F&B
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403(b) Final Regulations

General Overview (For plan years beginning in 2016)

There are two basic 403(b) plan types: those required to follow the rules of The Employee Retirement Income Security Act of 1974 (ERISA), and those exempt from ERISA rules. If the plan is sponsored by a 501(c)(3) non-profit organization and includes any employer contributions the plan comes under Title 1 of ERISA and has specific regulatory requirements. The plan does not come under ERISA if the employer does not make a plan contribution, and does not actively manage the plan (non-ERISA). Unless otherwise elected, churches, public schools and government agencies are non-ERISA as well. These plans can also be called Tax Sheltered Annuities or TSAs in some instances. Both plan types have new requirements generally effective January 1st, 2009.

Non-ERISA Plans

- Comprehensive document (required by 12/31/2009)
- Loan maintenance
- Distribution signatures

ERISA Plans

- Comprehensive document
- Full Form 5500 with attached schedules. This can only be accomplished through increased monitoring and recordkeeping of plan related activities.
- Over 100 eligible employees will require an independent CPA audit

ERISA & Non-ERISA Plans alike

Both types will need to review investment options and determine that they will comply with new requirements:

- Consistent rules including restricted distributions
- Information sharing agreements

Plan sponsors have expanded authority to restrict the investment providers available to participants. Participants are no longer allowed to transfer plan funds away from one of the listed providers due to the repeal of the 90-24 transfer rules. Instead, employers have been given the added authority to initiate transfers or exchanges to an approved provider. Fortunately, DOL guidance has determined that these activities do not necessarily constitute active management of the plan, and therefore these plans can still be considered non-ERISA. Proactive communication between the employer and investment providers is necessary for compliance.

New Terminology

<u>Common Remitter:</u> Single entity for all investment providers to communicate with, generally administrative staff with employer.

<u>Information Sharing Agreement:</u> Contract between employer and investment provider authorizing and requiring certain communication necessary for plan management.

If you have any questions or would like to meet with a plan consultant, please call FARMER & BETTS.