

How Will New 403(b) Regulations Affect Your Plan?

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What are 403(b) Plans?

- Section 403(b) was added to I.R.C. in 1958
- Special retirement plan options for nonprofit organizations
- Allowed employee pre-tax salary reductions & employer contributions



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Who Qualifies for 403(b)?

- Nonprofit organizations qualified under 501(c)(3)
 - ❖ Charitable/religious
 - ❖ Educational/research
 - ❖ Health/human service
- Public educational institutions
 - ❖ School systems or private schools
 - ❖ Colleges
- Hospitals
- Churches or church controlled organizations



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Old Paradigm

- Viewed as employee's money
- Relationship between employee & product provider
- Employer responsible for deducting contributions & remitting to product provider
- Most plans had multiple vendors
- Participants were sold, not educated



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New Paradigm

- Must have written plan document
- Employer is responsible for making sure plan operates in compliance with plan document & regulations
- Employer is responsible for compliance with loan program, hardship withdrawals & distributions
- Relationship is between employer & product provider
- Single, or limited number of providers



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Regulations for 403(b) Plans

- Regulations proposed in November 2004
- July 2007 U.S. Treasury Department published the final regulations
- Last regulations were issued in 1964
- Aimed at aligning 403(b) plans with 401(k) plans available to for-profit plan sponsors
- Effective, with some transitional exceptions, January 1, 2009



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Important Provisions

- Requirement for written plan document
- Universal availability
- Nondiscrimination rules
- Plan termination
- Hardship distributions
- Loans



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Are 403(b) Plans Subject to ERISA?

- Yes
- No
- Maybe



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Moving to 401(k) Plan?



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Option 1 – Terminate 403(b) Plan & Establish 401(k) Plan

- Create 403(b) plan document
- Include provisions for termination
- File 5500 for ERISA 403(b) plan for current year
- Distribute assets
- File plan for termination
- File final 5500
- Establish 401(k) plan



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Option 2 – Do Not Terminate 403(b) Plan & Establish 401(k) Plan

- Same as Option 1 except termination
- Plan sponsor must maintain two plan documents & file two 5500 forms going forward



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Option 3 – Continue 403(b) Plan

- Create plan document
- Operate plan in compliance
- File 5500



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Moving to 401(k) Plan

- Option 3 is the only option that limits plan sponsor to one plan & is most cost effective
- 403(b) plan does not have actual deferral percentage test (ADP)
- 403(b) plans have more favorable catch-up provisions than 401(k) plans



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Life Insurance/Retirement/Employee Benefits

OneAmerica® companies:
American United Life Insurance Company®
AUL Reinsurance Management Services, LLC
OneAmerica Securities, Inc.
Pioneer Mutual Life Insurance Company
A stock subsidiary of American United Mutual Insurance Holding Company
R.E. Moulton, Inc.
The State Life Insurance Company

Tax qualified retirement plans from American United Life Insurance Company (AUL) are funded by an AUL group annuity contract. While a participant in an annuity contract may benefit from additional investment and annuity related benefits under the annuity contract, any tax deferral is provided by the plan and not the annuity contract.

Registered group variable annuity contracts issued by AUL are distributed by OneAmerica Securities, Inc., Member FINRA, SIPC, a Registered Investment Advisory, P.O. Box 1984, Indianapolis, IN 46206, 317.285.1877, which is a wholly owned subsidiary of AUL.



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Requirements

- 403(b) plans that are subject to Title I of ERISA, will be subject to same Form 5500 requirements as “regular” 401(k) type plans for 2009 Plan year
 - ❖ Entire Form 5500 will need to be completed—not just current informational & benefit code items
 - ❖ Plans with over 100 participants—financial statement audit will generally be required



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Requirements

- “Large” Plans
 - ❖ ERISA – plans with 100 or more *eligible* participants generally will be required to file audited financial statements beginning with their 2009 Form 5500 filing (December 31, 2009, will be first filing year-end to be affected)



Requirements

- “Small” Plans
 - ❖ ERISA – covered plans with fewer than 100 *eligible* participants may be able to use new Short Form 5500-SF
- “Eligible” includes all employees under the **Universal Availability rule & all former participants with account balances**
- Plans can “pretend” to follow 80/120 rule, which indicates that plans that cover between 80 & 120 eligible participants at beginning of plan year may elect to complete Form 5500 in the same category (“large plan” or “small plan”), as was filed for previous year



Plans Affected

- 403(b) annuity contracts or custodial accounts purchased or provided under a program subject to Title I of ERISA
 - ❖ Generally included:
 - ✓ §501(c)(3) charities, schools, hospitals & universities
 - ❖ Generally excluded:
 - ✓ “Governmental plans” under ERISA section 3(32)
 - ✓ “Church plans” under ERISA section 3(33)
 - ✓ Annuity contracts or custodial accounts purchased or provided solely through salary reduction agreements or agreements to forego an increase in salary (DOL “safe harbor” rules)



