



MOODY, FAMIGLIETTI & ANDRONICO

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A photograph of the U.S. Capitol building in Washington, D.C., viewed from across the reflecting pool. The building's iconic dome is the central focus, with its reflection clearly visible in the water. The sky is overcast, and some trees and a statue are visible in the foreground.

Compensation and Benefits Tax Alert

Subject: **403(b) Plans and Form 5500**

In November 2007, the DOL issued amendments to the Form 5500 – Annual Return/Report of Employee Benefit Plan – for the 2009 plan year. One of the changes eliminated the exemption granted to Internal Revenue Code (“IRC”) 403(b) retirement plans of IRC 501(c)(3) organizations, from the Form 5500 reporting, disclosure and audit requirements of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended.

The removal of this exemption subjects ERISA-covered 403(b) plans to the same Form 5500 reporting and audit requirements as 401(k)-type plans. Generally, 403(b) plans sponsored by tax-exempt organizations are subject to ERISA whereas 403(b) plans sponsored by governments and most religious organizations are not covered under ERISA.

ERISA-covered 403(b) plans with 100 or more participants generally will be required to file audited financial statements beginning with their 2009 Form 5500 filing. 403(b) plans with fewer than 100 participants may be eligible to use abbreviated reporting forms without audited financial statements.

Many of these plans have been in existence since the late 1950s and companies will be faced with numerous challenges in preparing for the audit, such as gathering plan accounting records, identifying all current and former participant accounts to be included as plan assets, determining the beginning account balances, and obtaining other financial information to be included in the plan’s financial statements. As such, it is highly recommended that plan sponsors embark on gathering the necessary information as soon as possible in order to be able to meet the new requirements.

If you would like to discuss the content of this Alert, please contact:

Joyce Ripianzi, CPA
Partner

jripianzi@mfa-cpa.com
(978) 557-5349

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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)

**The Department of Labor requires comparative financial periods to be presented for the statement of net assets available to pay benefits.*

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