403(b) PLANS - A GUIDE FOR SECTION 501(c)(3) ORGANIZATIONS

ING
January 2009

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INTRODUCTION

This *403(b) Plans – A Guide for 501(c)(3) organizations* is intended to assist tax-exempt organizations who sponsor 403(b) Plans by providing general information about the Internal Revenue Code ("Code") and the Employee Retirement Income Security Act of 1974 ("ERISA") rules governing 403(b) Plans' operation and administration. The *Guide* does not address any state or local tax implications affecting 403(b) Plans.

A tax-sheltered 403(b) annuity, also known as a tax deferred annuity or "403(b) Plan" is a deferred compensation arrangement, which may only be sponsored by organizations that are exempt from taxation under Code Section 501(c)(3) and public school systems. Tax-exempt Code Section 501(c)(3) organizations are nonprofit organizations organized and operated exclusively for religious, charitable, scientific, literary, educational or safety testing purposes. In addition, certain public institutions, such as government-operated hospitals, libraries and museums may be recognized as Code Section 501(c)(3) organizations. Please note that this *Guide* focuses solely on 403(b) Plans sponsored by tax-exempt Code Section 501(c)(3) organizations and does not address 403(b) Plans sponsored by public school systems, religious organizations, or entities that have both governmental and non-profit status.

There are three different types of investments for 403(b) Plans. Under Code Section 403(b)(1), contributions are invested in annuity contracts issued by life insurance companies. Under Code Section 403(b)(7), contributions are held in custodial accounts and are invested solely in regulated investment company stock (i.e., invested in shares of mutual funds). Under Code Section 403(b)(9), contributions are held in retirement income accounts maintained for employees of certain church-affiliated organizations. A public educational system may invest its 403(b) Plan assets in a 403(b)(1) annuity contract or a 403(b)(7) custodial account, but <u>not</u> a 403(b)(9) retirement income account.

Code Section 403(b) Plans are usually funded through salary reduction agreements under which eligible employees elect to make contributions from their salary. Employers may also choose to make contributions either as a fixed percentage, as a fixed dollar amount, or as a matching contribution.

Please note that this *Guide* is intended for general informational purposes only. No part of this *Guide* is intended to provide tax or legal advice – this is ING's interpretation of the Code and ERISA rules. Any questions involving tax or legal matters should be referred to your 403(b) Plan's legal counsel or tax advisor.

Final 403(b) Final Regulations

The IRS released its much anticipated 403(b) regulations on July 26, 2007. The Treasury considers it the "first comprehensive guidance on section 403(b) arrangements in over 40 years," addressing compliance with pension laws from the ERISA up through the Economic Growth and Tax Relief Reconciliation Act of 2001. The 403(b) regulations are generally effective on January 1, 2009 (church plans and plans maintained under a collective bargaining agreement have special effective dates). For more information on the final 403(b) regulations, please visit our dedicated website at www.ing.com/us/403bregs.

DEFINITIONS

Actual Contribution Percentage ("ACP")

A percentage used in a test that measures whether Matching Contributions and/or after-tax contributions impermissibly discriminate in favor of Highly Compensated Employees (HCEs). (See Section III-E)

Annuity Contract

A funding vehicle for a 403(b) Plan established under Code Section 403(b)(1). Annuity Contracts are purchased by the Employer for its Employees from an insurance company and may be either individual contracts or a group annuity contract under which each Participant has his or her own participant account.

Beneficiary

An individual or entity, including a trust, designated by a Participant, which is entitled to receive any death benefit payments. (See Section IV-C)

Custodial Account

A funding vehicle for a 403(b) Plan established under Code Section 403(b)(7) by a custodial agreement between the Employer and the custodian or the Participant and the custodian, as appropriate. Assets under a Custodial Account must be held by a bank, trust company, or entity authorized by the Commissioner of the Internal Revenue and must be invested solely in regulated investment company stock (i.e., mutual funds). Any dividends from the investment in mutual funds must be reinvested to ensure that the distribution requirements of the Code are satisfied.

Department of Labor ("DOL")

One of the federal government agencies responsible for the enforcement of the reporting and disclosure provisions of ERISA.

Eligible Rollover Plan

An Eligible Rollover Plan is an individual retirement account, another 403(b) tax-deferred Plan, a 401(a)/(k) qualified plan or a governmental 457(b) deferred compensation plan among which eligible amounts may be rolled.

Employee

An individual receiving remuneration for services performed as a common law employee of the Employer. In general, independent contractors and Leased Employees are not considered common law Employees and may not be covered by a 403(b) Plan.

Employee Retirement Income Security Act of 1974 (“ERISA”)

In addition to the Internal Revenue Code, this is the basic federal law governing employee benefit plans.

Employer

A tax-exempt organization qualified under Code Section 501(c)(3) organized and operated exclusively for religious, charitable, scientific, literary, educational or safety testing purposes. In addition, certain public institutions, such as government-operated hospitals, libraries and museums may also have a favorable determination letter from the IRS regarding their status as Code Section 501(c)(3) organizations.

Employer Contributions

Contributions made to a 403(b) Plan (other than Matching Contributions) by an Employer without regard to whether a Participant makes Salary Reduction or Roth 403(b) Contributions. (See Section II-C)

Forfeitures

The portion of a Participant’s benefit attributable to Employer or Matching Contributions that may be lost if the Participant severs employment before becoming fully vested in those Employer or Matching Contributions. (See Section II-C)

Highly Compensated Employee (“HCE”)

An HCE is an Employee who:

- was at any time a 5-percent owner during the Plan Year or the preceding Plan Year; or

- received compensation from the Employer in excess of $80,000 (as adjusted annually) during the preceding Plan Year, and if the Employer elects for such preceding Plan Year, the Employee was in the top paid group (i.e., top 20 percent of Employees by compensation) of the Employer for such preceding Plan Year.

Hour of Service

Any hour for which an Employee is paid or entitled to be paid. An hour of service includes payments made due to vacation, sickness, holiday, disability, layoff, jury duty, military duty, or leave of absence, even if the Employee no longer works for an Employer.

Includible Compensation

The amount of a Participant's taxable wages, plus amounts deferred by the Participant to the Employer's 403(b) Plan, 457(b) plan, 401(k) plan, SIMPLE and Salary Reduction Simplified Employee Pension (SARSEP) plans, Section 125 Cafeteria plan, and qualified transportation benefits deferred under Section 132(f)(4) plans over the most recent one-year period of service. Includible Compensation is taken into account for purposes of determining the Participant's contributions under Code Section 415(c). (See Section II-J)

Internal Revenue Service ("IRS")

This is an agency of the Treasury Department headed by the Commissioner of Internal Revenue whose primary responsibility is administering, interpreting and enforcing the Code.

Internal Revenue Code of 1986 ("Code")

The basic federal tax law that describes favorable qualification for 403(b) Plans.

Leased Employee

An individual who provides services to an Employer of a type historically performed by Employees, pursuant to an agreement with the Employer and a leasing organization, on a substantially full time basis for a period of at least one year provided the services performed are under the primary direction or control of the Employer.

Loans

If a 403(b) Plan permits, a Participant may take a loan from his vested account balance. If the Loan meets certain Code requirements, it will not be treated as a taxable distribution from the 403(b) Plan unless the loan is in default. (See Section IV-O)

Matching Contributions

Employer Contributions that match Salary Reduction and/or Roth 403(b) Contributions. (See Section II-C)

Required Minimum Distribution ("RMD")

Rules governing when distributions under a 403(b) Plan must commence and the maximum period over which benefit payments can be made. Generally, distributions must begin by April 1 of the calendar year following the later of:

- the year in which the Participant attains age 70 1/2, or
- the year in which the Participant retires from service with the Employer maintaining the 403(b) Plan.

(See Section IV-F)

Non-Highly Compensated Employee ("NHCE")

An Employee who is not an HCE.

One-Year Break in Service

A One-Year Break in Service is a computation period (generally, a Plan Year) during which an Employee fails to complete more than 500 Hours of Service. Generally, Hours of Service are credited for "authorized leaves of absence" and "maternity and paternity leaves of absence" in order to prevent the Employee from incurring a One-Year Break in Service.

Participant

An Employee who has satisfied the eligibility requirements of the Employer's 403(b) Plan.

