



PRIVATE WEALTH
MANAGEMENT

Retirement Plan Services

A Guide for 403(B) Plan Sponsors

- Is your organization a nonprofit company under section 501(c)(3) of the Internal Revenue Code?
- Do you sponsor a 403(b) plan for your employees?
- Are you unsure if your 403(b) plan is subject to the pension rules under the Employee Retirement Income Security Act (ERISA)?

If you answered yes to these questions, read on for information to help you determine which rules apply to your company's 403(b) plan.

Overview

Nonprofit companies have sponsored 403(b) plans for decades, with little guidance to help determine plan requirements and administration. Over the past several years, new legislation and regulations have helped create a roadmap for sponsors to comply with 403(b) rules. The key question that remains is whether or not a company's 403(b) plan is subject to ERISA.

Plans sponsored by governmental organizations, as defined in ERISA §3(32), or religious organizations, as defined in ERISA §3(33), are not subject to ERISA. A religious organization would have to make a proactive election to be covered by ERISA. Public education institutions are considered state and local governmental entities and are never subject to ERISA.

If your company does not meet any of these exemptions, then the following rules need to be applied in order to be exempt from ERISA. The Department of Labor (DOL) has provided safe harbor criteria detailing what employers may and may not engage in as part of the day-to-day plan administration.

What You May Do

These activities can be performed without subjecting the plan to ERISA rules:

- Make participation in the plan completely voluntary
- Engage in a range of activities to facilitate the operation of the program
- Permit investment providers, including agents or brokers who offer annuity contracts/custodial accounts, to publicize product offerings
- Request information concerning proposed funding media, products or annuity contractors
- Compile investment information to facilitate review and analysis by employees



- Enter into salary reduction agreements and collect annuity or custodial account considerations required by the agreements, remit them to the providers and maintain records of such collections
- Hold one or more group annuity contracts in the employer's name covering its employees and exercise rights as representative of its employees under the contract, at least with respect to amendments of the contract
- Limit funding media or products available to employees, or annuity contractors that may approach the employees, to a number and selection designed to afford employees a reasonable choice in light of all relevant circumstances
- Certify to an annuity provider a statement of facts within the employer's knowledge, such as employee addresses, attendance records or compensation levels
- Transmit to the investment provider another party's certification as to other facts, such as a doctor's certification of the employee's physical condition
- Identify in the plan the parties that are responsible for administrative functions, including those related to tax compliance. The plan should correctly describe the employer's limited role and allocate discretionary determinations to the vendors/investment provider(s).
- Discontinue a provider due to non-compliance with 403(b) regulations or inclusion of optional features
- Refuse vendors whose operational practices force an employer to make discretionary decisions

What You May Not Do

These activities will subject the plan to ERISA and all applicable regulations:

- Permit any type of employer contributions under the plan
- Have responsibility for, or make, discretionary determinations in administering any part of the 403(b) plan or hire a third-party administrator (TPA) to do the same
- Make discretionary decisions including authorizing plan-to-plan transfers; processing distributions, including hardship distributions; determining whether a domestic relations order (QDRO) is qualified; and determining eligibility for and enforcement of loans
- Limit investments to one provider- Field Assistance Bulletin (FAB) 2010-01 permits "reasonable choice" for cost considerations where, for example, multiple investments are available under a broker/dealer or an "open architecture" program
- Receive any compensation for offering the plan

Close review of your company's 403(b) and taking into considerations these "dos" and "don'ts" will be key to determining whether or not your plan is subject to ERISA. Consider retaining the services of a qualified consultant to help you through your review process.

CIBC's Retirement Plan Services Group can help you determine the status of your 403(b) plan. Contact us at 312.564.3806 for more information.



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