

## 403(b) Plans The Next Step – determining if you are subject to the audit requirement

Now that you have successfully adopted your plan document and determined whether or not you have an ERISA plan, it is time to focus on ERISA audits. This ErisaALERT is the first in a series covering issues facing 403(b) plan sponsors; future issues will address what to expect from your auditor during the audit process as well as gathering the data the auditor will need.

### **When is an audit required?**

**Large** ERISA plans will be required to file audited financial statements beginning with the 2009 Form 5500 filing. A large plan is an ERISA plan with more than 100 participants at the beginning of the plan year.

**Small** ERISA plans are generally exempt from the audit requirements provided the requirements of the DOL's [small plan audit waiver](#) are satisfied. A small plan is an ERISA plan with less than 100 participants at the beginning of the plan year. Since 403(b) plans are limited to investing in custodial accounts or mutual funds, the probability of not qualifying for the exemption is slim.

A useful exception to the small/large plan rule is the “80 to 120” rule. Under the 80 to 120 rule, if the number of participants covered under the plan as of the beginning of the plan year is between 80 and 120, and a small plan 5500 was filed for the prior year, the plan administrator may elect to continue to file as a small plan and effectively avoid the audit requirement.

### **What if you are subject to an audit?**

Keep in mind that this will also be the first year that your recordkeeper, investment provider, lawyer, advisors and certified public accountants (CPAs) will deal with 403(b) plan audits. Although 403(b) plans are similar to the qualified plan audits with which CPAs are familiar, there are significant differences, some of which may not be obvious. It is therefore very important to engage individuals who understand 403(b) plans when you prepare for your first audit. Given that many 403(b) plans will be subject to the audit requirements, the earlier you secure the services of an auditor the better off you will be.

The DOL website contains information on [selecting an auditor](#) and is a good place to start. Key questions to address include:

- Does the auditor have experience in auditing employee benefit plans?
- Will the auditor be independent?
- Is the auditor licensed or certified?

An additional resource available to help you with the RFP process (request for proposal) is the AICPA Employee Benefit Plan Audit Quality Center. There you will find a document titled [Obtaining Quality Employee Benefit Audit Services: The Request for Proposal and Auditor Evaluation Process](#). The article discusses:

- The Importance of a Quality Plan Audit
- Finding an Audit Firm
- The Request for Proposal
- Proposal Evaluation and Auditor Selection
- Documenting the Agreement

Audits can be expensive, starting at thousands of dollars. You can mitigate the cost by being prepared as well as providing data that is complete, accurate and timely. Future ErisaALERTs will provide information on what to expect during the audit process as well as tips to help you prepare.

**What steps should you be taking now:**

1. Develop an audit search committee
2. Get help if you need it!
3. Begin drafting an RFP
4. Identify who you will send the RFP
5. Develop objective criteria for evaluating an RFP
6. Send the RFP
7. Select your auditor.

**Note:** all links are active as of the date of issuance of this ErisaALERT.

Disclaimer: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice and should not be used as a substitute for legal advice. You should seek the advice of counsel when applying the requirements to your plan. For more information on this ErisaALERT contact us by phone at 610-337-7222 and ask for Paul Protos or 610-524-5351 and ask for Mary Andersen or 973-994-7539 and ask for Theresa Borzelli.