Plan

The written document or collection of documents under which an Employer operates its 403(b) Plan.

Plan Administrator

A fiduciary who is responsible for the day-to-day administration of the 403(b) Plan including determination of eligibility for participation in the Plan and determination of Participant benefits.

Plan Year

Any 12-month period elected by the Employer and stated in the 403(b) Plan document over which 403(b) Plan records and administration are maintained.

Prohibited Transactions

Fiduciaries must operate a 403(b) Plan for the exclusive benefit and in the best interest of Participants. To satisfy this requirement, a fiduciary must not engage in economic transactions that directly or indirectly involve Plan assets and parties related to the Plan unless the Plan is covered by a statutory ERISA exemption or an exemption granted by the DOL. Prohibited transactions cover the sale, exchange or lease of property, extension of credit, provision of goods or services, transfer or use of Plan assets, the investment in employer securities or employer real estate in excess of legal limits, and any situation where a Plan fiduciary may have a conflict of interest (e.g., self-dealing, kickbacks, etc.). (See Section V-B)

Qualified Domestic Relations Order ("QDRO")

A court order issued under state domestic relations law that relates to the payment of child support or alimony or to marital property rights. A QDRO creates or recognizes an alternate payee's right or assigns to an alternate payee the right to receive Plan benefits payable to a Participant. The alternate payee may be the Participant's spouse, former spouse, child or dependent. (See Section VI-A)

Rollover Contribution

A contribution made to a 403(b) Plan by an Employee attributable to a distribution from an Eligible Rollover Plan. (See Section II-B)

Roth 403(b) Contribution

The portion of a Participant's Compensation that is contributed to a 403(b) Plan by an irrevocable designation on an after-tax basis for federal income tax purposes (See Section II-B).

Salary Reduction Agreement

The agreement between the Employer and the Participant under which Salary Reduction and/or Roth 403(b) Contributions are made. A Salary Reduction Agreement applies to compensation that is not currently available to the Participant on the effective date of the agreement. (See Section I-C)

Salary Reduction Contributions

The portion of a Participant's Compensation that is contributed to a 403(b) Plan on a before-tax basis for federal income tax purposes (See Section II-B).

Year of Service

A Plan Year where at least 1,000 Hours of Service are credited to an Employee for purposes of determining eligibility and vesting.

SECTION I – ELIGIBILITY

A. Eligibility Basics for Employers

A 403(b) Plan may only be sponsored by organizations that are exempt from taxation under Code Section 501(c)(3) and public school systems. A tax-exempt organization must be organized and operated exclusively for religious, charitable, scientific, literary, educational or safety testing purposes. In addition, certain public institutions, such as government-operated hospitals, libraries and museums, may also have a favorable determination letter from the IRS regarding their status as Code Section 501(c)(3) organizations. The IRS considers such organizations "dual status" entities. Please note that this *Guide* focuses solely on 403(b) Plans sponsored by tax-exempt Code Section 501(c)(3) organizations and does not address 403(b) Plans sponsored by public school systems, religious organizations, or entities that have both governmental and non-profit status

A 501(c)(3) organization includes not only the organization whose Employees participate in the 403(b) Plan, but also any other tax exempt that is under common control. Common control is based on 80% of the directors or trustees being either representatives of, or directly or indirectly controlled by an exempt organization.

It should be noted that in a "controlled group" situation, only entities that are either tax-exempt organizations under Code Section 501(c)(3) may participate in a 403(b) Plan. If a tax-exempt organization operates a for-profit corporation, the employees of the for-profit corporation cannot participate in the organization's 403(b) Plan.

For example:

Hospital A has several for-profit subsidiaries for certain research functions. Hospital A sponsors a 403(b) Plan. While the employees of Hospital A are permitted to be covered by the 403(b) Plan, the employees of the for-profit subsidiaries cannot be covered under the 403(b) Plan.

B. Eligibility Basics for Employees

Only Employees may participate in a 403(b) Plan. In general, independent contractors and Leased Employees are not considered common law Employees and cannot participate in a 403(b) Plan.

C. Salary Reduction Agreements

A Salary Reduction Agreement is an agreement by which a Participant elects to defer Salary Reduction or Roth 403(b) Contributions from his or her salary into a 403(b) Plan. A Participant, if permitted under the 403(b) Plan, may make multiple Salary Reduction Agreements in a single taxable year. In addition, a Participant may make or modify a Salary Reduction Agreement election at any time before the affected salary would otherwise become payable.

In addition, the Salary Reduction Agreement must be legally binding under law. For example, in most states, an individual who is under the age of 18 or who is mentally incapable of entering into a contract may not make a Salary Reduction Agreement. In addition, an Employee who is not eligible to participate in a 403(b) Plan may not make a Salary Reduction Agreement.

D. Universal Availability

The nondiscrimination requirement for Salary Reduction and Roth 403(b) Contributions requires "universal eligibility" and is satisfied only if the 403(b) Plan permits every Employee (subject to the exceptions listed below) to have the opportunity to make Salary Reduction and Roth 403(b) Contributions of at least $200 annually. Note that an Employer may not impose a minimum percentage of contributions on Salary Reduction and Roth 403(b) Contributions as an administrative convenience. Such a practice is considered a violation of the nondiscrimination rules and is therefore impermissible.

A 403(b) Plan may exclude the following groups of Employees from making Salary Reduction and Roth 403(b) Contributions:

- Employees whose maximum Salary Reduction and Roth 403(b) Contributions under the 403(b) Plan would be no greater than $200,
- nonresident aliens with no U.S. source of income,
- students performing services for the Employer whose Compensation is not subject to wages under the Federal Insurance Contributions Act ("FICA"), unless such student regularly works more than 40 hours per week,
- Employees eligible to make deferred compensation contributions to a qualified Code Section 401(k) plan or another 403(b) Plan sponsored by the Employer, or
- Employees who normally work less than 20 hours per week,

A 403(b) Plan is permitted to exclude Employees who normally work less than 20 hours per week. However, an Employee is considered to work fewer than 20 hours per week only if:

- For the 12-month period beginning on the date the Employee's employment commenced, the Employer reasonably expects the Employee to work fewer than 1,000 hours of service in such period; and

- For each Plan Year ending after the close of the 12-month period beginning on the date the Employee's employment commenced (or, if the Plan provides, each subsequent 12-month period), the Employee worked fewer than 1,000 hours of service in the preceding 12-month period.

A 403(b) Plan is not permitted to have any minimum age or service requirements in order for a Participant to make Salary Reduction or Roth 403(b) Contributions.

E. Notice to Eligible Employees to meet "Universal Availability"

At least once each Plan Year, an Employer must provide Employees who are eligible to Participant in a 403(b) Plan a notice informing them that they have the opportunity to make Salary Reduction and, if applicable, Roth 403(b) contributions, or change deferral elections, when they can make those elections, the maximum amount permitted and whether there are conditions on those elections.

F. One-Time Irrevocable Election

Contributions under a Salary Reduction Agreement do not include elective contributions made pursuant to a one-time irrevocable election. Such election is made:

- at the initial eligibility to participate in the 403(b) Plan,
- pursuant to certain other one-time irrevocable elections specified in the IRS regulations, or
- pre-tax contributions made as a condition of employment.

G. Other Types of Contributions

There are no Code provisions restricting the permissibility of other types of contributions. For that reason, 403(b) Plans may contain specific eligibility requirements for non-Salary Reduction Contributions subject to specific nondiscrimination requirements (See Section III). A 403(b) Plan may require an Employee to reach a certain age in order to be eligible to receive Employer or Matching Contributions in the 403(b) Plan. A 403(b) Plan may also require an Employee to work for the Employer sponsoring the 403(b) Plan for a certain period of time in order to receive Employer or Matching Contributions.

H. Rehired Employees And Breaks In Service

With respect to Employer and Matching Contributions, if a Participant terminates employment and is later reemployed before incurring a One-Year Break in Service, he will be considered to be a Participant as of his reemployment date. However, if a Participant terminates employment and is later reemployed after incurring a One-Year Break in Service, his prior Years of Service for vesting and eligibility purposes will include his prior service subject to the following rules:

- In the case of a terminated Participant who did not have any percentage of vesting in his Employer or Matching Contributions, his prior Years of Service will not be taken into account if the number of consecutive One-Year Breaks in Service equals or exceeds the greater of (i) five or (ii) the aggregate number of pre-break Years of Service.

