

# EDUCATION IS AN ETHICAL NECESSITY

BY SARAH SIMONEAUX, CPC

**Advisors who delay training or choose not to earn credentials can lose business to those advisors who make a commitment to ethics and education.**

**W**e now have more new employees who want to participate in our voluntary 403(b) program,” said Susan Smith, the benefits administrator for Campus College, a private, nondenominational school. Jane Johnson, the financial advisor for the college’s 403(b) program, was surprised – but pleased – to hear that the number of new 403(b) participants was so high. The last time she’d been out to meet with Susan, only 90 employees were contributing to the 403(b) individual accounts. Forty new possible accounts meant more work for Jane, but she’d be paid for that work through one or more of the four investment alternatives offered to those who elected to make voluntary contributions.

“At the request of our board,” Susan continued, “we’ve been reviewing employees’ distribution requests. In this economy, it’s critical that our participants have access to their money in case of hardship.”

Jane hesitated. She knew that this plan was a voluntary 403(b) arrangement and wasn’t subject to the rules of ERISA. She also suspected that the four existing investment providers didn’t offer review of employee hardship or loan requests; they only processed distributions. If the school made decisions about hardship and loan eligibility, it could make the individual 403(b) accounts part of an ERISA plan.

Jane had gone to a training session about the differences between ERISA and non-ERISA plans, and she thought that the instructor had said ERISA plans with more than 120 participants were subject to an accounting requirement, but she couldn’t remember exactly what it was.

“Your plan could be subject to the rules of ERISA,” Jane pointed out. “Let me check on it and get back to you.”

“Oh no, not ERISA!” Susan snapped back. “You assured us that our 403(b) plan was voluntary and not subject to those

complicated regulations. We don’t want to be responsible for an ERISA plan!”

“I’m sure you’ll be fine,” Jane hurriedly replied. “Most 403(b) plans aren’t ERISA arrangements anyway.”

Jane went on to enroll 35 of the 40 employees in the plan, and two of the investment providers agreed to monitor hardship and loan requests. She assured Susan that this kept the plan’s non-ERISA status intact. Jane knew she needed to learn more about the new rules, but she was successfully enrolling employees in this plan, as well as several other 403(b) arrangements she worked with. She could worry about getting education later.

### UNINTENDED CONSEQUENCES

Jane’s lack of education, however, meant she wasn’t fully aware of the complexities of non-ERISA and ERISA 403(b) plans. In 2009, the Department of Labor issued guidance on 403(b) arrangements. One of the triggers that turns a non-ERISA

## THE SHORT FORM

- ♦ One trigger that turns a non-ERISA plan into an ERISA plan is employer involvement in processing distributions or making hardship withdrawal determinations.
- ♦ The number of participants in ERISA plans will determine whether they're subject to an annual audit and must file a 5500 form with the government.
- ♦ An uneducated and inattentive advisor can inadvertently allow a voluntary 403(b) plan to become an ERISA plan.
- ♦ ASPPA's Code of Conduct requires continuing professional education to stay current with the latest rule changes.
- ♦ ASPPA and NTSAA conferences, publications, and webcasts are excellent sources for continuing education and professional credentials.

plan into an ERISA plan is employer involvement in processing distributions or making hardship withdrawal determinations. Although two of the four providers took on this responsibility for Susan's plan, Jane didn't follow up with Susan about approving distributions or hardships for employees with the other two providers.

Even more important, ERISA plans with more than 120 participants are subject to an annual audit and must file a 5500 form with the government. Had Jane participated in a detailed education and credentialing program, such as the Tax Exempt and Governmental Plan Consultant (TGPC) designation from ASPPA and NTSAA, she would have learned about the rules of ERISA and how they apply to 403(b) plans.

Later in the year, Amy, another 403(b) financial advisor in the same area as Jane, earned her TGPC designation from ASPPA. While studying for her exam, she learned that ERISA plans with more than 120 participants are subject to an annual audit. She thought there were likely to be 403(b) plans that had unknowingly become ERISA plans and were now subject to this audit requirement.

Amy teamed up with a local CPA firm with experience in auditing ERISA plans at a reasonable cost, and started prospecting 403(b) plans with more

than 100 participants. When she got a meeting with Susan and reviewed her plan contracts and procedures, she saw that Susan was reviewing and approving distribution requests for two of the four investment providers that didn't handle loans and hardships. In addition, the school's 403(b) plan had 125 participants, making it an ERISA plan subject to the audit requirements.

### THOROUGH AND HONEST

Although Susan wasn't happy with the analysis, she appreciated the fact that Amy had been so thorough and honest throughout the process. She also was glad that Amy had been proactive in bringing in the CPA firm that could do the audit efficiently and at a reasonable cost. Despite being the bearer of bad news, Amy's ethical approach had won the plan away from Jane.

As a credentialed member of ASPPA, Amy was subject to ASPPA's Code of Conduct and she had a required continuing professional education requirement to stay current with the latest rule changes. To meet these standards, she attended the annual NTSAA conference and participated in ASPPA webcasts on 403(b) and 457 plans. She realized that her commitment to education and her expertise in 403(b) and 457 plans could help her win more business.

She highlighted her designation and

involvement with ASPPA and NTSAA on her website and with her clients and prospects. As a result, she was selected to partner with a local TPA who also credentialed their employees with ASPPA. She became the "go to" advisor for 403(b) and 457 plans in her area – especially larger plans possibly subject to ERISA audit and filing requirements.

Expertise, education and ethical practices aren't just the hallmark of a quality advisor, they're also fast becoming a necessity in the complex world of retirement plans. Advisors who delay training or choose not to earn credentials can lose business to those advisors who make a commitment to ethics and education. The long-term dedication to educational excellence will translate into long-term gains for advisors in the 403(b) profession.



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### Have You Had to Make a Difficult Choice?

Have you ever faced an ethical dilemma that tested your professionalism? A potential conflict of interest, perhaps, a fiduciary question, or a client's questionable actions?

### We'd like to hear about it.

Summarize your ideas in a brief email to [stevensullivan08@comcast.net](mailto:stevensullivan08@comcast.net) and you could be the bylined author of the next [On the Level](#) in 403(b) Advisor.