

Rosen Seymour Shapss Martin & Company LLP  
*Certified Public Accountants & Profitability Consultants*

*Employee Benefits and Executive Compensation Services  
Group*

**RSSM Alert**

**It's That Time of Year Again**

Dear Client and Friends of the Firm:

**Form 5500 is due at the end of July**

Most retirement and some health and welfare plans are required to file an annual report with the Department of Labor ("DOL"). The report is used by both the DOL and the Internal Revenue Service and consists of Form 5500, including appropriate schedules, and if applicable, audited financial statements (see below). The report is due seven months after the close of the plan's year. For plans operating on a calendar year basis, the deadline is **July 31st**. A 2-1/2 month extension of time to file Form 5500 can be obtained.

**The requirement for an audited financial statement with Form 5500**

DOL regulations distinguish between "small" and "large" plans. Plans with 100 or more participants at the **beginning** of the plan year are generally considered to be large plans. With limited exception, primarily health and welfare plans fully funded by insurance, large plans are required to include an **audited financial statement** with their annual filing. Thus the requirement to include certified financial statements hinges on the number of plan participants at the beginning of each plan year. In recent years, the DOL has audited those CPA firms that perform Form 5500 audits, in an effort to improve the quality of those audits. The choice of a seasoned audit team to perform this specialized work is critical.

Each plan document is different. It is important to determine which employees are eligible to participate. For plans with a 401(k) feature, all employees eligible to make an elective contribution are deemed participants, whether or not they actually participate.

DOL regulations permit, under certain circumstances, the plan sponsor to limit the scope of the required audit. Such an election is usually available where the plan assets are held and managed by appropriate custodians, most notably banks and regulated insurance carriers, and the plan sponsor can use information certified by those custodians to prepare their financial statements.

**Penalties for failure to file**

Failure to file a return can result in substantial penalties for **each day** the return is late. Fortunately, the Department of Labor's Employee Benefit Security Administration has initiated a Delinquent Filer Voluntary Compliance ("DFVC") Program for those employers who are not in compliance but who do not wish to open a "Pandora's box". The program caps the penalty on both a "per filing" and "per plan" basis. If you are delinquent in your filings, we can help you take advantage of the DFVC program in order to reduce your exposure at a reasonable cost to you.

### **New 403(b) Plan Filing and Audit Regulations**

The IRS has issued new regulations concerning 403(b) tax sheltered annuities (retirement plans for government and non profit organizations). For the most part, the new regulations are effective for plan years beginning after **December 31, 2008**.

Under the new regulations, most 403(b) plans will be required to file a full and complete Form 5500, and have their financial reports audited, if they have 100 or more participants at the **beginning of the plan year** (ie January 1, 2009 for calendar year plans). Reporting and auditing requirements will be similar to those currently existing for 401(k) plans.

If you have a 403(b) plan it is essential to determine if your plan will be required to file Form 5500 and have an audit under the new regulations, make sure that your plan has a written document that meets all the current standards, review contracts with outside custodians and service providers, and organize records to determine what type of reporting is applicable to your plan. **Since the determinant of many of the reporting requirements is the number of participants at the beginning of the plan year, it is important to gather the historical data necessary to ensure that the balances reported at the end of the 2008 plan year are correct and can be verified.**

If you sponsor a retirement or benefit plan, it is extremely important to know what your filing and reporting requirements are, and to obtain the services of professionals who have the necessary training and expertise to assist you. RSSM is a member of the AICPA's Employee Benefit Plan Audit Quality Center and is well qualified to assist you with your individual requirements.

Should you have any questions please feel free to contact me at 212-303-1806 or e-mail me at [aneumark@rssmcpa.com](mailto:aneumark@rssmcpa.com).

Sincerely,  
*Rosen Seymour Shapss Martin & Company LLP*

Avery E. Neumark, CPA, JD  
Partner-in-Charge of Employee Benefits and Executive Compensation

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