- A terminated Participant who did not have any Years of Service before incurring a One-Year Break In Service will be eligible to participate in the 403(b) Plan as of the date of his reemployment, or if later, as of the date he would have otherwise been eligible to participate in the Plan.

- Subject to the Employer electing in the 403(b) Plan document, a terminated Participant who is reemployed by the Employer before incurring five consecutive One-Year Breaks in Service and who had received a distribution of his vested Employer or Matching Contributions, may elect to repay the full amount which had been distributed to the Participant. If the Participant repays the distributed amount, then any forfeited amounts will be reinstated. The repayment must be made before the earlier of five years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five consecutive One-Year Breaks in Service beginning after the distribution. If a distribution occurs for any reason other than a severance from employment, the time for repayment is not permitted to end earlier than five years after the date of distribution. In the event the former Participant repays the full amount distributed, the undistributed forfeited amount of the Employer or Matching Contributions will be restored in full.

SECTION II - CONTRIBUTIONS AND RELATED LIMITATIONS

A. Contributions - Introduction

A 403(b) Plan may provide for more than one type of contribution. The Participant and/or the Employer may make contributions and special rules apply to the various types of contributions. The following is an overview of the types of contributions and limitations on such contributions that may be made to 403(b) Plans.

B. Participant Contributions

Salary Reduction Contributions - A 403(b) Plan may allow Participants to defer a portion of their Compensation to the Plan on a before-tax basis (see Section II-E for a discussion of taxation). The portion deferred is known as Salary Reduction Contributions. An election to defer must be made on Compensation not yet received. Salary Reduction Contributions are subject to various limitations as explained below.

Roth 403(b) Contribution – - A 403(b) Plan may allow Participants to defer a portion of their Compensation to the Plan on an after-tax basis. The portion deferred is known as Roth 403(b) Contributions. If the 403(b) Plan permits Roth 403(b) Contributions, participants must have the choice to make Salary Reduction Contributions or Roth 403(b) Contributions or a combination of the two types of contributions. However, the total amount of Roth 403(b) Contributions and Salary Reduction Contributions made by a Participant in a year must not exceed the contributions limits described below.

Rollover Contribution - A contribution made to a Plan by an Employee attributable to a distribution from an Eligible Rollover Plan. While a 403(b) Plan is not required to *accept* Rollover Contributions into the Plan, the Plan must permit Participants, alternate payees and spousal Beneficiaries to elect a rollover as a distribution option.

Participant contributions are always 100% vested.

Payments after Severance from Employment

A Participant who has had a severance from employment may be able to defer certain payments to a 403(b) Plan for up to the later of 2 1/2 months or the end of the limitation year following severance from employment. Payments that are eligible to be deferred include regular compensation, payments for overtime, commissions, bonuses, sick pay, vacation pay or other leave that would have been payable or available if the Participant had not had a severance from employment.

C. Employer Contributions

Employer contributions made to a 403(b) Plan may be a discretionary amount, a fixed amount or percentage, or may match Participants' Salary Reduction and/or Roth 403(b) Contributions.

Employer Contributions – Employer Contributions may either be a discretionary amount or be based on the 403(b) Plan's contribution formula. The contribution may be allocated in a method that satisfies either a design-based safe-harbor formula (which are deemed to be non-discriminatory) or a formula that must be tested to ensure that it does not impermissibly discriminate in favor of HCEs.

An Employer may require that a Participant complete a certain number of Hours of Service (not more than 1,000) and/or be employed on the last day of the Plan Year in order to receive an allocation of the Employer Contribution. If an Employer requires a certain number of Hours of Service to be completed during the Plan Year and/or Participants to be employed on the last day of the Plan Year in order to receive an allocation of Employer Contributions, the Employer should not make the contribution until after the end of the Plan Year.

Employers are permitted to make contributions to a 403(b) Plan on behalf of retired or terminated Participants for a period of up to 5 years after the year of the Participant's retirement or termination. Such Participants may receive contributions up to the Code Section 415(c) annual additions limit (See Section II-I) for each of the 5 post-retirement years, based on Includible Compensation over their final 12-month period of service. It is important to note however that these contributions, too, **must** satisfy nondiscrimination requirements, and should be an area of extreme caution for the Employer (See Section III).

Matching Contributions – Contributions that match all or a portion of a Participant's Salary Reduction Contributions (and, if permitted in the 403(b) Plan, Roth 403(b) Contributions). Generally, Matching Contributions are made without regard to an Hour of Service requirement or employment on the last day of the Plan Year. If a 403(b) Plan has an Hour of Service (not to exceed 1,000) requirement or employment on the last day of the Plan Year requirement, contributions should not be made until after the end of the Plan Year.

A vesting schedule may apply to Employer and Matching Contributions. (See Section II-F)

D. "Safe Harbor" Contributions

An Employer may elect to make a "safe-harbor" contribution to its 403(b) Plan as an alternative to passing the ACP nondiscrimination test applied to Matching Contributions (See Section III-E). These safe-harbor contributions must be either Basic, Enhanced, or Alternative Enhanced Matching Contributions (as described in more detail below), and the 403(b) Plan cannot have any other matching contributions.

Matching Contributions used to meet this safe harbor must be 100% immediately vested and are not available for hardship withdrawals. In addition, the 403(b) Plan cannot require NHCEs to work at least 1,000 hours during a Plan Year or be employed on the last day of the Plan Year in order to receive a safe harbor contribution.

In order to meet the “Matching Contributions Limitations,” the 403(b) Plan must provide one of the following types of Matching Contributions:

- Basic: a Matching Contribution is made to each eligible NHCE based on the following formula: 100% match on the eligible NHCEs Salary Reduction and/or Roth 403(b) Contributions up to the first 3% of compensation, plus 50% of the eligible NHCEs’ Salary Reduction and/or Roth 403(b) Contributions for the next 2% of compensation. If a NHCE does not make Salary Reduction and/or Roth 403(b) Contributions, there is no requirement to provide that individual with a Basic Matching Contribution.

- Enhanced: a Matching Contribution is made to each eligible NHCE which, in the aggregate amount, would result in Matching Contributions at least equal to the aggregate amount of the Basic Matching Contribution as described above. This Enhanced Matching Contribution cannot increase as an employee’s rate of Salary Reduction and/or Roth 403(b) Contributions increases. The Enhanced Match cannot be more than 6% of compensation.

EXAMPLE:

A Matching Contribution of 100% of the first 4% of Salary Reduction and/or Roth 403(b) Contributions ***satisfies*** *the safe-harbor requirement using the Enhanced Match formula.*

- Alternative Enhanced: a Matching Contribution that meets all of the following requirements:

  - The rate of match does not increase as the rate of Salary Reduction and/or Roth 403(b) Contributions increases.
  - The rate of the match is never greater for an HCE than for a NHCE contributing at the same percentage of compensation.
  - No Matching Contributions are made on Salary Reduction and/or Roth 403(b) Contributions that exceed 6% of the Participant’s compensation.

EXAMPLE:

A Matching Contribution of 100% of the first 2% of Salary Reduction and/or Roth 4039b) Contributions with a 200% match of the next 2% of Salary Reduction and/or Roth 403(b) Contributions ***<u>does not</u>*** *satisfy the requirement because under the Enhanced Match Option, the rate of match is not permitted to increase as a Participant’s rate of Salary Reduction and/or Roth Contributions increase.*

Matching Contributions used to meet this safe harbor must be 100% immediately vested and are not available for hardship withdrawals. In addition, the 403(b) Plan cannot require NHCEs to work at least 1,000 hours during a Plan Year or be employed on the last day of the Plan Year in order to receive a safe harbor contribution.

Notice of Safe Harbor Contributions to Participants

An Employer must provide each Employee who is eligible to participate in the 403(b) Plan a written notice of the safe harbor contributions formula in accordance with IRS guidance.

E. Taxation of Contributions

Federal and State Income Taxation

In general, Salary Reduction, Employer and Matching Contributions, including earnings thereon, are subject to federal and state income tax only when directly distributed to the Participant. However, Roth 403(b) Contributions are generally subject to federal and state income tax when these amounts are contributed, but earnings on those amounts may be tax-free when distributed if certain conditions are met (See Section IV-C).

