



# Compliance News

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## DOL Gives Relief to Form 5500 Filing for 403(b) Plans

In 2007, the Internal Revenue Service (IRS) and Treasury Department released final regulations that updated rules that 403(b) plans must follow. In addition, the Department of Labor (DOL) published changes to the annual reporting requirements for 403(b) plans effective January 1, 2009.

### New Form 5500 Requirement

The DOL changed the Form 5500 annual reporting requirements beginning with the 2009 Form 5500 filing for 403(b) plans covered by Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA). Prior to 2009, 403(b) plans had limited reporting requirements. Beginning with 2009, 403(b) plans must file a complete report. In addition, large ERISA-covered 403(b) plans (100 or more participants) must file audited financial statements with their Form 5500. Even small 403(b) plans must report aggregated financial information regarding the plan.

This reporting requirement may be troublesome for some 403(b) plans. Many 403(b) plans consist of legacy individual contracts and custodial accounts to which the employer is not making contributions. Many employers have no information about these accounts from prior providers and cannot obtain the information to accurately report the financial information on the Form 5500.

### Transitional Relief

The DOL, in recognizing reporting concerns for 403(b) plans, has release Field Assistance Bulletin (FAB) 2009-02. The FAB provides transitional relief to help plan administrators make a good faith effort to comply with the 2009 Form 5500 filing requirements, including the large plan audit requirement. Generally, annuity contracts and custodial accounts do not need to be reported as plan assets on the Form 5500 if the following conditions are met:

- The contract or account was issued to a current or former employee prior to January 1, 2009.
- The employer has no obligation to make contributions and/or ceased to make contributions before January 1, 2009 (including forwarding of employee salary deferrals).
- All the rights and benefits under the contract or account are enforceable without any involvement by the employer.
- The individual owner of the contract is fully vested in the contract or account.

Employees that only have contracts or accounts that are excluded above are not required to be counted as participants under the plan.

The DOL is expected to issue additional guidance and possibly regulations in the future to address the Form 5500 requirements for years subsequent to 2009.

### Qualified Opinions

Under the FAB, the DOL will not reject a Form 5500 on the basis of a “qualified” or “adverse” audit opinion that may be given if the accountant states that the sole reason for the opinion is because pre-2009 contracts were not covered by the audit.

### Effect on Other Guidance

This FAB applies only to assets that must be included on Form 5500 and which are subject to audit. It has no effect on the regulations and transitional guidance that was previously released by the IRS and Treasury Department. In other words, certain contracts will have to be taken into account in administrative processes for Internal Revenue Code compliance, even if they are exempt from inclusion on Form 5500.

Please contact your financial professional or representative of the Principal Financial Group® if you have any questions.



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