

Department of Labor Issues Guidance on Certain 403(b) Plans Subject to ERISA

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In Advisory Opinion 2012-02A, the U.S. Department of Labor advised that a Code Section 403(b) Plan will be subject to ERISA if an employer's contributions to a Code Section 401(a) plan are contingent upon the employee's contributions to the 403(b) Plan. Specifically, the 403(b) plan would no longer satisfy the safe harbor exemption from ERISA in 29 C.F.R. 2510.3-2(f) which requires participation of employees to be completely voluntary and limits employer involvement. Advisory Opinion 2012-02A can be found [here](#).