Taxation under the Federal Unemployment Tax Act ("FUTA") and the Federal Insurance Contributions Act ("FICA")

FICA imposes a tax on Employers and Employees in order to provide retirement and welfare benefits to individuals who are no longer Employees. In addition, FUTA imposes a tax on Employers to fund cash benefits to former Employees who are temporarily unemployed. FUTA and FICA taxes are based on wages paid to Employees of an Employer. Only Salary Reduction and Roth 403(b) Contributions, because they are deferred from a Participant's compensation, are subject to FUTA and FICA taxes when contributed to the 403(b) Plan. However, no contributions to a 403(b) Plan, regardless of source, and earnings under a 403(b) Plan are subject to FICA and FUTA taxes when distributed.

Participant nonrefundable tax credit for contributions made to a 403(b) Plan

A nonrefundable tax credit for Salary Reduction and Roth 403(b) Contributions may be available to certain Participants. The maximum annual contribution eligible for the credit is $2,000, and the maximum credit rate is 50%. The credit is pro rated and depends on a Participant's adjusted gross income and his/her federal income tax filing status. The credit phases out to $0 for filers of a:

- joint return with an AGI greater than $55,500,
- head of household returns at an AGI greater than $41,625 and
- single returns at an AGI greater than $27,750.

ADJUSTED GROSS INCOME						
JOINT RETURN		HEAD OF HOUSEHOLD		ALL OTHER CASES		APPLICABLE PERCENTAGE
OVER	NOT OVER	OVER	NOT OVER	OVER	NOT OVER	
$0	$33,000	$0	$24,750	$0	$16,500	50%
$33,000	$36,000	$24,750	$27,000	$16,500	$18,000	20%
$36,000	$55,500	$27,000	$41,625	$18,000	$27,750	10%
$55,500	---------	$41,425	---------	$27,750	---------	0%

F. Vesting Requirements

A 403(b) Plan may require that a Participant earn the right to his account balance attributable to Employer or Matching Contributions by completing a certain number of Years of Service. The applicable vesting schedule(s) are stated in the 403(b) Plan document. An Employer may choose a vesting schedule that is at least as liberal as one of the following vesting schedules:

<u>3-year cliff vesting schedule</u>

0-2 Years of Service 0%
3 Years of Service 100%

<u>6-year graded vesting schedule</u>

0-1 Years of Service 0%
2 Years of Service 20%
3 Years of Service 40%
4 Years of Service 60%
5 Years of Service 80%
6 Years of Service 100%

<u>Other Contributions</u>

A Participant is always 100% vested in his Salary Reduction, Roth 403(b) and Rollover Contributions. For this purpose, as well as for distribution reasons, these contributions must be accounted for separately from those subject to a vesting schedule.

<u>Changing a Plan’s Vesting Schedule</u>

An Employer may amend the 403(b) Plan’s vesting schedule. If a vesting schedule is amended, the following requirements are necessary:

- the vested portion of a Participant’s account balance may not be impacted by the new vesting schedule, and

- Participants with at least three Years of Service must be allowed to elect which of the two vesting schedules apply to their total account balance and their ongoing contributions.

Forfeitures

If a Participant terminates employment without 100% vesting, the non-vested portion of his account becomes a "Forfeiture." The Forfeiture, which is defined in the 403(b) Plan document, occurs when a Participant takes an immediate distribution of his vested account balance or after he has incurred five consecutive one-year Breaks in Service. Forfeitures may be used to reduce Employer or Matching Contributions, pay expenses of the 403(b) Plan or be reallocated among remaining Participants' accounts, as specified in the 403(b) Plan document.

G. Timing of Contributions

Technically, Employer Contributions, including Matching Contributions, for a Plan Year can be made to the 403(b) Plan after the end of the Plan Year.

If a 403(b) Plan is subject to ERISA, generally, the Salary Reduction and Roth 403(b) Contributions must be contributed to the 403(b) Plan as soon as they can reasonably be separated from the Employer's general assets, but no later than the 15th business day of the month following the month in which the contribution was withheld from Participants' compensation or received by the Employer. Although not specifically provided for in the DOL Regulations, the DOL has stated in an Advisory Opinion that Loan repayments should also follow this rule.

If a 403(b) Plan is not subject to ERISA, the 403(b) regulations provide that Contributions must be remitted to the 403(b) Plan's funding vehicle no later than is reasonable for the proper administration of the 403(b) Plan.

H. Annual Contribution Limits

There are two separate limitations on the amount of contributions to a 403(b) Plan that may be excluded from a Participant's gross income. These two limits are:

- the annual limit on contributions under Code Section 415(c), and
- the annual limit on Salary Reduction Contributions and Roth 403(b) Contributions under Code Section 402(g).

The contributions that must be included in each limitation are as follows:

Code Section Limitation	**Contributions to be Included**
Code Section 415(c)	All contributions and Forfeiture allocations attributable to the current Employer
Code Section 402(g)	Salary Reduction Contributions and Roth 403(b) Contributions attributable to all employers of the Participant

The following is a general description of the various limitations. For more detailed information, please refer to IRS Publication 571 – Tax-Sheltered Annuity Plans for Employees of Public Schools and Certain Tax-Exempt Organizations. This Publication can be found on the IRS website at www.irs.gov.

I. Code Section 415 Contribution Limits

Code Section 415(c) provides that annual additions to 403(b) Plan on behalf of a Participant cannot exceed the lesser of:

- $49,000 (for 2009, subject to annual cost of living adjustments) or
- 100 percent of the Participant's Includible Compensation.

The Section 415(c) limit applies to all contributions and Forfeiture allocations (known as "annual additions") made to a Participant's account(s) under a 403(b) Plan, regardless of whether these contributions are vested, for a 12-month limitation year (generally the Plan Year or a calendar year).

If a Participant in a 403(b) Plan also participates in another defined contribution retirement plan of the Employer, such as a Code Section 401(a) qualified retirement plan, in general, the amounts allocated annually to a Participant's account under a 403(b) Plan are considered "separate" for Code Section 415(c) contribution limitation purposes from the amounts under the 401(a) qualified defined contribution retirement plan. However, there is an exception to this general rule – a Participant will have a combined Code Section 415(c) contribution limit in the case where he also participates in a defined contribution plan (typically, a Keogh plan) in which he has a controlling interest in that plan sponsor (more than a 50% interest) ("Common Control Rule"). In the Common Control Rule situation, all retirement plans are deemed to be "owned" by the Participant.

For example:

Doctor Jones is employed by a 501(c)(3) hospital that maintains a 403(b) Plan and also owns a private practice where he is a 60 percent shareholder. Doctor Jones' private practice sponsors a 401(a) qualified defined contribution retirement plan. Because Dr. Jones is deemed to "own" both the 403(b) Plan and the 401(a) qualified retirement plan, the retirement plans must be combined for purposes of Code Section 415(c).

J. Includible Compensation

Generally, Includible Compensation is the amount of compensation determined on a calendar year basis received from the Employer currently sponsoring the 403(b) Plan that is includible in the Employee's gross income for the most recent period that may be counted as a one-year period of service.

<u>Most Recent One-Year Period of Service</u>

Full time Employees: for these Employees, the most recent one-year period of service will generally be the current taxable year.

Part-time and retiring Employees: for these Employees, the most recent one-year period of service consists of the service in the current year and the service for as many previous years as is necessary to total one full year of service. The most recent periods of service are added to determined the most recent one-year period of service by first taking into account the service during the year for which the determination is being made and then adding the service during the next preceding years until the service total one-year of service.

Includible Compensation includes:

- Amounts received from the Employer currently sponsoring the 403(b) Plan that is includible in the Employee's gross income for the most recent period that may be counted as a one-year period of service.
- Salary Reduction Contributions (but not those made pursuant to a one-time irrevocable election since they are not treated as Salary Reduction Contributions) under a 403(b) Plan
- Roth 403(b) Contributions
- Deferrals under a Section 457(b) deferred compensation plan,
- Deferrals under a Section 401(k) plan made by the employee,
- Qualified transportation Benefits excluded from gross income under Section (132(f)(4)
- Any Section 125 cafeteria plan salary reduction amounts, and

- Deferrals under a salary reduction simplified employee pension ("SARSEP") and a savings incentive match plans for employees ("SIMPLE") plans.

