



## **Good News For 403(b) ERISA Plans: Pre-2009 Individually Owned Accounts Can Be Excluded From 5500 Reporting**

In response to a number of comment letters posted in the past few months (including letters from ASPPA with NTSAA input), the DOL has provided welcome relief for the new 5500 Form filing requirements for ERISA 403(b) plans. Based on the concerns expressed by those filing comments that it would be virtually impossible to identify all "orphan" accounts to provide accurate data on the assets held in ERISA 403(b) plans, the DOL responded by providing that annuity contracts and custodial accounts (if certain conditions are met) are not required to be identified as plan assets for purposes only of the 5500 reporting requirements.

To gain the relief, the plan administrator must "make good faith efforts to transition for the 2009 plan year to ERISA's generally applicable annual reporting requirements." Note that the abbreviated reporting that was permitted for ERISA 403(b) plans was replaced for the 2009 and subsequent plan years.

The administrator must meet the following conditions to gain the relief:

- The contract/account was issued to a current or former employee before January 1, 2009.
- The employer ceased to make both employer contributions and salary reduction contributions to the contract or account before January 1, 2009.
- All of the rights and benefits under the contract or account are legally enforceable by the individual owner of the contract or account without any involvement by the employer, and,
- The individual owner of the contract is fully vested in the contract or account.

Additionally, the employees holding those accounts are not required to be counted as participants under the plan, which could be helpful in determining whether the employer must have an independent audit performed when there are 100 or more participants. Additionally, the relief also applies to group annuity contracts where the participant holds an individual certificate as long as the participant has the rights and benefits under the certificate without involvement by the employer.

Note that a few commentators appear to interpret the FAB to mean that the relief itself applies only to the 2009 plan year reporting requirements. However, a growing number interpret the relief to apply to plan years beginning with the 2009 plan year and subsequent years with the key being that the employer must make a good faith effort to follow the new reporting requirements for the 2009 plan year in order to gain the relief. As always, members should check with their own legal counsel.

[View the FAB No. 2009-2](#)