



Qualified Retirement Plan
Consulting & Administration Services

FAB 2009-02 (July 2009)

The U.S. Department of Labor, in Field Assistance Bulletin 2009-02 has provided transitional relief for administrators of 403(b) plans that make good faith efforts to transition for the 2009 plan year to the Employee Retirement Income Security Act's generally applicable annual reporting requirements.

Following passage of new 403(b) regulations in July 2007, the DOL published Form 5500 revisions and related final regulations generally effective for plan years beginning on or after January 1, 2009. These changes greatly expanded the reporting requirements for 403(b) plans including subjecting large plans, those with over 100 lives to engage a certified public accountant to prepare an annual audit to be attached to the Form 5500 filing. Some plan administrators expressed concern that the historical treatment of 403(b) plans as a collection of individual contracts with respect to which employees could engage in a range of actions without the consent or involvement of an employer or plan administrator could make it costly, and in some cases impossible, to identify and obtain financial information about certain pre-2009 contracts and custodial accounts to which the employer is no longer making employer contributions or forwarding employee salary reduction contributions. Such inability to gather contract data will undoubtedly lead to many audit reports being filed as "qualified," "adverse" which would lead to a rejection by the DOL of the filing as "incomplete".

Recognizing these difficulties that may be faced by many 403(b) plan sponsors, The DOL has provides some welcome relief in the reporting requirements.

Specifically, FAB 2009-02 provides that the administrator of a 403(b) plan does not need to treat annuity contracts and custodial accounts as part of the employer's Title I plan or as plan assets for purposes of ERISA's annual reporting requirements provided that:

- the contract or account was issued to a current or former employee before January 1, 2009;
- the employer ceased to have any obligation to make contributions (including employee salary reduction contributions), and in fact ceased making contributions to the contract or account before January 1, 2009;
- all of the rights and benefits under the contract or account are legally enforceable against the insurer or custodian by the individual owner of the contract or account without any involvement by the employer; and;

- the individual owner of the contract is fully vested in the contract or account.

In addition, the DOL said current or former employees with only contracts or accounts that are excludable from the plan's Form 5500 or Form 5500-SF under the above transition relief do not need to be counted as participants covered under the plan for Form 5500 annual reporting purposes. The DOL also will not reject a Form 5500 on the basis of a "qualified," "adverse" or disclaimed opinion if the accountant expressly states that the sole reason for such an opinion was because such pre-2009 contracts were not covered by the audit or included in the plan's financial statements.

This is welcome news indeed and should greatly ease the new administrative burdens for 403(b) Plan Sponsors. We at Pension Works will work closely with all our 403(b) plan sponsors and their other service providers to ensure we are engaging in good faith compliance with respect to the conditions for the relief and to ensure ongoing compliance of your 403(b) plans.