

## **It's 2009 ... Are you Ready for Your 403(b) Audit?**

Under this year's new 403(b) regulations plans that are subject to the Employee Retirement Income Security Act (ERISA) will need to comply with the same reporting requirements as other ERISA retirement plans. This includes Form 5500 reporting requirements as well as the annual audit requirement for plans with over 100 "eligible participants" as of the beginning of the plan year (known as "Large Plan Filers"). This provision is effective with plan years beginning on or after Jan. 1, 2009. Therefore, it is important to understand who qualifies as an eligible participant to determine if your plan will require an audit.

Generally, ERISA plans with fewer than 100 eligible participants at the beginning of the plan year (known as "Small Plan Filers") are not subject to the audit requirement as long as they qualify under the Department of Labor's (DOL) Small Plan Audit Waiver Exemption. Some plans that have more than 100 eligible participants as of the beginning of their plan year can also be exempt from the audit requirement if they qualify under the 80/120 rule. This rule allows plans with more than 100 but fewer than 121 eligible participants as of the beginning of the plan year to use their prior year Small Plan Filer status.

Since 403(b) plans did not have a prior year reporting requirement, the DOL advised in its Notice of Adoption of Final Forms Revision that 403(b) plans that were eligible to file as a small plan under DOL Reg. 29 CFR 2520.103-1(d) in the previous year and that have participant counts of fewer than 121 in the beginning of the 2009 plan year can file as small plans under the new filing rules.<sup>1</sup> The real challenge for 403(b) plan administrators may be to accurately determine the number of eligible plan participants as of the beginning of their 2008 and 2009 plan years.

Since the audit issues affecting qualified retirement plans are very unique, it is important to work with a Kostin accountant who has the specific technical expertise.

There are many things that need to be done in preparation for the audit. We will highlight some of the more significant areas below.

**Audit Scope:** Initially there should be a discussion with your auditor to determine if your plan could qualify for a limited scope audit. This will depend on whether your plan's service provider(s) or vendor(s) can provide the auditor with a DOL limited scope certification letter.

---

<sup>1</sup> AICPA-Employee Benefit Plan Audit Quality Center analysis "Section 403(b) Retirement Plans-Form 5500 Reporting and Independent Audit Requirements," p.3.

Only certain institutions are qualified to provide these certification letters. If a certification letter can be provided, it will limit some of the auditing associated with investments and may have an impact on audit fees.

**Form 5500 Filing Requirements:** A full Form 5500 with attachments will be required from 403(b) Large Plan Filers, including audited financial statements beginning with their 2009 Form 5500 filing. Generally, the Form 5500 is due seven months after the plan year end but can be extended for an additional two-and-a-half months. Below is a chart to assist you in determining when your plan is required to file their Form 5500 for the 2009 plan year.

Plans not complying with those filing deadlines are subject to penalties of up to \$1,100 a day for each day a plan administrator fails or refuses to file a complete Form 5500. The IRS may also assess penalties for failure to file a form 5500 in the amount of \$25 a day to a maximum of \$15,000 per return.

### Form 5500 Filing Calendar

<u>Plan Year End</u>	<u>Form 5500 due date</u>	<u>Form 5500 due date with extension</u>	<u>Financial statement periods to be presented*</u>
Dec. 31, 2009	July 31, 2010	Oct. 15, 2010	Dec. 31, 2009 plan year (with comparative Dec. 31, 2008 statement of net assets available for benefits)
June 30, 2010	Jan. 31, 2011	April 15, 2011	June 30, 2010 plan year (with comparative June 30, 2009 statement of net assets available for benefits)
Sept. 30, 2010	April 30, 2011	July 15, 2011	Sept. 30, 2010 plan year (with comparative Sept. 30, 2009 statement of net assets available for benefits)

\*Note: The Department of Labor requires comparative financial periods to be presented for the statement of net assets available to pay benefits.<sup>2</sup>

<sup>2</sup> AICPA-Employee Benefit Plan Audit Quality Center analysis “Section 403(b) Retirement Plans-Form 5500 Reporting and Independent Audit Requirements,” p. 4.

