

## Section 403(b) Retirement Plans: Next Steps

Beginning with 2009 Form 5500 filings, employee benefit plans under section 403(b) of the Internal Revenue Code that are sponsored by charitable organizations and covered under the Employee Retirement Income Security Act of 1974 (ERISA) will be subject to the same reporting and audit requirements that currently exist for section 401(k) plans.

We anticipate many plans facing significant challenges in establishing plan accounting records and proper controls, identifying all participant accounts to be included as plan assets, determining beginning account balances (i.e. - comparative balances are also required as of December 31, 2008 for calendar year plans), obtaining other financial information to be included in the plan's financial statements, and obtaining an unqualified opinion on the plan's financial statements from the independent auditor.

Below are steps that you, as a plan sponsor, can take now to help your plan meet the new requirements.

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### 1. Understand how the Department of Labor's (DOL) new financial reporting and audit requirements will affect your plan.

You should become familiar with the DOL's new reporting and independent audit requirements for ERISA-covered 403(b) plans, including the DOL "safe harbor" rules for annuity contracts or custodial accounts in 29 C.F.R. § 2510.3-2(f), and determine your plan's Form 5500 reporting and audit requirements. Is your plan eligible to use the new simplified Short Form 5500? If your plan is not eligible to use the simplified Short Form 5500, how will your plan meet the Form 5500 reporting and independent audit requirements? Will the plan's financial statements and Form 5500 be prepared by in house personnel or by an external service provider?

### 2. Establish responsibility for the plan's financial reporting function.

Designate an individual to be responsible for ensuring the plan meets its reporting responsibilities. This individual should have knowledge and expertise in financial accounting and reporting and an understanding of GAAP for employee benefit plans.

This could be an individual in the sponsor's financial accounting department.

### 3. Hire a qualified independent auditor for your plan.

Select an auditor that has prior experience with employee benefit plans and can perform a quality audit. A quality audit helps ensure the financial integrity of a plan and protect plan assets. A quality audit also will help the plan administrator carry out its legal responsibility to file a complete and accurate annual return/report for the plan each year. Discuss with your auditor whether there will be any scope restrictions on the plan audit (i.e., limited scope exemption) and whether the requisite conditions are met. Consider selecting CPA firms that are members of the Employee Benefit Plan Audit Quality Center.

### 4. Communicate with your service provider on the plan's information needs.

Identify all plan service providers and inquire whether they will be able to provide you with the information that you will need for your plan's financial statement audit and Form 5500. Your service provider should be able to identify and match all individual participant contracts and account balances to your plan. Make sure the plan has current contracts with its service providers that provide for this information. Also ask your service provider if they will be making available a "SAS 70" report on the internal controls established to process your plan's transactions. Verify that the SAS 70 report is a type II report, as non-Type II reports may affect the cost of your audit.

### 5. Determine what 2008 comparative financial information the plan will need.

Even though the new Form 5500 reporting and independent financial statement audit requirements are not effective until the 2009 Form 5500 filing, if your plan meets the requirement to have an independent audit for the plan year ended December 31, 2009, then the plan's financial statements will also need to include certain comparative financial information as of the 2008 plan year end (i.e. - December 31, 2008 for calendar year plans). This comparative year information is required by the DOL to be included in the plan's financial statements, even in the initial reporting year. Required information includes the current value of plan investments, and the amounts of employer's contributions owed to the plan, accounts payable and accrued expenses as of the end of the plan year.

## 6. Make sure plan participant records are complete and accurate.

Plan participants may include former employees for which the plan has no current records. You may need to take steps to find these “missing” participants and determine their account balances so that they can be properly included in the plan records

## 7. Get your plan’s books and records in shape.

Make sure your plan establishes adequate financial records to support the preparation of the plan’s financial statements. These records should include contribution and disbursements records, individual participant account balance records, investment schedules, a general ledger and trial balance. Identify all participant mutual fund and custodial accounts holding plan assets, including any transfers to another 403(b) account or contract outside the plan. Determine which insurance annuity contracts should be reported as plan assets on Schedule H of Form 5500 and in the plan’s financial statements (“fully allocated” annuity contracts are not included as plan assets). If the plan previously changed service providers, identify any old accounts and contracts that were not transferred to the new service provider (referred to as “orphan contracts”).

## 8. Establish proper internal controls over the plan’s financial reporting process.

Establish policies and processes to ensure proper authorization and recordkeeping of *plan* transactions, including investments, contributions, benefit payments, participant data and administrative expenses. This includes controls at all service providers used by the plan, and ongoing monitoring of those controls. Effective controls reduce the risk of asset loss, and help ensure that plan information is complete and accurate, financial statements are reliable, and laws and regulations are complied with. Your plan auditor is required to communicate to you — and others in your organization charged with governance — certain deficiencies or weaknesses in internal controls over your plan’s financial reporting

## 9. Ensure that the plan has an up-to-date written plan document and an investment policy.

Make sure the plan has a current, written plan document that includes basic provisions relating to eligibility, benefits, distribution availability and other limitations, and information relating to the annuity contracts or custodial agreements used by the plan. The plan should also have a written investment policy describing what types of investments the plan can make and the appropriate authorizations for investment transactions. It is required that this document is completed by December 31, 2009.

## 10. Ensure that the plan is in compliance with the plan’s tax exemption.

Review the plan’s exempt status and compliance with requisite IRS rules, including salary deferrals, contributions, universal availability and coverage, nondiscrimination, compensation testing, controlled group/affiliated service group analysis, minimum required distribution calculations, and transfers to an IRA or other eligible plan.

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Faced with so many regulatory and accounting rules and the increased fiduciary liability these changes bring, many employers will look to firms with extensive benefits expertise to perform audits of their investment plans. The IRS has signaled that it will be ramping up its audits of 403(b) plans to insure compliance with the new regulations. Milligan & Company is ready to assist you in complying with these new regulations and preparing for your initial audit.

If you have any questions on these recommendations or would like more information, please contact Jovan Goldstein at 215.496.9100 ext 104 or by email — [jgoldstein@milligancpa.com](mailto:jgoldstein@milligancpa.com)

This guidance is not intended to be a comprehensive summary of final regulations associated with 403(b) plans. However, it is intended to summarize significant aspects of the regulations for your consideration.

## Section 403(b) Retirement Plan: Next Steps Checklist

- 1. Understand how the Department of Labor's (DOL) new financial reporting and audit requirements will affect your plan.
- 2. Establish responsibility for the plan's financial reporting function.
- 3. Hire a qualified independent auditor for your plan.
- 4. Communicate with your service provider on the plan's information needs.
- 5. Determine what 2008 comparative financial information the plan will need.
- 6. Make sure plan participant records are complete and accurate.
- 7. Get your plan's books and records in shape.
- 8. Establish proper internal controls over the plan's financial reporting process.
- 9. Ensure that the plan has an up-to-date written plan document and an investment policy.
- 10. Ensure that the plan is in compliance with the plan's tax exemption.

## 2009 Milestones

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
Step 1												
Step 2												
			Step 3									
	Steps 4 & 5											
				Step 6								
	Step 7											
		Step 8										
	Step 9 *											
										Step 10		

\* Step 9 required by 12/31/2009