

At Baker Tilly we strive to bring creativity, commitment, and the highest professional standards to everything we do. In doing so, we make every effort to keep you in the know about upcoming changes.

Below you will find detailed information about the upcoming changes to the 403(b) plan and how it may affect you and your business. If you would like additional information or have questions, please contact Baker Tilly to speak with an advisor.

New form 5500 requirements

In November 2007, the Department of Labor (DOL) issued amended regulations eliminating an exemption granted to 403(b) plans from the annual Form 5500 reporting, disclosure, and audit requirements. This exemption removal subjects ERISA-covered 403(b) plans to the same Form 5500 reporting and audit requirements as 401(k) plans, effective with their 2009 Form 5500 filings. See the table on the next page for examples of due dates for the 5500.

403(b) regulations

On July 23, 2007 the IRS issued comprehensive regulations for 403(b) plans. In summary, these new regulations:

- > Impose due diligence and compliance criteria.
- > Require 403(b) programs to be maintained pursuant to a **written defined contribution plan** that satisfies 403(b) in both form and operation and contains all the terms and conditions for eligibility, limitations, and benefits under the plan. This must be completed by December 31, 2009 for **all** plans. Any plan with the written plan document finalized during 2009 must do a look back to ensure that the plan was operating in accordance with the provisions of the plan document during all of 2009.
- > Provide stricter transfer rules.
- > Establish a bright-line universal availability test.

Meeting the requirements

Below are steps that you, as a plan sponsor or administrator, can take now to help your plan meet the new requirements.

- > Become familiar with the DOL's new requirements for ERISA-covered 403(b) plans, and understand how they will affect your plan. Call us, we can help.
- > Choose an individual to ensure that the plan meets its reporting responsibilities, preferably someone from your financial accounting department. The plan sponsor needs to **identify the plan assets as of the beginning of the first plan year subject to the audit requirement** (December 31, 2008 for calendar year-end plans).
- > Communicate with your service provider on the plan's information needs. Once you've done so make sure your records are up to date.
- > Ensure that the plan has an up-to-date written plan document and an investment policy by December 31, 2009, regardless of plan year, and perform the look back, if required, as indicated above.
- > Ensure that the plan is in compliance with the plan's tax exemption.

Effective Date

The general effective date is for taxable years beginning after December 31, 2008, with some exceptions.

General filing requirements

Large Plans: ERISA-covered 403(b) plans with 100 or more eligible participants will be required to file **audited financial statements** beginning with their 2009 Form 5500 filing as a “large plan”.

Small Plans: ERISA-covered plans (less 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.

In years subsequent to the initial filing year, a plan that covers between 80 and 120 eligible participants at the beginning of the plan year may elect to complete the Form 5500 in the same category (“large plan” or “small plan”) as was filing for the previous year.

Form 5500 Filing Calendar		
Plan Year End	Form 5500 Due Date	Form 5500 Due Date with Extension
December 31, 2009	July 31, 2010	October 15, 2010
June 30, 2010	January 31, 2011	April 15, 2011
September 30, 2010	April 30, 2011	July 15, 2011

The financial information that needs to be presented on the Form 5500 includes comparative statements of net assets available for benefits (similar to a balance sheet) and a single year statement of changes in net assets available for benefits (the income statement). It is imperative that you gather sufficient information to put together the opening “balance sheet” information for the first year subject to the new rules.

Selecting an auditor

The DOL requires the plan sponsor to select an Independent Qualified Public Accountant (IQPA) to perform an audit of the plan, if required (see above). Not all CPA's are IQPA's. At Baker Tilly, we have dedicated teams of benefit plan auditors that receive training annually. These teams perform approximately 500 qualified plan audits each year. Our custom designed tools and templates allow for high quality engagements that adhere to generally accepted audit standards, while creating a streamlined, efficient process.

We have the resources to understand the rules imposed by ERISA and can provide the audit expertise necessary to help you exercise your fiduciary duty to properly run the plan in accordance with its provisions and the rules of ERISA, and to select an IQPA to perform the audit.

Due to the extensive changes brought forth by these new rules, please contact Baker Tilly to speak with an advisor to help guide you through the requirements.

Completed Plan Document

The written plan document must be done by December 31, 2009 for all plans, regardless of the plan year-end.

Plan Assets

You will need to identify the plan assets as of the beginning of the first plan year subject to the 5500 filing requirement.