Plans Affected

- DOL estimates that approximately 7,000 “large” 403(b) plans will be subject to new financial statement audit requirements
- Another 9,000 “small” 403(b) plans may be eligible to use new abbreviated reporting forms



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Filing Calendar

FORM 5500 FILING CALENDAR

Plan Year End	Form 5500 Due Date	Form 5500 Due Date With Extension	Financial Statement Periods to be Presented
December 31, 2009	July 31, 2010	October 15, 2010	December 31, 2009 plan year (with comparative December 31, 2008 statement of net assets available for benefits)
June 30, 2010	January 31, 2011	April 15, 2011	June 30, 2010 plan year (with comparative June 30, 2009 statement of net assets available for benefits)
September 30, 2010	April 30, 2011	July 15, 2011	September 30, 2010 plan year (with comparative September 30, 2009 statement of net assets available for benefits)



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Types of Audits for Employee Benefit Plans

- Full scope audits
- Limited scope audits (banks, insurance companies & trust companies that certify plan activity)



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Resources & Support AICPA 403(b) Task Force

- Tools & Resources
 - ❖ Various resources available include:
 - ✓ 403(b) primer
 - ✓ Analysis of reporting & audit requirements
 - ✓ "Getting Started" tool
 - ✓ PBC list
 - ✓ Questions to expect from your auditors



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Resources & Support DOL Activities

- Monitoring implementation
- Received feedback from plans, service providers & AICPA Task Force
- Further guidance forthcoming???
- Contact DOL's EFAST Help Line at 1.866.463.3278



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Implementation Issues & Challenges

- For many employers, gathering of complete & accurate information, from all of vendors for all of years program has been in place, will likely pose a big administrative burden
- Information sharing agreements will be essential
- Biggest challenges will likely relate to former employees & former vendors
- Plan sponsor will need to carefully & thoroughly document their data collection approach to enable auditors to get comfortable with audit evidence



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Implementation Issues & Challenges

- Many plans face significant challenges:
 - ❖ Identifying all current & former participant accounts to be included as plan assets
 - ✓ "Missing" participants
 - ✓ "Orphan" contracts
 - ❖ Determining beginning account balances
 - ✓ Comparative balances are required as of December 31, 2008 for calendar year plans
 - ❖ Will DOL accept financial statements with disclaimers other than limited scope?



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Implementation Issues & Challenges

- Establishing plan accounting records
- Establishing proper internal controls
- Obtaining other financial information to be included in plan's financial statements



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Example Case Studies



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403(b) Audit Scenario #1
Engagement: Full Scope Audit

- Plan Historical Information
 - ❖ Always had single vendor/trust
 - ❖ Sponsor & vendor have good employee & plan records
- Audit Challenges
 - ❖ None – Opening balances can be tested; current investments, participant data & other financial activity can be tested
- Likely Auditor's Opinion
 - ❖ Unqualified opinion

403(b) Audit Scenario #2
Engagement: Full Scope Audit

- Plan Historical Information
 - ❖ Always had multiple vendors – sponsor knows which vendors hold plan assets
 - ❖ Sponsor has good historical payroll records, but no historical plan records
 - ❖ Vendors have no historical plan records

403(b) Audit Scenario #2
Engagement: Full Scope Audit (cont.)

- Audit Challenges
 - ❖ Performing procedures on opening balances may not be possible
 - ✓ Beginning balance completeness might be tested using payroll records
 - ❖ Current year investments, participant data & other financial activity can be tested

403(b) Audit Scenario #2
Engagement: Full Scope Audit (cont.)

- Likely Auditor's Opinion
 - ❖ Unqualified, if completeness assertion of beginning balances can be satisfactorily tested
 - ❖ Disclaimer, if procedures cannot be performed with respect to individual account balances since plan inception



403(b) Audit Scenario #3
Engagement: Full Scope Audit

- Plan Historical Information
 - ❖ Always had multiple vendors – sponsor unsure which vendors hold plan assets
 - ❖ Sponsor only has current payroll records
 - ❖ Some, but not all, vendors have historical plan records



403(b) Audit Scenario #3
Engagement: Full Scope Audit (cont.)

- Audit Challenges
 - ❖ Performing initial year procedures on opening balances unlikely
 - ❖ Current year investments, participant data & other financial activity can be tested



403(b) Audit Scenario #3
Engagement: Full Scope Audit (cont.)

- Likely Auditor's Opinion
 - ❖ Disclaimed opinion will most likely be issued unless initial year procedures can be performed

NOTE: Where disclaimer opinion is issued, auditor is still required to complete all other audit procedures, e.g., contributions, distributions, etc.



