

## NON-PROFIT

## POSSIBILITIES

*From SAS 112 to SAS 115—What's the Difference?***OVERVIEW**

The definition of Statement on Auditing Standards (SAS) 112, *Communicating Internal Control Related Matters Identified in an Audit*, has been revised by the American Institute of Certified Public Accountants to clarify language thought to be unclear. This article reviews the differences between SAS 112 and 115.

Doesn't it seem like just yesterday we were implementing Statement on Auditing Standards 112, *Communicating Internal Control Related Matters Identified in an Audit*? Well, here we are again. This time, the American Institute of Certified Public Accountants (AICPA) is merely tweaking the wording of the requirement, rather than overhauling the definitions as it previously did with SAS 112.

The new definition is less restrictive, and fortunately, since the changes between SAS 112

and 115 are simply wording, there is nothing your organization will need to implement or change based on this new standard.

SAS 115, *Communicating Internal Control Related Matters Identified in an Audit*, supersedes SAS 112 and is effective for organizations with December 31, 2009, year-ends.

The primary purpose of the change is to revise the definitions of material weakness and significant deficiency, with the intent of clarifying language the AICPA thought to be unclear.

Specifically, SAS 115 replaces "more than remote likelihood" with "reasonable possibility" in defining material weakness. It also changes "adversely affects the entity's ability to initiate, authorize, record, process or report financial data reliably in accordance with generally accepted

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## What are the Next Steps for 403(b) Plans?

### OVERVIEW

Over the past year, changes in the Internal Revenue Code (IRC) have had a major impact on 403(b) plans. This article reviews what employer sponsors must do to maintain compliance.

403(b) regulation changes became generally effective for plan years beginning after December 31, 2008. By now, employers sponsoring a 403(b) plan should have completed the following:

- Adopted a written plan
- Implemented contribution limits as defined in IRC 401(k)
- Complied with timely contribution remittance regulations (transferring employee deferrals to the plan within 15 business days following the month in which they were deducted)

With the new regulations, the employer sponsor will want to make sure that procedures and protocols have been established to ensure the plan remains in compliance in order to maintain its tax deferred status. Plan sponsors should review the following components to ensure their

current practices are in compliance: written plan, universal eligibility, contribution limit, nondiscrimination rules and distributions.

### Written Plan

Effective December 31, 2009, all 403(b) plans must have a written plan that contains all the terms and conditions for eligibility, limitations and benefits under the plan. This written plan can be comprised of several documents, including salary reduction agreements, various contracts that fund the plan and administrative procedures. If several documents from different sources are incorporated in the written plan, it is important to ensure there are no conflicts between documents that are incorporated by reference. If the plan offers loans or hardships, this documentation should include the requirements for such distributions and the protocols for processing them.

### Universal Eligibility

The nondiscrimination rule for eligibility to defer income in a 403(b) plan is known as universal eligibility. Generally, all employees must be eligible to make contributions and everyone must receive notice that they have that right to make a deferral. A limited number of allowable exclusions exist:

- Individuals that have the right to defer under another plan, such as another 403(b) plan, 457(b) or 401(k) plan
- Work study students
- Non-resident aliens with no U.S. income source
- Individuals who normally work less than 20 hours per week

If employers have implemented an exclusion for individuals who normally work less than 20 hours, they should implement procedures at hire date and annually to verify employees' eligibility. At hire date, the employer must reasonably expect that the employee works less than 1,000 hours in 12 months. For each subsequent plan year (or hiring anniversary if designated by the plan), the employer must verify that the employee worked less than 1,000 hours. If any employee who normally works less than 20 hours per week becomes eligible to have elective deferrals made on their behalf, then all employees who normally work less than 20 hours must have the same eligibility.



Certain other exclusions are no longer allowed under the new regulations, including exclusion for collectively bargained employees, visiting professors and individuals who made a vow of poverty. Plans that excluded collectively bargained employees have until the earlier of the date that the collectively bargained agreement terminates or July 26, 2010, to make these changes. Plans that excluded visiting professors or individuals making a vow of poverty may continue the exclusion until plan years beginning on or after January 1, 2010.

### Contribution Limits and Timing on Contributions

Several contribution limits apply to 403(b) plans. In 2010, employee deferrals are limited to \$16,500. In addition, educational organizations, hospitals, health and welfare agencies and church-related organizations are allowed a special 403(b) catch-up contribution. 403(b) plans may also provide catch-up contributions after age 50, but these catch-up contributions only apply after contributions are made under the \$16,500 limit, and the special 403(b) catch-up provisions, if applicable.

In 2010, the limit for the combination of employee and employer contributions to a participant's account is \$49,000. In addition, compensation for determining employee and employer contributions is limited to \$245,000 for 2010.

403(b) regulations also require that employee deferrals be remitted to the participant's account within 15 business days following the month in which the deferral was made. Plans covered by the Department of Labor's Employee Retirement Income Security Act of 1974 (ERISA) are required to remit contributions as soon as administratively feasible.

### Nondiscrimination Rules

In addition to universal eligibility, several other nondiscrimination rules apply to 403(b) plans. As required by IRS regulation, 403(b) plans must offer benefits, rights and features to participants in a fashion that does not discriminate in favor of highly compensated employees. This means, if the plan offers a benefit (i.e., loans), it must be offered uniformly, not just to certain employee

groups. In addition, the new 403(b) regulations require that at least 70 percent of the non-profit's non-highly compensated individuals must be covered by the plan.

### Distributions

Distributions of amounts related to employee deferrals may not be paid out until the participant has a severance of employment, experiences a hardship, becomes disabled, attains age 59 ½ or is deceased. Amounts attributed to employer contributions are not available for hardship distributions, and hardship distribution rules are the same as a 401(k) plan. These rules include the following:

- For those plans with after-tax employee contributions, these are not subject to any in-service distribution restrictions
- Plans are required to make minimum distributions to participants upon the participant's attainment of age 70 ½. The minimum required distribution should be calculated for all of the individual's contracts in the plan, and the aggregate of the required distributions can be taken from any or all of the contracts.

In general, participants are permitted to rollover amounts from the 403(b) into another 403(b) plan, 401(k) plan or other qualified retirement plan. The plan and any contracts under the plan must allow for such rollovers, and participants must be provided a notice that they have the right to make this rollover distribution. Plan sponsors should ensure that they review all their contracts for this provision and ensure that participants are receiving a timely notification of their rights to elect a rollover distribution.

For additional information regarding 403(b) plans, please contact your Eide Bailly representative. ■



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*SAS 112 to SAS 115—from page 1*

accounting principles such that there is more than a remote likelihood that a misstatement of the entity’s financial statements that is more than inconsequential will not be prevented or detected by the entity’s internal control” to “is less severe than a material weakness, yet important enough to merit attention by those charged with governance” for the significant deficiency definition.

For those non-profit organizations that are subject to single audit, the Office of Management and Budget (OMB) has not made the same changes to the definitions of material weakness and significant deficiency and, therefore, will keep the SAS 112 definitions until OMB adopts SAS 115. However, Yellow Book has adopted the new definitions, so the report on internal control over financial reporting and compliance and other matters based on an audit of financial statements performed in accordance with Government Auditing Standards will have the new definitions.

Historically, we have sometimes included items in the “Other Matters” portion of the management letter that were best

practices, but with the definition changed to “important enough to merit attention by those charged with governance,” those items may not be in the management letter going forward. However, there may be a separate communication to address those items.

Keep in mind, the new standard really isn’t changing anything, but merely tweaking the definitions of significant deficiency and material weakness. There is really nothing to be afraid of with this new standard. ■



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