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## New Requirements for Nonprofit 403(b) Retirement Plans

by Shauna MacSweeney, CPA

Schools, churches, charities and certain other tax-exempt organizations that offer a 403(b) retirement plan to employees must meet new requirements in 2009. Previously, tax-exempt organizations that sponsored a 403(b) retirement plan had minimal or no reporting requirements and were not required to have a formal plan. However, all 403(b) plans beginning on or after **January 1, 2009**, will be subject to the same 5500 reporting and audit requirements as 401(k) plans.

New challenges that plan sponsors face:

Then	Now
No or minimal reporting requirement	Mandatory filing with the Department of Labor and Internal Revenue Service
No written plan document	Written plan document required
No tracking of plan assets	Required to calculate the value of plan assets and the related activity for the plan year
No limit to number of vendors	Consolidation and/or elimination of vendors
No rules on eligibility	Employers are required to permit all employees to participate unless the plan document specifically excludes a class of employees
No set timing on deposits of employee deferrals	Plan sponsors will be held accountable for late employee deferral deposits
Little to no required communication to employees	Employers are responsible to give notice to all employees eligible and afford them an effective opportunity to make or change an elective deferral
No audit required	Audit required for large plans
No recordkeeping required	Centralized recordkeeping is critical to compliance
No guidelines on how to operate the plan	Plan must operate in accordance with written plan document
Plan sponsors outsource responsibility to third parties	Plan sponsor has fiduciary responsibility over plan

Large plans (100 or more participants) generally will be required to file audited financial statements beginning with their 2009 Form 5500 filing. Small plans (generally fewer than 100 participants) may be eligible to use a new Short Form 5500 and thus may be eligible to use abbreviated reporting forms without audited financial statements. Failure to comply with the 403(b) disclosure and audit requirements under Subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) could result in adverse tax consequences to *all plan participants* and the *plan sponsor*.

Keep in mind that although the new requirements are effective for 2009 plans, Form 5500 requires a comparative Statement of Net Assets. Therefore, 2008 financial information will need to be included on the 5500 and the audited financial statements. For large plans where the financial statements have not been previously audited, the auditor will need to apply procedures to ensure accounting principles used by the plan in both the current and preceding year are consistent. The initial audit of a plan will require significant audit efforts as the auditor will need to perform procedures to test the completeness and accuracy of the plan and participant-level information going back numerous years.

In preparation for these changes, plan sponsors should obtain outside assistance regarding the plan document and its administration. Additional action items should include:

- Contact your investment custodian and request investments statements for the 2008 plan year, and organize participant files.
- Designate someone as the plan administrator. This person will be responsible for administering the plan and should be able to:
  - Read and understand the plan document.
  - Design proper accounting procedures and internal controls over the administration of the plan.
  - Stay up-to-date on rules and regulations set forth by the Department of Labor and Internal Revenue Service as they relate to these plans.
- Select a qualified public accountant who has the experience and expertise to conduct your employee benefit plan audit.

Should you have questions about the new 403(b) requirements or need assistance with an audit, please feel free to contact Shauna MacSweeney at **781-937-5371** or **smacsweeney@dgccpa.com**.