

# **403(B) SEMINAR NEW AUDIT & COMPLIANCE REQUIREMENTS**



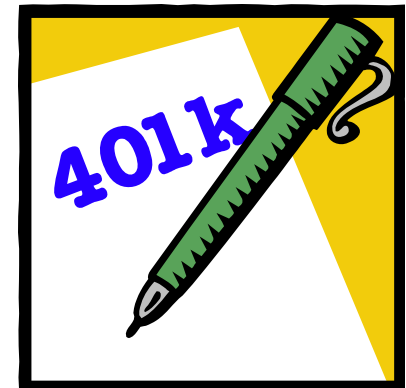
Feeley & Driscoll, P.C. | 200 Portland Street | Boston, MA 02114  
January 11, 2011 | [www.fdcpa.com](http://www.fdcpa.com)

# Learning Objectives

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**After this session, you will understand:**

- ❑ Quick Recap of the impact of the new 403(b) regulations
- ❑ What to expect from an audit
- ❑ How to plan for and manage the audit
- ❑ First year considerations
- ❑ Early lessons learned and common compliance issues



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# Poll Question 1

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Have you undergone a 403(b) Audit?

- Yes
- No
- Don't know

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# Poll Question 2

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How many custodians does your 403(b) have?

- ▣ 1
- ▣ 2-3
- ▣ 3-5
- ▣ More than 5

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# Poll Question 3

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Will you be preparing your own Form 5500?

- Yes
- No
- Don't know

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# Poll Question 4

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Do you have online functionality for the following:

- ▣ Enrollment
- ▣ Change in deferral %
- ▣ Distributions
- ▣ Loans
- ▣ Participant Investment Allocations

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# Unique 403(b) Plan Audit Aspects

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- ❑ 403(b) plans did not historically have strict reporting guidelines forcing documentation at the plan level
- ❑ Historically treated as a collection of individual contracts
- ❑ 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)
- ❑ Brought the 403(b) rules in line with other defined contribution plan requirements, subject to DOL, including audit requirement and filing IRS Form 5500
- ❑ First step is to assess whether you need an audit
- ❑ Assuming you need an audit, the rest of this session focuses on the audit process, etc.

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# 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.
- May have "limited scope" option

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# 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

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# 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

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# 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

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# 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

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# How To Prepare For The Annual Plan Audit

1 OF 3

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- Appoint a key coordinator for the audit
- 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

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# How To Prepare For The Annual Plan Audit

2 OF 3

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- ❑ 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 - Select those that can meet your deadlines

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# How To Prepare For The Annual Plan Audit

3 OF 3

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- ❑ 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

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# What is Audited?

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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

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# What is Audited?

2 OF 8

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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

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# 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

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# 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

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# 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

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# 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

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# What is Audited?

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## Timeliness

- 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
- **DOL HOT TOPIC**

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# 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

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# Audit Service Plan

1 OF 2

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- Obtain information request from auditor
  - ▣ Complete information prior to start of audit
  - ▣ Suggest using electronic tools for ease of updating
  - ▣ Add deadline dates and assign personnel responsibilities
  - ▣ Update regularly
- Establish timeline and fieldwork testing schedule with auditor
  - ▣ Suggest a face-to-face kickoff meeting
  - ▣ Define end date goals



# Audit Service Plan

2 OF 2

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- Coordinate audit fieldwork with affected departments (Payroll, HR, Finance, Administration, etc.), noting vacations, etc.
- Ongoing “auditor management” –
  - Perhaps having regularly scheduled conference calls
  - Open items 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



# 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
  - ▣ Reconcile participant information to trustee reports
- Availability of SAS 70s must be addressed
- Going back in time presents a unique difficulty for 403(b) plans, given the possible recordkeeping shortfalls

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# Early Lessons Learned

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- Overcoming resistance to file
- Are you required to file?
- Consequences for not preparing the 403(b)
- Identifying participants list
- Where are all the custodians of the assets?
- Fair value investment disclosures
- TPA responsiveness

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# Common Compliance Issues

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- ❑ Late deposit of participant deferrals and loan repayments
- ❑ Failure to properly apply plan's definition of compensation
- ❑ Failure to update plan document
- ❑ Failure to follow plan's eligibility provisions
- ❑ Incorrect employer contributions
- ❑ Failure to properly apply plan's vesting provisions
- ❑ Improper use of plan forfeitures
- ❑ Failure to comply with Form 5500 filing requirements
  - EFAST2 not set up and too late to file on time
  - Schedule C missing information
- ❑ Deferrals not properly calculated
- ❑ Fraud

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# Tools Available To Assist

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- Employee Benefit Plan Audit Quality Center
  - Website: [www.aicpa.org/ebpaqc](http://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](http://www.dol.gov)
- The full text of [DOL FAB No. 2009-02](http://www.dol.gov/ebsa/regs/fab2009-2.html) and [DOL FAB No. 2010-01](http://www.dol.gov/ebsa/regs/fab2010-1.html) are available at [www.dol.gov/ebsa/regs/fab2009-2.html](http://www.dol.gov/ebsa/regs/fab2009-2.html) and [www.dol.gov/ebsa/regs/fab2010-1.html](http://www.dol.gov/ebsa/regs/fab2010-1.html), respectively.
- Employee Benefits Security Administration  
Office of the Chief Accountant (202) 693-8360
- EFAST Help Line (866) 463-3278

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**ANY QUESTIONS?**

