



New 403 (b) Audit Requirements

Employment, Labor & Benefits Practice Group

Foster Swift Employment, Labor & Benefits Quarterly

September 2008

PRACTICE AREAS

Employee Benefits

Many not-for-profit organizations offer employees the opportunity to participate in a 403(b) tax deferred annuity plan. Traditionally, 403(b) plans have been subject to minimal governmental scrutiny. Currently, the U.S. Department of Labor (the "DOL") requires only limited Form 5500 reporting for 403(b) plans. However, in recent years, the Internal Revenue Service and DOL have identified the lax 403(b) reporting standards as a cause for concern. Accordingly, in the interest of increased oversight, improved administration, and greater public transparency, the DOL issued new 403(b) regulations, effective January 1, 2009. The regulations require that organizations offering ERISA 403(b) plans file a complete Form 5500 on an annual basis. Additionally, those ERISA 403(b) plans with 100 or more participants will be required to include an audited financial statement with their Form 5500 filings.

Although the new 403(b) regulations are not effective until plan years beginning on or after January 1, 2009, Form 5500 requires auditors to measure a plan's 2009 figures against comparable information from prior years. Accordingly, sponsors of 403(b) plans falling within the new 403(b) auditing requirements (i.e., ERISA plans with 100 or more participants) should take action to assure the compilation of 403(b) plan data for comparison purposes.