Since 2009 is the first year that many plans will be required to complete the full Form 5500 with attachments, you will need to determine who will be preparing the 2009 Form 5500 for the plan. If you use multiple vendors, how will all plan information be consolidated for Form 5500 reporting purposes? This may require substantial coordination depending on the number of vendors your plan utilizes.

**Required Plan Documents:** Since 403(b) plans have not been audited in the past, auditors will require substantial documentation. At a minimum the auditor will need to review plan documents in effect for the plan being audited. Therefore, if you have not already obtained a written plan document, you will need to do so prior to your audit.

You will also need to provide the auditor with other documentation, such as copies of any fee and service agreements in effect with your vendors, investment policy statements, fidelity bond information, and copies of any meeting minutes of those charged with plan governance during the plan year under audit. Additional data requests will be part of your audit.

**Audit Compliance Testing:** Auditors will need to review personnel and payroll records to complete audit procedures. Since this is the first year your plan requires an audit, you should review your personnel and payroll files to make sure you have the ability to provide the auditor with accurate and timely census information (date of birth, date of hire, date of death, date of term, etc.), benefit forms (plan enrollment form, beneficiary form, investment change form, etc.) and payroll information (salary letters, W-2 information, etc.) to avoid delays in the audit.

If loans are allowed under the plan, identify all outstanding loans under the plan and determine how to access the loan documentation including amortization schedules and payment information.

If you have outsourced any plan services, such as plan enrollment, contribution and investment changes, loan or termination processing, etc., notify the auditor so they can determine how to request alternate audit support. Advise them if you receive reports from the service provider verifying an outsourced transaction.

It is important to understand what your auditor will require to complete certain procedures ensuring timely filing of the Form 5500. If an audit cannot be completed by the plan's Form 5500 filing date, the filing will be considered a "deficient" or incomplete filing by the DOL and may be subject to penalties of up to \$1,100 per day.

**2008 Audit Information:** As part of the 2009 financial statements, management will need to present a comparative statement of net assets available for benefits. The auditor will need to perform certain procedures to gain comfort in those amounts that form the basis of the 2009 opening balances. Since the reporting regulations impacting 403(b) plans are not effective until 2009, this information may be hard to obtain from vendors. It is imperative that 403(b) plan sponsors understand the information that their auditor will require and begin contacting their service provider(s) or vendor(s) to request the required 2008 comparative financial information.

**2009 Plan Financial Information:** The auditor will need to receive 2009 plan year financial information on a participant and plan level basis from your service provider(s). In preparation for the audit, contact your vendors and ask them if they can provide you with a description of the reports they intend to produce for the 2009 plan year audits. Since this is a new requirement, they may not have yet determined what information may be available.

If they are unable to provide this information to you now, request that you be notified as soon as it becomes available. If you use multiple vendors it is important that you coordinate this information, and provide your auditor with aggregated financial information.

**Establishing Proper Internal Control:** It is essential that you establish proper internal controls over your plan's financial reporting process, and determine who will be responsible for the plan's financial reporting function within your organization. The AICPA Employee Benefit Plan Audit Quality Center has prepared a booklet to assist plan sponsors with internal control considerations titled "The Importance of Internal Controls in Financial Reporting and Safeguarding Plan Assets. Copies can be downloaded from their site <http://ebpaqc.aicpa.org/> under Plan Advisories.

We hope this information has been helpful in providing you with insight into some of the information to complete a 403(b) plan audit. For many 403(b) administrators and staff, this will be your first plan audit experience. We understand the effort required to provide an auditor with this information and recommend that you start preparing now. Proper planning will produce a benefit to your plan for years to come.

**For more information** please contact:

Jason D. Newman, CPA at [jnewman@kostin.com](mailto:jnewman@kostin.com) or (860) 678-6059 or  
Lindsey A. Wright at [lwright@kostin.com](mailto:lwright@kostin.com) or (860) 678-6019