


**BCG**
**Benefit Consultants Group**
**Building financial security since 1958**

## News Update!

### DOL Offers Another Filing Option to Plan Sponsors Using EFAST2

The DOL has been working diligently to ease the burden for plan sponsors using EFAST2. Their original procedure placed a heavy burden on plan sponsors, especially those who are smaller and less sophisticated trying to understand and use the EFAST2 system. The DOL has just introduced a new, alternative for filing the 5500 form. This new filing option will simplify the process for some employers.

Under the new procedure, TPA's and other practitioners with proper authorization from the plan sponsor will be able to file the form 5500 using the practitioner's signing credentials. This additional option would alleviate the need for the plan sponsor to navigate the EFAST2 system to obtain credentials on their own.

This new approach should help to ease the transition to the new mandatory electronic filing system.

As new information develops, and when we have confirmed how this new procedure will operate, we will update you immediately to assist you with your needs.

### New Guidance on the 403(b) Plan ERISA Annual Filing Requirements

The Department of Labor (the "DOL") recently clarified that tax-exempt entities (such as non-public schools or charitable hospitals) offering 403(b) annuity programs subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") must file a complete Annual Report ("Form 5500") for the 2009 plan year and thereafter. The new guidance also details which employee annuity contracts must be reported on the Form 5500 and what types of annuity contracts are grandfathered from the reporting requirements.

#### Hot Subjects

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## eStatements are Safer. Greener. Smarter.

Did you know there's a better way for participants to view and save their quarterly account summary? They're called electronic statements or eStatements. With eStatements, participants can access their account statements right from their computer.

#### How do eStatements work?

When a participant's statement is ready, they will receive an email notification stating that their summary is available. They can then view, save and print (if needed) their statement right from their

### **403(b) Plans Subject to ERISA Must File a Form 5500**

A "403(b) plan" is a retirement program governed by Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"). DOL regulations provide a "safe harbor" exclusion for 403(b) plans from the definition of a plan under Title I of ERISA (which excludes qualifying plans from almost all plan requirements, including reporting and disclosure). The safe harbor applies to 403(b) plans when the employers have very limited involvement and the benefits are provided through salary-reduction-only contributions and offered by insurers or mutual fund providers directly to employees. Any 403(b) annuity program that meets the safe harbor requirements will not be an ERISA plan and, therefore, will not be required to file a Form 5500.

Under new IRS regulations effective January 1, 2009, avoiding ERISA status has become more difficult. The new DOL guidance, has clarified prior guidance on what makes a 403(b) annuity plan eligible for the safe harbor in light of the new IRS regulations:

- The employer cannot exercise any discretion in the operation of the program, such as by approving loans or distributions.
- The improper exercise of discretion includes the employer choosing someone else (such as a third-party administrator) to make all the discretionary decisions of day-to-day administration.
- An employer can limit the number of providers to which it will forward employee salary deferrals, even to a sole provider, provided that employees are allowed to transfer withheld funds to another provider, or the employer can demonstrate increased administrative burdens or costs from using a number of providers. The guidance also confirms, however, that a sole provider also must offer a broad range of investment choices.
- An employer cannot unilaterally move investments between annuity contracts or mutual funds.
- Any payment by a provider to the employer, or to another person or entity for the employer's benefit, that is not limited to the actual cost of employer-provided services (such as payroll deductions) is inconsistent with the safe harbor.

Given the difficulties of meeting the safe harbor, the fact that plans not subject to ERISA are still subject to state law fiduciary rules, and the advantage of having a comprehensive and well interpreted set of governing rules, many employers are choosing to not take advantage of the ERISA safe harbor exemption. The DOL has facilitated that decision by providing relief for what 403(b) programs must be reported on the 5500

### **403(b) Annuity Contracts Must Be Separately Reported on the Form 5500**

The DOL guidance has made it clear that, effective for the 2009 plan year and thereafter, 403(b) annuity programs subject to ERISA must include financial reporting on Form 5500 for all annuity contracts or custodial accounts under the plan. (Small

computer. eStatements are stored online for easy access, reducing the amount of printed paper. For an added convenience, participants will have access to a year's worth of statements.

#### **Why make the switch to eStatements?**

Switching to eStatements helps us reduce waste and save natural resources. At the same time, participants will benefit from increased account security and convenience that comes with e-statements.

#### **Have your participants enroll today!**

Participants can enroll in eStatements by logging on to [www.bcgbenefits.com](http://www.bcgbenefits.com). Choose "Paperless Statements," then go to "Click Here To Create Your Own Account." Then choose "Sign Up Now," highlighted in blue. Follow the prompts to confirm your personal information, provide your email address, and establish a User ID and Password. Next, log in using the new user id and password you have just created. From here you will be able to activate paperless statements and have the ability to access/print up to four quarterly statements.

E-Statements give participants the ability to access essential secured information quickly and easily, offers more security, and it's environmentally friendly.

If you have any further questions, please feel free to contact our Participant Services department at 1-800-524-4015, option 4. Representatives are available

plans, generally with fewer than 100 participants, need only report summary data.)

There is a transition exception for certain "grandfathered annuity contracts." Because the annuity provider traditionally handled administration of 403(b) annuity programs, employers were concerned that they may not be able to identify every previously issued 403(b) annuity. To address these concerns, the DOL issued transition guidance excluding vested annuity contracts from the Form 5500 reporting requirements if the contracts were issued prior to January 1, 2009, and no further contributions were made. Grandfathered annuity contracts are not required to be reported on Form 5500 (or the audited financial statements) and their owners are not counted for purposes of meeting the small plan exception.

The latest DOL pronouncement provides further guidance on the exception for grandfathered annuity contracts. If an employee wants to exchange an annuity contract for a different annuity contract (for instance, switching from a variable to a fixed-interest annuity), or if an employer is forwarding loan repayments into an annuity contract, the annuity contract will not be a grandfathered annuity contract, even if no new contributions have been made. The DOL did confirm, however, that a contribution made in 2009 attributable to 2008 elections would not cause an annuity contract to lose its grandfathered status.

The new DOL guidance on 403(b) annuity programs reinforces the idea that an employer needs to be very thorough and cautious in determining whether a 403(b) annuity program is subject to ERISA and the Form 5500 reporting requirements. Furthermore, as separate reporting of 403(b) annuity contracts is required for Form 5500 effective with the 2009 plan year, additional time and resources may be needed to identify all 403(b) annuity contracts and to prepare the requisite Form 5500 filings.

from 8 am to 8 pm ET on each business day.

## Testimonial Corner

**Here's what another client is saying about BCG...**

*"Your firm is the administrator of our profit sharing plan. We had an IRS audit recently and it went smoothly. I would like to commend Sandra Coulter who supplied the considerable information to my attorney in this process. Sandra was a key ingredient in our successful encounter with the IRS"*

Share your experience with us, and let us know how we met or exceeded your expectations. Drop us an email and share your story - [click here!](#)

## Benefit Consultants Group

is the first retirement plan provider in the country to be ISO 9001 Registered.



For more information about our services, please call 800-524-401k, or visit our website at [www.bcgbenefits.com](http://www.bcgbenefits.com).

