

MEMO# 22988

October 10, 2008

Draft Letters to Treasury and DOL Regarding Outstanding 403(b) Plan Issues - Plan Termination and Form 5500 Reporting

URGENT/ACTION REQUESTED

[22988]

October 10, 2008

TO: PENSION COMMITTEE No. 29-08
PENSION OPERATIONS ADVISORY COMMITTEE No. 29-08 RE: DRAFT LETTERS TO
TREASURY AND DOL REGARDING OUTSTANDING 403(B) PLAN ISSUES - PLAN TERMINATION
AND FORM 5500 REPORTING

Attached for your review are two draft comment letters requesting guidance on outstanding 403(b) plan issues. One letter asks the Internal Revenue Service and Treasury for guidance concerning termination of 403(b) plans funded by custodial account contracts. The letter requests guidance confirming that the distribution of an individual custodial account is treated as a distribution for plan termination purposes and that a distributed custodial account is taxed in the same manner as a distributed annuity contract.

The other draft letter asks the Department of Labor to delay the expanded Form 5500 reporting requirements for 403(b) plans and clarify whether certain 403(b) contracts could be considered plan assets. The letter explains the significant issues facing 403(b) plan sponsors and providers in light of the final IRS regulations and asks the Department to delay the effective date of the new Form 5500 reporting requirements for one year. To assist 403(b) plan sponsors and service providers in complying with the reporting requirements (whenever they become effective) and other requirements under ERISA, the letter also asks the Department to provide guidance on the fundamental question of plan asset status. The letter suggests that individual custodial accounts held by former employees and 403(b) contracts with vendors to which contributions cease before January 1, 2009 are not plan assets, and therefore are not reportable on Form 5500 or subject to

other rules under ERISA.

We would appreciate your input on these draft letters. Please provide comments or suggestions to ebarone@ici.org (telephone 202-326-5821) by Friday, October 17, 2008.

Elena Barone
Associate Counsel

[Attachment no. 1](#)

[Attachment no. 2](#)

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