

Do the Final 403(b) Regulations Make Your 403(b) Plan Subject to ERISA? For 501(c)(3) Employers Only

Certain 403(b) plans¹ sponsored by 501(c)(3) non-governmental employers are exempt from ERISA and its fiduciary requirements. If you sponsor a 403(b) plan that is exempt from ERISA, you can comply with the final 403(b) regulations and preserve your plan's ERISA-exempt status as long as you continue to follow certain guidelines.

The Final 403(b) Regulations and Your ERISA Exemption

- **Adopting a plan document will not make a 403(b) plan subject to ERISA.** If your plan is currently not subject to ERISA, then adopting a plan document, as required in the final regulations², will not affect your plan's exempt status.
- **Delegating your 403(b) responsibilities will help you maintain "limited involvement"³ in your plan.** As long as you delegate certain activities such as approvals for loans and hardship withdrawals to your plan's approved investment providers or to a third-party administrator (TPA), you can maintain the ERISA exemption under the Department of Labor safe harbor regulations.

Having your providers sign hold harmless agreements could protect your plan from liabilities incurred through investment provider or TPA negligence.

- **The final 403(b) regulations do not require that you seek out new investment providers.** To maintain an exemption from ERISA, your 403(b) plan must offer employees reasonable investment choices. The final 403(b) regulations do not require that you seek out new investment providers.
- **See the Department of Labor (DOL) Field Assistance Bulletin 2007-2.** This bulletin addresses ERISA exemptions and final 403(b) regulation compliance issues pertaining specifically to 403(b) plans sponsored by non-governmental employers.

How to Determine If Your 403(b) Plan Is Exempt from ERISA

- 403(b) plans sponsored by 501(c)(3) non-governmental employers are exempt from Title I of ERISA only if the plan meets the requirements of the "safe harbor" regulations set forth under 29 Code of Federal Regulations (CFR) Section 2510.3-2(f), such as:
 - Your plan permits only employee elective deferral contributions.
 - You, as the plan sponsor, have limited involvement in your plan.
 - Participation in the plan is completely voluntary.
 - All rights under the annuity contract or custodial account rest with the participant.
 - You do not receive compensation for sponsoring the plan beyond offsetting administrative expenses.
- The following organizations are never subject to ERISA, even if employer contributions or other factors stated above are present: public education institutions, governmental organizations, and religious organizations described in Internal Revenue Section 414(e) (unless the religious organization makes an irrevocable election to be subject to ERISA).

¹ 501(c)(3) non-governmental employers sponsoring 403(b) plans that provide for employer contributions are automatically subject to ERISA.

² Generally effective January 1, 2009.

³ Limited involvement in the plan means the employer cannot have responsibility for reviewing or approving transactions, including loans and distributions; monitoring the plan's investment performance; or appointing an investment committee.



Fiduciary Responsibilities If Your 403(b) Plan Is Subject to ERISA

- If your plan is subject to ERISA, then as plan sponsor, you are considered a plan fiduciary.
- As a plan fiduciary, ERISA sets standards of conduct that could make you liable for federal excise tax penalties and/or any losses that occur if you breach those standards. You could also be subject to civil action from plan participants or beneficiaries.

AXA Equitable Can Help You

- Your AXA Advisors financial professional can provide you with samples of a plan document, provider and information sharing agreements, administrative forms and notices to help you comply with the final 403(b) regulations.
- Contact your financial professional today for assistance.

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