Includible Compensation does not include:

- Non-Salary Reduction Contributions (such as Employer Contributions), and
- Code Section 414(h) pick up contributions.

Code Section 401(a)(17) Compensation Limit

For purposes of non-Salary Reduction Contributions (e.g., Employer and Matching Contributions), the Code requires that compensation be limited to $245,000 (for 2009, subject to annual cost of living adjustments).

K. Code Section 402(g) Contribution Limits

In general, Code Section 402(g) imposes a limit on Salary Reduction Contributions and Roth 403(b) Contributions made to a 403(b) Plan. The limit is $16,500 in 2009 and is subject to annual cost of living adjustments.

The Code Section 402(g) limit under a 403(b) Plan is coordinated with all elective deferrals made by a Participant under another 403(b) Plan, a Code Section 401(k) plan, a salary reduction simplified employee pension (SARSEP) plan or a SIMPLE retirement plan in a tax year.

If an Employer maintains a Code Section 457(b) deferred compensation plan, Salary Reduction Contribution limits of 403(b) Plans do not impact an individual's ability to make deferrals to a 457(b) deferred compensation plan. Generally, this means for the 2009 calendar year that a Participant can defer up to $16,500 to a 403(b) Plan and separately defer up to $16,500 to a 457(b) deferred compensation plan.

Special Catch-Up Provision

A special catch-up election for Salary Reduction and Roth 403(b) Contributions is available to Employees of certain entities. These entities include:

- An educational organization described in Code Section 170(b)(1)(A)(ii). This type of educational organization normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place which its educational activities are regularly carried on.

- A hospital.
- A home health service agency. This type of organization must be specifically designated as such an organization under section 1861(o) of the Social Security Act by the Secretary of Health and Human Services.
- A health and welfare agency. This is an organization whose primary activity is to:
  - Provide medical care;
  - Prevent cruelty to individuals or animals;
  - An adoption agency; or
  - Provide substantial personal services to the needy.
- A church, convention or association of churches, or an organization described in Code Section 414(e)(3)(B)(ii) (this is an organization that is tax-exempt under Code Section 501 and that is controlled by or associated with a church or a convention or association of churches).

Employees who have 15 or more Years of Service with their current Employer who is one of these eligible organizations may be able to contribute an amount up to $19,500 (for 2009, as indexed annually for cost of living adjustments). For eligible Employees, the general $16,500 limit is increased by the lesser of the following amounts:

- $3,000,
- $15,000 reduced by Salary Reduction and Roth 403(b) Contributions not included in gross income for prior taxable years because of this provision (which was effective 1/1/87), or
- $5,000 times years of service minus all prior elective deferrals made to Code Section 403(b), 401(k), SARSEP and SIMPLE plans of the Employer in prior taxable years.

For example:

Mary Smith, a nurse, who has worked 15 years for a hospital, has never used the increased limit and has made $30,000 in Salary Reduction and Roth 403(b) Contributions in prior years. Ms. Smith's calculation would be as follows:

The lesser of a), b) or c):

a) $3,000	*$ 3,000*
b) $15,000 (because increased limit was never used)	*$15,000*
c) $5,000 times 15 minus $30,000	*$45,000*

Therefore, in 2009, Ms. Smith is eligible to make Salary Reduction and Roth 403(b) Contributions in the amount of $19,500 provided that she has sufficient compensation to fund such contribution.

L. Age 50 Catch-Up Provision

If a Participant is at least 50 years old by the end of a calendar year, he may take advantage of the age 50 plus catch-up provision. This provision permits a Participant, once he has contributed the maximum amount of Salary Reduction and Roth 403(b) Contributions, including any available amounts under the 15-year catch-up, to make additional contributions to a 403(b) Plan in the amount of $5,500 (for 2009, as indexed annually for cost of living adjustments). As with the Code Section 402(g) limit, the age 50 plus catch-up contributions under a 403(b) Plan are coordinated with age 50 plus catch-up contributions under another 403(b) Plan, a 401(k) plan, a SARSEP or a SIMPLE retirement plan.

Age 50 plus catch-up contributions are not subject to the Code Sections 415(c) and 402(g) limits. In addition, an Employer is permitted to make Matching Contributions with respect to these catch-up contributions.

M. Contributions in Excess of the Code Section 415 Contribution Limits

Contributions made to a 403(b) Plan that are in excess of the Code Section 415(c) limit are considered "Excess Contributions." The methods of correction differ depending on whether the correction is made from Employer or Employee Contributions.

<u>Correction Method for Employer and Matching Contributions</u>

For Excess Contributions resulting from Employer and Matching Contributions, IRS regulations authorize a 403(b) Plan to permit correction by:

- using the excess to reduce future Employer or Matching Contributions;
- having the excess reallocated to other Participants for the current year; or
- holding the excess in a segregated account to correct in future years.

<u>Correction Method for Salary Reduction and Roth 403(b) Contributions</u>

For excesses that result from Salary Reduction and Roth 403(b) Contributions, IRS regulations authorize a 403(b) Plan to permit the distribution of such excesses (and any attributable earnings). If correction is made by distribution of the excess and earnings, both are taxable in the year of distribution.

The IRS also permits the additional methods of correction of excess amounts in accordance with its Employee Plans Compliance Resolution System (EPCRS) (See Section VI-D).

If the Employer also participates in a defined contribution plan in which he has Common Control (See Section II-I) and he has an excess of the Code Section 415(c) limit, the excess must first be corrected under the 403(b) Plan.

Excise Tax

Code Section 4973 imposes a 6% cumulative excise tax on Excess Contributions made to a Custodial Account. (The excise tax is not applicable to Excess Contributions made to an Annuity Contract.) However, the excise tax does not apply to Excess Deferrals under a Custodial Account. The excise tax is imposed specifically on the Employee (and not the Employee or provider), and is not tax deductible. The excise tax is determined as of the close of the taxable year and is imposed for each taxable year until the Excess Contribution is eliminated by an allowable method of correction.

N. Contributions in Excess of the Code Section 402(g) Contribution Limit

Salary Reduction and Roth 403(b) Contributions made by a Participant that are in excess of the Code Section 402(g) limit are considered "Excess Deferrals."

To correct an Excess Deferral, both the excess and any associated earnings must generally be distributed to a Participant by the April 15 immediately following the close of the taxable year in which the Salary Reduction or Roth 403(b) Contribution was made. The Excess Deferral is includible to the extent taxable for tax purposes in the year deferred; however, earnings associated with the Excess Deferral are includible in the year distributed. The distribution is not eligible to be rolled over to an Eligible Rollover Plan and distribution is not subject to the IRS 10% premature distribution penalty tax.

Generally, if correction of Excess Deferrals made to the 403(b) Plan that does not occur by the April 15 immediately following the year in which the Salary Reduction or Roth 403(b) Contribution was made, the Excess Deferral may not be distributed to the Participant until he is entitled to receive a distribution (see Sections IV-A, B and C). Such distributions are subject to double taxation. That is, the Excess Deferral is taxable in the year the excess was made and in the year the amount is ultimately distributed. Additional correction methods may be available under EPCRS.

O. Military Leave

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), veterans returning to employment from certain military service are entitled to the restoration of pension benefits that would have accrued but for the Employee's military service.

Specifically, the re-employed veteran's military service is considered service with the Employer for purposes of 403(b) Plan contributions. Make-up contributions on behalf of re-employed veterans are neither subject to 403(b) Plan contribution limitations for the year made, nor are they considered in applying the limits to any other contributions made during the year. However, the make-up contributions are subject to the applicable limitations (including any previous cost-of-living adjustments that were in effect) with respect to the year the contribution relates.

In calculating the amount of any make-up contributions, compensation used for such calculation is the compensation the Participant would have earned had the Participant not engaged in military service. There is no requirement that the 403(b) Plan provide for earnings to be credited to make-up contributions for any period before the contributions were actually made or make-up Forfeitures occurring during the period of military service. Also, if the 403(b) Plan contains a vesting schedule, re-employed veterans must receive credit for purposes of vesting service for periods of military service.

If any contribution under the 403(b) Plan is contingent upon the making of contributions by the Participant (e.g., a Participant must make Salary Reduction Contributions in order to receive Matching Contributions), the Participant must make up the missed contributions before receiving the Employer's contribution. For additional information refer to the Department of Labor website at http://www.dol.gov/ebsa/.