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403(b) Audit Scenario #4
Engagement: Full Scope Audit

- Plan Historical Information
 - ❖ Always had multiple vendors – sponsor unsure which vendors hold plan assets
 - ❖ Sponsor only has current payroll records
 - ❖ Some, but not all, vendors have historical plan records
 - ❖ Required DOL supplemental schedules incomplete or omitted



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403(b) Audit Scenario #4
Engagement: Full Scope Audit (cont.)

- Audit Challenges
 - ❖ Performing initial year procedures on opening balances unlikely
 - ❖ Current year investments, participant data & other financial activity can be tested



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403(b) Audit Scenario #4
Engagement: Full Scope Audit (cont.)

- Likely Auditor's Opinion
 - ❖ Disclaimed opinion will most likely be issued unless initial year procedures can be performed; &
 - ❖ Explanatory paragraph with respect to the DOL supplemental schedules depending on materiality of deficiency



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403(b) Audit Scenario #5
Engagement: 103-8 Limited Scope Audit

- Plan Historical Information
 - ❖ Always had single vendor/trust
 - ❖ Sponsor & vendor have good employee & plan records
- Audit Challenges
 - ❖ None – Opening balances information available; current participant data & noninvestment related financial activity can be tested
- Likely Auditor's Opinion
 - ❖ Standard 103-8 opinion with no modifications



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403(b) Audit Scenario #6
Engagement: 103-8 Limited Scope Audit

- Plan Historical Information
 - ❖ Always had multiple vendors – sponsor knows which vendors hold plan assets
 - ❖ Sponsor has good historical payroll records, but no historical plan records
 - ❖ Vendors have no historical plan records



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403(b) Audit Scenario #6 (cont.)
Engagement: 103-8 Limited Scope Audit

- Audit Challenges
 - ❖ Performing procedures on opening balances may not be possible
 - ❖ Current year participant data & noninvestment related financial activity can be tested

403(b) Audit Scenario #6 (cont.)
Engagement: 103-8 Limited Scope Audit

- Likely Auditor's Opinion
 - ❖ Standard 103-8 opinion with no modifications, if completeness assertion of beginning balances can be satisfactorily determined
 - ❖ Standard 103-8 opinion, with description of additional scope limitation, if procedures cannot be performed with respect to individual account balances since plan inception

403(b) Audit Scenario #7
Engagement: 103-8 Limited Scope Audit

- Plan Historical Information
 - ❖ Always had multiple vendors – sponsor unsure which vendors hold plan assets
 - ❖ Sponsor only has current payroll records
 - ❖ Some, but not all, vendors have historical plan records

403(b) Audit Scenario #7 (cont.)
Engagement: 103-8 Limited Scope Audit

- Audit Challenges
 - ❖ Performing initial year procedures on opening balances unlikely
 - ❖ Current year participant data & other noninvestment related financial activity can be tested

403(b) Audit Scenario #7 (cont.)
Engagement: 103-8 Limited Scope Audit

- Likely Auditor's Opinion
 - ❖ Standard 103-8 opinion, with description of additional scope limitation, will most likely be issued if procedures cannot be performed with respect to individual account balances since plan inception

403(b) Audit Scenario #8
Engagement: 103-8 Limited Scope Audit

- Plan Historical Information
 - ❖ Always had multiple vendors – sponsor unsure which vendors hold plan assets
 - ❖ Sponsor only has current payroll records
 - ❖ Some, but not all, vendors have historical plan records
 - ❖ Required supplemental schedules incomplete or omitted

403(b) Audit Scenario #8 (cont.)
Engagement: 103-8 Limited Scope Audit

- Audit Challenges
 - ❖ Performing initial year procedures on opening balances unlikely
 - ❖ Current year participant data & noninvestment related financial activity can be tested

403(b) Audit Scenario #8 (cont.)
Engagement: 103-8 Limited Scope Audit

- Likely Auditor's Opinion
 - ❖ Standard 103-8 opinion, with description of additional scope limitation, will most likely be issued if procedures cannot be performed with respect to individual account balances since plan inception
 - ❖ Explanatory paragraph with respect to supplemental schedules depending on materiality of deficiency

Note: Remember, where disclaimer opinion is issued, auditor is still required to complete all other audit procedures, *e.g.*, contributions, distributions, etc.

Key Takeaways

- Auditor is responsible for following GAAS & still needs to audit whatever information is available.
- Auditor is responsible for issuing appropriate opinion, which includes all reasons for any qualifications.
- Auditor is responsible to audit & cannot limit test work because of a scope limitation or because auditor is issuing a qualified or adverse opinion.

Note: Presentation modified from AICPA National Conference on Employee Benefit Plans (May 2009)



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