
- ❑ Coordinate audit fieldwork with affected departments (Payroll, HR, Finance, Administration, etc.)
- ❑ Ongoing “auditor management”
- ❑ Follow-up on audit findings
- ❑ Review and approve financial statements
- ❑ Coordinate auditor communication with “those charged with plan governance”
- ❑ File Form 5500, with audited financial statements



Manage The CPA And TPA

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- Manage the auditors
 - ▣ Select those that can meet deadlines
- Manage the TPA
 - ▣ You are their client, we are not
- Conduct a face-to-face kick-off meeting
- Complete the client information form before the meeting
- Obtain a “to-do” letter with dates and assign tasks to the appropriate people
 - ▣ Electronic and easy to update
 - ▣ E-mail updated to-do letter weekly
- Establish field work dates around vacation times
- Establish conference call dates/times
- Obtain open items in writing from the auditors before they leave for fieldwork
- Define the end date
- If you selected the right CPA and TPA, you control the outcome!



Tools Available To Assist

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- Employee Benefit Plan Audit Quality Center
 - Website: www.aicpa.org/ebpaqc
 - Includes multiple resource centers with information and tools on EBP topics
 - Includes resource centers for plan sponsors, such as 403(b) plan assistance and tools
- www.dol.gov
- Employee Benefits Security Administration
Office of the Chief Accountant (202) 693-8360
- EFAST Help Line (866) 463-3278



ANY QUESTIONS?