If an Employer provides differential pay to individuals who are on military leave, that individual may be able to defer all or a portion of that pay to a 403(b) Plan. Differential pay are amounts an Employer pays an individual who has been called to active military service as a way of replacing some or all of the difference between the individual's military pay and the compensation the individual would have received from the Employer had s/he remained in active employment. If the 403(b) Plan permits, an individual who is on military leave may be able to continue to defer differential pay to their Employer's 403(b) Plan while on active duty.

If an Employee takes a loan and then goes into military service, there are ways to handle the loan subject to 403(b) Plan document and funding vehicle rules:

- The individual could continue to repay the loan while on military leave or
- The loan could be suspended until the individual returns from military leave

If an individual continues to make loan repayments while on military leave, the Servicemembers Civil Relief Act of 2003 generally prohibits the Employer from charging more than 6% interest on that loan during active military service.

If loan repayments are suspended during the military leave, loan repayments must resume upon rehire and the repayment period may only extended by the length of military service.

A reservist or national guardsman is permitted to take a distribution from a 403(b) Plan, which is not be subject to the IRS 10% premature distribution penalty if all of the following requirements are met:

- The Participant was ordered or called to active duty after September 11, 2001.
- The Participant was ordered or called to active duty for a period of more than 179 days or for an indefinite period as a member of a reserve component.
- The distribution consists of Salary Reduction or Roth 403(b) Contributions.
- The distribution was made no earlier than the date of the order or call to active duty and no later than the close of the active duty period.

All or part of a qualified reservist distribution can be recontributed to an IRA within 2 years after the end of military duty.

In addition, an Employer sponsoring a 403(b) Plan must treat an individual who dies or becomes disabled while performing qualified military service as if the individual has resumed employment on the day preceding death or disability and terminated employment on the actual date of death or disability. Therefore, Beneficiaries obtain additional benefits such as accelerated vesting, incidental death benefits or other survivor benefits that are provided to those Participants who terminate employment due to death.

P. Separate Accounting

If the 403(b) Plan has Employer or Matching Contributions subject to a vesting schedule, then the recordkeeping system must separately account for those amounts and attributable earnings. In addition, if Code Section 415 excess contributions are not corrected in a timely manner, those contributions must be accounted for separately.

SECTION III – NONDISCRIMINATION TESTING

A. Nondiscrimination Testing for Salary Reduction and Roth 403(b) Contributions

The nondiscrimination requirement for Salary Reduction and Roth 403(b) Contributions requires "universal eligibility." See Section I-D.

B. Nondiscrimination Testing for Contributions Other Than Salary Reduction and Roth 403(b) Contributions

With respect to contributions other than Salary Reduction and Roth 403(b) Contributions, 403(b) Plans are generally subject to the same nondiscrimination requirements as 401(a) qualified plans.

In addition to complying with the annual Compensation limits, there are a number of nondiscrimination tests which a 403(b) Plan must meet on an annual basis. In order to perform these tests, an Employer must identify the HCEs.

In general, the following is a list of nondiscrimination test that must be performed on an annual basis by a 403(b) Plan sponsored by a Code Section 501(c)(3) organization:

Nondiscrimination Test	Description
Code Section 410(b) – Minimum Coverage	The minimum coverage rules require a 403(b) Plan to cover a cross-section of Employees
Code Section 401(a)(4) – General non-discrimination	These tests ensure that contributions and benefits do not discriminate in favor of the HCEs in terms of benefits, rights and features, and in amounts
Actual Contribution Percentage ("ACP") Test	This test ensures that the amount of Matching Contributions made to a 403(b) Plan do not discriminate in favor of HCEs

Special Note: A 403(b) Plan may be required to perform other nondiscrimination testing as needed and contingent upon plan design.

C. Minimum Coverage Requirements under Code Section 410(b)

The minimum coverage requirements of Code Section 410(b) require that the classification of Employees covered by a 403(b) Plan does not discriminate in favor of HCEs. Some 403(b) Plans automatically meet the minimum coverage requirements. Other 403(b) Plans will need to pass one of two minimum coverage tests – the ratio percentage test or the average benefit test.

The minimum coverage requirements are complex. If your 403(b) Plan does not permit a certain classification of Employees to participate or if your organization is a member of a controlled group of organizations and some of the organizations do not participate in your 403(b) Plan, you need to be familiar with the minimum coverage requirements. The following is a simplified explanation of the requirements to provide you with general information that you may need when discussing your 403(b) Plan's specific requirements with your tax advisor.

<u>Ratio Percentage Test</u>

The ratio percentage test requires a 403(b) Plan to benefit a percentage of NHCEs that is at least 70% of the percentage of HCEs benefiting under the 403(b) Plan.

<u>Average Benefit Test</u>

If a 403(b) Plan cannot pass the ratio percentage test, then the 403(b) Plan must pass the average benefit test. The average benefit test is a two-part test – a nondiscriminatory classification test and the average benefit percentage test. Both tests must be satisfied in order to pass the average benefit test.

<u>Nondiscriminatory classification test</u>: The classification of Employees benefiting must be a "reasonable" classification that does not discriminate in favor of HCEs. A reasonable classification is based on all of the facts and circumstances, such as whether the classification is made under objective business criteria such as job categories, method of compensation and geographic location.

<u>Average Benefit Percentage Test</u>: This test requires that the average benefit percentage of NHCEs be at least 70% of the average benefit percentage of the HCEs.

D. General Nondiscrimination under Section 401(a)(4)

Section 401(a)(4) requires that a 403(b) Plan cannot discriminate in favor of HCEs with respect to benefits, rights and features, and amounts. Compliance must be demonstrated by testing the 403(b) Plan. This type of testing is very complex and too vast to include in this guide. However, there are two types of contribution formulas which, if adopted by the Employer, no testing 401(a)(4) general testing is required.

- The formula provides the same contribution percentage or a flat dollar amount for all employees, or one that provides higher contributions for employees earning over a dollar break point that complies with permitted disparity rules under Code Section 401(l), and
- The formula provides contributions based on a uniform points formula taking into account the age, service and/or compensation of the employee, provided that the average contribution (as a percentage of compensation) for all NHCEs is at least as great as the average contribution for all HCEs.

E. Actual Contribution Percentage ("ACP") Discrimination Test

The amount of matching contributions made to a 403(b) Plan cannot discriminate in favor of HCEs. To ensure that Matching (including contributions that match Age 50 Plus Catch-Up Contributions) Contributions are not discriminatory, the 403(b) Plan must satisfy the Actual Contribution Percentage ("ACP") test.

The Code provides two methods of applying the ACP test, a *prior year testing method* and the *current year testing method*. A 403(b) Plan must specify which of these methods it will use in applying the ACP test.

Prior year testing method: under this method, Matching Contributions will satisfy the ACP test if:

- The actual contribution ratio ("ACR") for HCEs for the **current Plan Year** does not exceed the ACR of the NHCEs for the **preceding Plan Year**, multiplied by 1.25, or
- The lesser of (1) the ACR for HCEs for the **current Plan Year** does not exceed by more than 2% of the NHCEs for the **preceding Plan Year** or (2) the ACR for HCEs for the **current Plan Year** is not more than the ACR of the NHCEs for the **preceding Plan Year** multiplied by 2.

Current year testing method: under this method, the ACR of NHCEs for the **current Plan Year** are compared with the ACR of HCEs for the **current Plan Year**. Under this method, Matching Contributions will satisfy the ACP test if:

- The ACR for HCEs for the current Plan Year does not exceed the ACR for NHCEs for the **current Plan Year**, multiplied by 1.25, or

- The lesser of (1) the ACR for HCEs for the **current Plan Year** does not exceed by more than 2% that of NHCEs for the **current Plan Year** or (2) the ACR for HCEs for the current Plan Year is not more than the ACR of the NHCEs for the **current Plan Year** multiplied by 2.

A 403(b) Plan may correct a failed ACP test by forfeiting non-vested contributions, recharacterizing Salary Reduction or Roth 403(b) Contributions, distributing excess contributions and in certain circumstances, the Employer may make an extra contribution to the NHCEs in the amount needed to satisfy the tests.

