



EMPLOYEE BENEFIT PLAN AUDITS

Kara Shadeed, CPA, MBA, Supervisor
Bruner-Cox LLP

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Business Consultants & Certified Public Accountants

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Agenda

- ERISA Audit Requirements
- 403(b) Plan Changes for 2010
- What to Expect from an Audit
- Questions

ERISA Audit Requirements

- Employee Retirement Income Security Act of 1974 (ERISA) requires qualified retirement plans that cover 100 or more eligible participants to file a Form 5500 as a “large” plan
- The 5500 for large plans requires audited financial statements to be included
- Since 1974 403(b) or Tax-sheltered annuity plans enjoyed an exemption for most of the filing requirements



What are 403(b) Plans

- Internal Revenue Code 403(b)
- Retirement plans often offered by governments, schools, hospitals, churches, and other 501(c)(3) tax exempt organizations
- There are over 15,000 403(b) plans in existence
- Over 7,000 are “large” plans that are now subject to new audit requirements
- Have individual investment accounts

403(b) Plan Changes for 2010

- Previous exemptions eliminated by the DOL in November 2007
 - <http://www.dol.gov/ebsa/regs/fedreg/final/200711116.p>
- Became effective for plan years beginning on or after January 1, 2009
- Result is now 403(b) plans are treated similar to 401(k) plans for ERISA filing purposes

403(b) Plan Changes for 2010

- Need a written plan document by December 31, 2009
- Plan document needs to address
 - Eligibility
 - Benefits
 - Dollar limitations
 - Non-discrimination rules
 - Available investments
 - Time and form of distributions

Questions to Ask on Your 403(b) Plan

- Is our plan subject to ERISA?
- Is our plan a “large” plan per ERISA?
- Who will perform the audit and prepare the Form 5500?
- Do we have the appropriate records for an audit?



Is Our Plan Subject to ERISA?

- Legal determination
- Plans sponsored by governmental units are not subject to ERISA
- A church plan is usually exempt from ERISA
- Extent of employer's involvement may provide an exemption, but not typically

Do We Have a Large Plan?

- Annual determination
- Based on first day of plan year
- 100 or more participants
- Participants include active and eligible participants
- Potential relief under “80/120” rule



Per Code Section 401(k)

- A participant is:

“Any individual who is eligible to participate in the plan whether or not the individual elects to contribute or has an account under the plan (DOL Reg. 29 CFR 2510.3-3(d)”

- Includes former employees with a balance still in the plan

What to Expect from an Audit



Selecting a Qualified Audit Firm

- DOL has developed guidance to assist:
 - Are they a member of the AICPA EB Audit Quality Center (ebpaqc.aicpa.org)
 - Developed a RFP checklist of items to consider
 - EB plan audit experience and qualifications
 - Request references
 - Developed a list of questions to ask the plan auditor



Audited Financial Statements Will Include:

- Opinion from the Audit Firm
- A statement of net assets available for benefits (required to be comparative, even for first year)
- A statement of changes in net assets available for benefits
- Footnotes
- Supplemental Schedule (s), if required

What is the Audit For?

- Important part of the total process to protect plan participants
- Not designed to ensure compliance with ERISA provisions
- Include with your 5500 filing



Your Auditors Will Want.....

- Plan document and amendments
- Trust agreement with all vendors
- Plan internal controls at sponsor and TPA
- Participant records
- Plan-wide financial statement
- Distribution records



Steps to Get Ready for the Audit

- Understand the new requirements
- Determine who will be responsible for areas
- Get the plan's accounting records in order
- Communicate with service providers on information needs
- Review plan participant records for completeness

Steps to get Ready for the Audit

- Select an audit firm to perform the audit
- Establish a timeline and responsibilities
- Have a kick-off planning meeting with third party providers and auditor
- Monitor progress and communicate throughout the process

Auditors Opinion

- May be Full or Limited scope opinion
- For a Limited-Scope Audit Opinion
 - Assets must be held by a bank, trust company, or similar institution or by an insurance company that is regulated and subject to periodic examination by a state or federal agency
 - Entity must certify the assets

Missing Plan Financial Information

- Audit Opinion may need to be modified which may cause rejection of the Form 5500 and start penalties/fines from DOL and IRS
- Field Assistance Bulletin No. 2009-2 offers relief by the DOL on having to count former employees for Audit Opinion qualifications, with stipulations

DOL Enforcement

- Employee Benefits Security Administration (EBSA)
 - \$1,100 a day, no limit, on plan administrators for delinquent filings per ERISA
 - Additional DOL penalties up to \$50,000 a year
 - Pursued civil and criminal penalties on plan administrators
 - The DOL has a database to check 5500 filings

5500 Due Dates

- Last day of the 7th calendar month after plan year end
 - Complete distribution of assets is deemed a new plan year end
- A one-time extension of 2 ½ months by filing a Form 5558 before original due date
- Corporate filers can get an extension to the due date of the federal income tax return but there are certain conditions that must be met

5500 Changes for 2010

- E-filing required for plan years beginning on or after January 1, 2009
- EFAST2 is the DOL website-based filing program
- Will make filings available to public within 24-48 hours of being posted on the system
- May need to register for credentials and a PIN to sign 5500 which can be done now at www.efast.dol.gov
- Help desk at DOL is 1-866-GO-EFAST

DOL/IRS Hot Topics

- Timeliness of remittance of participant contributions
- Three regulatory initiatives to improve fee disclosures and transparency
- Focusing on increased audit efforts in areas typically related to fraud

Summary

- If ERISA applies to your plan there are new 5500 filing requirements you must comply with
- Requirements for 403(b) Plans have changed for 2009 year ends
- Changes will require timely action now in many areas to avoid late filings in 2010

Questions?

Kara Shadeed, CPA, MBA, Supervisor

kara.shadeed@brunercox.com

330.266.4176

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