



# Plan Design Decisions for Tax-Exempt Employers

**November 6, 2012 (PLANSPPONSOR.com) – Tax-exempt organizations deciding which type of retirement plan to offer employees need to know the differences.**

Tax-exempt organizations can establish a 401(k), 403(b), 457(b) or 457(f), Simplified Employee Pension (SEP), Savings Incentive Match Plan for Employees (SIMPLE), or multiple employer plans (MEPs). Speaking at the American Society of Pension Professionals & Actuaries (ASPPA) Annual Conference, Susan D. Diehl, president of PenServe Plan Services Inc., pointed out that 501(c)(3) organizations are unique in that they can offer a 403(b) plan.

One reason an employer may want to opt for a 403(b) is to not be governed by the Employee Retirement Income Security Act (ERISA). Diehl noted that to maintain non-ERISA status, the employer cannot offer employer contributions, make discretionary administrative decisions nor hire a third-party administrator (TPA) to do so, determine eligibility for hardships or loans, or limit investments to one provider unless it is a reasonable choice.

However, there are a range of activities the employer may engage in and still maintain non-ERISA status. According to Diehl, these include permitting investment providers to offer products to participants and educate them about the products, requesting information from product providers for review, entering into salary reduction agreements with participants, remitting contributions to providers and keeping records of them, offering annuities, certifying facts or providing facts to investment providers, identifying parties responsible for administrative functions, and de-selecting providers not complying with regulations.

One reason Diehl offered that employers may want to opt for a 401(k) instead of a 403(b) is that with a 401(k), employers can require a one- or two-year period before employees become eligible for the plan. This can reduce the number of eligibles for which an employer may have to keep records or pay, and also could help a plan avoid an audit due to the universal availability rule for 403(b) plans. Diehl says employers should compare the requirements of the universal availability rule with doing a average deferral percentage (ADP) test to determine which is best for them.

Other plan design considerations to help determine the type of plan to offer include:

- Paid-time-off (PTO) contributions can be put into 401(a) plans and the Internal Revenue Service (IRS) is considering allowing them in 403(b) and 457 plans;
- 403(b)s can include post-employment contributions for five years following a participant's termination of employment; and
- 403(b)s can have mandatory employee contributions which are not subject to testing and IRS limits.

Diehl added that tax-exempt employers may also want to consider a combination of plans, for example, a 401(a) with a 403(b) if they want to offer employer contributions, or a 457 plan for highly-compensated employees in addition to a plan for all employees.

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