SECTION IV – DISTRIBUTIONS

A. Annuity Contracts Under Code Section 403(b)(1)

Salary Reduction Contributions made to an Annuity Contract after December 31, 1988 may not be paid or made available before a distributable event occurs. Such amounts may be distributed to a Participant (or, if applicable, the Beneficiary) if the Participant:

- attains age 59 1/2,
- has a severance from employment,
- dies,
- becomes disabled, or
- encounters financial hardship. Hardship withdrawals are limited to the withdrawal of Salary Reduction Contributions and income on such amounts cannot be withdrawn.

Salary Reduction Contributions made to an Annuity Contract and corresponding earnings as of December 31, 1988 are "grandfathered" and these amounts may be distributed to a Participant without a distributable event unless the 403(b) Plan has restrictions on the distribution.

Employer and Matching Contributions made to an Annuity Contract issued after December 31, 2008, may only be distributed upon:

- Severance from employment or
- The prior occurrence of an event (as defined in the 403(b) Plan document), including after:
    - Fixed number of years
    - Reaching a stated age
    - Disability

However, if Employer contributions are not segregated from all other contributions made to the 403(b) Plan, amounts could be distributed only at the later of the occurrence of a distributable event using the Salary Reduction Contribution rules or a distributable event using the non-Salary Reduction Contribution rules.

Employer and Matching Contributions made to an Annuity Contract issued before January 1, 2009, are "grandfathered" and withdrawal restrictions to not apply unless the 403(b) Plan has restrictions on the distribution.

B. Custodial Accounts Under Code Section 403(b)(7)

All amounts in Custodial Accounts are subject to withdrawal restrictions. Amounts may not be paid or made available before a distributable event occurs. Such amounts may be distributed to a Participant (or, if applicable, the Beneficiary) if the Participant:

- attains age 59 1/2,
- has a severance from employment,
- dies,
- becomes disabled, or
- in the case of Salary Reduction Contributions, encounters financial hardship. Amounts available for a hardship consist of Salary Reduction Contributions, any pre-1989 earnings attributable to Salary Reduction Contributions made on or before December 31, 1988, and any other amounts contributed to the Custodial Account on or before December 31, 1988.

For example:

Susan Fields, an administrator at a hospital, has $50,000 in a Custodial Account under her hospital's 403(b) Plan:

1. *$25,000 is cumulative Salary Reduction Contributions,*
2. *$5,000 is pre-1989 earnings attributable to Salary Reduction Contributions made on or before December 31, 1988,*
3. *$12,000 is post-1989 earnings attributable to cumulative Salary Reduction Contributions,*
4. *$3,000 is Matching Contributions made on or before December 31, 1988,*
5. *$3,000 is Matching Contributions made after December 31, 1988, and*
6. *$2,000 is earnings attributable to all Matching Contributions.*

Ms. Fields is permitted to take up to $33,000 as a hardship distribution (i.e., the total of 1, 2 and 4).

C. Roth 403(b) Contributions

Distributions of Roth 403(b) Contributions will be tax-free for federal income tax purposes if they are "qualified distributions." To be a qualified distribution, the following criteria must be met:

- The funds must be held for a 5-year holding period, AND
- The distribution must be due to attainment of age 59 1/2, death, or disability.

In general, the 5-year holding period begins on the first day of the calendar year for which the Employee first makes Roth 403(b) Contributions to the 403(b) Plan and ends when 5 consecutive taxable years have been completed.

If a Participant rolls over designated Roth amounts from either a Roth 401(k) or a Roth 403(b), the following rules apply:

- If a *direct* rollover is made from a designated Roth account to a 403(b) Plan, the 5-year holding period begins on the first day of the calendar year for which the Employee first made designated Roth contributions to the prior plan.

- If an *indirect* rollover is made from a designated Roth account to a 403(b) Plan, the 5-year holding period begins on the first day of the calendar year that the employee makes a designated Roth contribution to receiving 403(b) Plan.

D. Types of Distributions

A 403(b) Plan may provide for one or a number of distribution options. The common distribution options are:

- Lump sum distribution
- Immediate or deferred annuity
- Direct rollover to an Eligible Rollover Plan
- Deferred distribution
- Periodic payments from the 403(b) Plan
- Combination of these options

In addition, if a Participant dies, a spousal beneficiary may continue the account subject to the minimum distribution rules (see Section IV-G). However, no additional contributions may be made to the account.

E. Severance from Employment

A 403(b) Plan may allow a Participant who has terminated employment with the Employer or has "retired" from the Employer to receive his vested account balance upon severance from employment in accordance with the 403(b) Plan rules.

Code Section 403(b) Plans must allow for portability of funds to an Eligible Rollover Plan (provided that the Plan accepts the funds) upon severance from employment. However, a 403(b) Plan may delay payments to Participants until the Participant attains a certain age or permit Participants to delay receiving payments until a later date, subject to the RMD rules.

F. Required Minimum Distribution ("RMD") under Code Section 401(a)(9)

A 403(b) Plan may allow a terminated Participant to defer the distribution of his account balance until a later date. The Code requires that payment of benefits must begin no later than the April 1 of the calendar year following the later of the year in which the Participant reaches age 70 1/2 or retires.

The amount of the RMD is based on the Participant's account balance (as of the previous December 31) divided by the applicable life expectancy. Generally, there is a single table that is used to determine a Participant's applicable life expectancy that does not take into account a Participant's designated Beneficiary unless the Participant's sole primary beneficiary is a spouse whose age difference is more than 10 years of the age of the Participant. In this case, the applicable life expectancy is the Participant's and spouse's joint and last survivor life expectancy. Life expectancies are determined under tables provided by the IRS.

Pre-87 Account Balance

For RMD purposes, if the issuer or custodian keeps the records necessary to identify the pre-1987 account balance and, if the 403(b) Plan so provides, the minimum distribution commencement requirements apply only to benefits that accrue after December 31, 1986, including the income on pre-1987 contributions. Generally, pre-1987 contributions and earnings must begin to be distributed no later than the April 1 of the calendar year in which the Participant attains age 75 or retires, whichever is later. If records are not kept, the entire account balance is subject to the RMD requirements. Please note that, if provided with the information, ING may keep records necessary to identify a Participant's pre-1987 account balance.

G. Death

Distributions, upon death of a Participant, are made to a designated Beneficiary. In general, if a Participant in a 403(b) Plan that is subject to ERISA is married, the designated Beneficiary must be the spouse unless the spouse consents to an alternative Beneficiary.

The 403(b) Plan provides for distribution options upon the death of a Participant and may require the immediate distribution of death benefits. Generally, a 403(b) Plan will offer various distribution options, although regulations require death benefits to be distributed within a certain period of time. The timeframe depends upon whether the Beneficiary is a spouse or non-spouse and whether RMD payments began prior to the Participant's death.

If RMD payments have not begun upon a Participant's death, payments must be distributed to a designated Beneficiary no later than:

- **Designated Beneficiary Rule:** Payment of the deceased Participant's account balance must begin no later than December 31 of the calendar year immediately following the calendar year of the Participant's death, payable over a period not to exceed the life expectancy of the Beneficiary.

- **Designated Beneficiary is Surviving Spouse**: If the designated Beneficiary is the surviving spouse, the payments to the spouse must begin by the later of:

- December 31 of the calendar year immediately following the calendar year in which the Employee dies, or
- December 31 of the calendar year in which the Employee would have attained age 70 1/2.

The payments to the surviving spouse must be made over a period not to exceed the spouse's life expectancy.

In the alternative, a spouse or non-spouse Beneficiary may elect to have death benefits paid under the five-year rule.

- **Five-year rule:** The deceased Participant's entire account balance must be distributed to a designated Beneficiary no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's death.

If RMD payments have begun to be made to a Participant prior to death, payments of the deceased Participant's account balance must begin to be made to a Beneficiary (regardless of whether the Beneficiary is a spouse or non-spouse) beginning no later than December 31st of the calendar year immediately following the calendar year of the Participant's death and must be paid over the Beneficiary's life expectancy.

RMD payments made over a Beneficiary's life expectancy, whether a Participant dies before or after RMD payments have begun, are made as follows:

- <u>Non-spouse Beneficiary</u>: for years after the year of the Participant's death, the distribution period is generally the remaining life expectancy of the designated Beneficiary. The Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reducing the life expectancy factor by one for each subsequent year.

