

Regulations Effective 1/1/09 Changing the 403(b) Plan Landscape

Understanding how the regulation impacts your 403(b) plan and attaining compliance by the January 1, 2009 deadline

Effective January 1, 2009, new regulations will place more stringent rules on the operation and administration of 403(b) plans. The 403(b) plan will now need to operate more like an ERISA 401(k) plan, heaping additional responsibility (and therefore fiduciary liability) on the shoulders of plan sponsors.

Highlighted below are several areas addressed in the regulations for which plan sponsors will assume accountability:

Plan Document

Written plan documents will now be required for all ERISA and non-ERISA 403(b) plans. Although your 403(b) plan probably currently has a plan document in place, it likely will now be insufficient. According to the new guidelines, Plan Documents must now cover:

- Non-discrimination rules
- Universal Availability
- Elective Deferral Limitations
- Minimum Distribution Requirements
- Direct Rollover rules
- Limits on annual additions to the IRS §415 limits

In addition, if multiple vendors are utilized, the same terms and conditions must apply across each plan document. The plan sponsor holds the ultimate responsibility for ensuring consistency.

Form 5500 reporting (for plans with greater than 100 participants)

The Form 5500, although currently required for all ERISA 403(b) plans which include employer contributions, has commonly been overlooked. Administrators of 403(b) plans have not had to complete all questions on the 5500 or include the accompanying schedules. The new regulation requires the following:

- Plan Sponsors must complete the 5500 in its entirety, and include the accompanying schedules
- An independent CPA must audit the plan
- The accountant's opinion must accompany the Form 5500 filing

Many 403(b) plans engage the services of multiple vendors. Under the new requirements, a Form 5500 must be filed for each piece of the plan residing with each vendor, or one vendor must be willing to assemble the information from all vendors, which is highly unlikely. Filing multiple Form 5500s increases the plan sponsor's cost. The use of multiple vendors also makes the auditor's job of assembling and reviewing plan data more difficult.

Investment Oversight

403(b) plans with employer contributions are subject to ERISA, which places clear fiduciary responsibilities on plan sponsors, including:

- Operating the plan in the best interest of the participants
- Administering the plan according to the law and the written plan document
- Understanding plan costs and ensuring they are reasonable
- Offering a diversified array of investment choices
- Monitoring the investments in the plan on a regular basis according to an investment policy

This document covers only a few of the topics covered under the new legislation. Engaging BFSG's services as an independent third party investment advisor can help you navigate the upcoming changes, ensure your plan is in compliance, and fulfill your fiduciary responsibilities to your participants. BFSG's team of investment and compliance experts have researched the legislation, and are prepared to help you answer any questions you may have.