

To: Clients and Friends
From: Smith & Downey
Date: November 27, 2008
Re: 403(b) Plan Sponsors - Year-End Tasks

As we've reported in prior e-Alerts and at our Seminars, employer-sponsors of 403(b) Plans must adopt, by December 31, 2008, amended and restated documents reflecting the requirements of the new IRS 403(b) Regs.

In addition to adopting updated documents, employers with 403(b) Plans also must take the following actions by year-end:

1. If the 403(b) Plan permits transfers of funds from the Plan's current, active vendor(s) to an inactive vendor or vendors, the Plan must enter into so-called "Information Sharing Agreements" with the inactive vendor(s).
2. The employer must send a copy of the amended and restated document to its active vendor(s) pointing out in a cover letter that the document allocates administrative duties and responsibilities among the employer and the vendor(s).

(In light of the variety of new administrative obligations imposed or clarified by the new Regs, some employers are entering into formal administrative services agreements with their 403(b) Plan active vendors to ensure that there is no misunderstanding about which party is responsible for which compliance tasks.)

3. The employer must determine whether its 403(b) Plan is ERISA-governed or non-ERISA-governed, in order to determine whether it needs to meet the various requirements of ERISA in addition to the requirements of the new IRS Regs. (For example, beginning in 2009, ERISA-governed 403(b) Plans must file "long-form" Form 5500s and, if they have more than 100 "participants," include CPA audits with the Form 5500s.)
4. The employer must ensure that virtually all of its employees -- there are some very limited exceptions -- are given the opportunity to defer into the 403(b) Plan effective on their date of hire.

Naturally, all employers with 403(b) Plans should take the steps necessary to coordinate with their vendors to ensure that the above requirements are met. Please let us know if we can be of any assistance with your 403(b) Plan compliance efforts.