



## DOL Provides Form 5500 Relief for Section 403(b) Plans

Employment, Labor & Benefits Practice Group

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**PRACTICE AREAS**

Employee Benefits

The U.S. Department of Labor has issued guidance on the Form 5500 annual reporting requirements for tax-deferred annuity programs described in Section 403(b) of the Internal Revenue Code with respect to contracts issued before January 1, 2009. The DOL recognizes it would be difficult for many Section 403(b) plans to comply with the new reporting requirements before 2009, and has therefore issued limited transitional relief. The relief provides that a Section 403(b) plan administrator is not required to treat annuity contracts and custodial accounts as part of the employer's ERISA plan or as plan assets for purposes of ERISA's annual reporting requirements if the following criteria are met:

- the contract or account was issued to a current or former employee before January 1, 2009;
- the employer ceased to have any obligation to make contributions (including employee salary reduction contributions), and in fact ceased making contributions to the contract or account before January 1, 2009;
- all of the rights and benefits under the contract or account are legally enforceable against the insurer or custodian 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.

In addition, a plan administrator is not required to count former or current employees as participants covered under the plan for annual reporting purposes if the individual has only contracts or accounts that are excludable from the Section 403(b) plan's Form 5500 or Form 5500-SF under the transitional relief described above. The DOL further recognizes that full compliance with the annual reporting requirements for the 2009 plan year may not be possible for reasons unrelated to pre-2009 contracts and accounts. The DOL has advised that a plan administrator's guiding principle must be to ensure appropriate efforts are made to act reasonably, prudently and in the interest of the plan's participants and beneficiaries.

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