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Managing the new 403(b) guidelines

By Donald Troy and Shauna MacSweeney

Tougher rules for nonprofits require more reporting

In the past, 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 in place.

Starting with the 2009 plan year, however, nonprofit organizations that offer 403(b) retirement plans to employees will be subject to many of the same reporting requirements as for-profit 401(k) plans. Nonprofits that offer employees 403(b) plans will be required to file a Form 5500 annually with the Department of Labor, and large plans with 100 or more participants must also include audited financial statements. This can be a daunting task for organizations that are not prepared.

STEPS FOR COMPLIANCE

The first step a plan sponsor should undertake is determining what kind of Form 5500 they need to submit. Large plans with 100 or more participants generally will be required to file audited financial statements beginning with their 2009 filing. Small plans with 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 the Employee Retirement Income Security Act of 1974 could result in adverse tax consequences to all plan participants and the plan sponsor.

Plan sponsors should obtain outside assistance to lead the project and prepare for the audit of the employee benefit plan. Advisors need to counsel their clients, guiding them on their fiduciary responsibility for the plan and designating someone to perform as the plan administrator. This person should be able to read and understand the plan document, design proper accounting procedures and internal controls over the administration plan, and work closely with the accounting team to stay up to date on rules and regulations set forth by the Department of Labor and Internal Revenue Service. Next, plan administrators need to work with all of their service providers to obtain the required historical information.

The accompanying graph highlights significant changes that have taken place this year and need to be adhered to for compliance.

Although the new requirements are effective for plans reporting for 2009, 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 that 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.

TIME REMITTANCE

The deadline for a written plan to be in place is Dec. 31, 2009. If the requirements are not completed as indicated by the DOL and IRS, a fee-based penalty will be issued until the Form 5500 is filed correctly.

Audits will be performed on the financial statements of the plan, and typically include verification of plan assets and liabilities, as well as testing activity during the plan year. Testing includes investment results, contributions of employers and employees, distribution of benefits, and payment of expenses. In addition, the auditor is required to test the compliance of the administration of the plan with the provisions of the plan document as it relates to individual participant accounts. Simply put, they will check to make sure benefits are being distributed as designated by the plan. Eligibility of employees participating in the plan will also be reviewed, as well as the distributions they receive.

For more information, check out the IRS checklist at www.irs.gov/pub/irs-tege/pub4546.pdf.

CHANGE OF PLANS: Changes to compliance rules for 403(b) plans

THEN

- * No or minimal reporting requirement
- * No written plan document
- * No tracking of plan assets
- * No limit to number of vendors
- * No rules on eligibility
- * No set timing on deposits of employee deferrals
- * Little to no required communication to employees
- * No audit required
- * No recordkeeping required
- * No guidelines on how to operate the plan
- * Plan sponsors outsource responsibility to third parties

... and NOW

- * Mandatory filing with the Department of Labor and the Internal Revenue Service
- * Written plan document required
- * Required to calculate the value of plan assets and the related activity for the plan year
- * Consolidation and/or elimination of vendors
- * Employers are required to permit all employees to participate, unless the plan document specifically excludes a class of employees
- * Plan sponsors will be held accountable for late employee deferral deposits
- * Employers are responsible to give notice to all employees eligible and afford them an effective opportunity to make or change an elective deferral
- * Audit required for large plans
- * Centralized recordkeeping is critical to compliance
- * Plan must operate in accordance with written plan document

* Plan sponsors have fiduciary responsibility over plan

Donald Troy, CPA, and Shauna MacSweeney, CPA, are with Boston-based DiCicco, Gulman & Co.
Reach them at dtroy@dgccpa.com and smacsweeney@dgccpa.com.

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