- <u>Spousal Beneficiary</u>: for years after the year of the Participant's death, the distribution period during the surviving spouse's life is the spouse's single life expectancy. For years after the year of the surviving spouse's death, the distribution period is the spouse's life expectancy calculated in the year of death, reducing the life expectancy factor by one for each subsequent year.

- <u>No designated Beneficiary (e.g., Participant's estate or a trust that is not being "looked through" is the Beneficiary)</u>: as of the end of the year after the Participant's death there is no life expectancy on which to base the payments and therefore, the distribution period is the Participant's life expectancy calculated in the year of death, reduced by one for each subsequent year.

H. Trust as Beneficiary

Only an individual may be a designated Beneficiary for purposes of determining the distribution period under Code Section 401(a)(9). Consequently, a trust itself may not be the designated Beneficiary even though the trust is named as a Beneficiary. However, if the trust is being "looked through" distributions made to the trust will be treated as paid to the Beneficiaries of the trust if certain conditions are met. Designated Beneficiaries under a trust may be treated as a 403(b) Plan Participant's Beneficiaries, if by the *later* of (1) the date on which the trust is named as a Beneficiary of the Participant, or (2) the Participant's minimum distribution required beginning date (i.e., RMD date):

- The trust is a valid trust under state law,
- The trust is irrevocable or will become irrevocable upon the death of the Participant,
- The Beneficiaries of the trust are identifiable from the trust instrument, *and*
- Certain documentation described in the regulations has been provided to the 403(b) Plan.

If, as of any date on or after the Participant's RMD date, a trust is the named Beneficiary and the requirements are not met, the Participant will be treated as not having a designated Beneficiary. Consequently, distribution must be made over the Participant's life (or over the period which would have been the Participant's remaining life expectancy determined as if no Beneficiary had been designated as of the Participant's RMD date).

If an RMD commences before death and the trust is being looked through so that the Participant's sole primary beneficiary is the spouse, whose age difference is more than 10 years of the age of the Participant:

- The Participant must provide to the 403(b) Plan (or the party who tracks Beneficiary information on behalf of the Plan) a copy of the trust instrument and agrees to provide the 403(b) Plan with any subsequent amendments, *or*

- The Participant must:

    - Provide to the 403(b) Plan a list of all of the beneficiaries under the trust, indicating that the Participant's spouse is the sole primary beneficiary and the spouse's age is more than 10 years of the age of the Participant,
    - Certify that the list of beneficiaries is correct and complete and that all requirements are satisfied,
    - Agree to provide corrected certifications to the extent that an amendment changes any information previously certified, and
    - Agree to provide a copy of the trust instrument to the 403(b) Plan upon request.

If this is a RMD after death:

By the October 31st of the year following the year of the Participant's death, the trustee of the trust must either:

- Provide the 403(b) Plan with:

  - a final list of all of the beneficiaries of the trust as of the date of death,
  - a certification that, to the best of the trustee's knowledge, this list is correct and complete and that all requirements are satisfied as of the date of death, and
  - agreement to provide a copy of the trust instrument to the 403(b) Plan upon request, *or*

- Provide the 403(b) Plan with a copy of the actual trust.

I. Disability

A 403(b) Plan may permit a disabled Participant to receive a distribution of 100% of his account balance. An individual is considered *disabled*, under Code Section 72(m)(7), if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or be of a long-continued and indefinite duration.

J. Hardship Withdrawals

As explained above, hardship withdrawals under a 403(b) Plan may be permitted from certain types of contributions. The IRS regulations set forth a two-part test to determine whether a Participant has a hardship:

- A hardship must be for an immediate and heavy financial need, and
- The withdrawal must be only to the extent necessary to satisfy the financial need.

Regulations permit both the "**safe-harbor**" and the "**facts and circumstances**" methods to be used to determine hardship.

<u>Safe-harbor method</u>: Under the safe-harbor method the circumstances that are considered an "immediate and heavy financial need" are limited to:

- Certain medical expenses incurred by a Participant, the Participant's spouse or dependent, or if permitted by the Plan, a primary Beneficiary designated by the Participant under the Plan;
- The purchase (excluding mortgage payments) of a Participant's principal residence;

- Payment of college tuition, related educational fees, and room and board expenses, for the next 12 months for a Participant, the Participant's spouse, children or dependents or, if permitted by the Plan, a primary Beneficiary designated by the Participant under Plan;
- Payments necessary to prevent the eviction from the Participant's principal residence or foreclosure on the mortgage on that residence;
- Payments for burial or funeral expenses for a Participant's deceased parent, spouse, children or dependents, or if permitted by the Plan, a primary Beneficiary designated by the Participant under Plan; or
- Certain expenses for the repair of damage to the Participant's principal residence.

To satisfy the requirement that the withdrawal must only be to the extent necessary to satisfy the financial need, the following is required:

- The distribution cannot exceed the amount necessary to satisfy to meet the need,
- The Participant must take all distributions, other than hardship distributions and all nontaxable loans available under all 403(b) Plans and retirement plans of the Employer, and
- The Participant is prohibited from making any Salary Reduction and Roth 403(b) Contributions to the 403(b) Plan or any other plan of the Employer for 6 months after receiving the hardship distribution.

<u>Facts and circumstances method</u>: Under the facts and circumstances method, the Employer must determine whether an immediate and heavy financial need exists based on all relevant facts and circumstances. An Employer may make this determination based on a "general standard" or rely on the Participant's written representation that the need cannot be met by the following:

- through reimbursement or Compensation by insurance or otherwise,
- stopping Salary Reduction or Roth 403(b) Contributions,
- liquidating the Participant's, spouse's or minor children's other reasonable assets available without causing further immediate and heavy need, or
- taking other distributions or nontaxable Loans from this 403(b) Plan or any other retirement plan by borrowing from commercial sources on reasonable commercial terms.

The general standard states that a retirement plan needs to establish nondiscriminatory guidelines for the circumstances for which a hardship withdrawal will be allowed. The hardship may be any reason as long as the surrounding facts and circumstances support an immediate and heavy financial need.

The regulations also require that a withdrawal will be made only to the extent necessary as grossed up for applicable taxes attributable to the hardship distribution to relieve the financial need if the need cannot be met through any other resources that are reasonably available to the Participant.

K. Rollovers and Federal Mandatory 20% Tax Withholding

If a Participant receives a distribution that is eligible for rollover, 20% federal income tax withholding is automatically withheld from the distribution. A distribution that is eligible for a rollover is any distribution to a Participant under a 403(b) Plan except:

- An RMD (See Section IV-F),
- A distribution that is one of a series of substantially equal periodic payments (at least annually) made (a) over the life or life expectancy of the Participant or over the joint lives or joint life expectancy of the Participant and the Participant's Beneficiary or (b) over a specified period of ten or more years,
- The portion of a distribution that is not included in gross income (e.g., any after-tax amounts),
- A distribution of any type of contribution on account of hardship, or
- A corrective distribution.

A Participant may avoid the 20% mandatory federal income tax withholding by electing a direct rollover distribution to an Eligible Rollover Plan.

A **direct rollover** is a direct transfer from a 403(b) Plan to an Eligible Rollover Plan. In a direct rollover, the check is payable to the financial institution issuing the other Eligible Rollover Plan for the benefit of the Participant and there is no tax withholding.

An **indirect rollover** occurs when a Participant receives a check for the distribution and makes a rollover within 60 days of receipt of the check. The mandatory 20% federal income tax withholding applies to any distribution made directly to a Participant. Even though taxes have been withheld, the Participant may contribute the amount withheld from the distribution in federal income tax withholding as part of a rollover to the subsequent Eligible Rollover Plan. If the Participant does not replace the federal income tax withheld, he will be taxed on this amount.

Depending on the Participant's particular tax circumstances, when the Participant files his federal income tax return, he may be eligible to receive a refund of the federal income tax withheld from the distribution.

A spouse who receives a death benefit distribution is also eligible to rollover the distribution to an Eligible Rollover Plan. Likewise, an alternate payee who is a former spouse and who receives a distribution is eligible to rollover the distribution to an Eligible Rollover Plan.

Non-spouse beneficiaries can roll their distributions to an inherited IRA instead of taking a lump-sym payment. The inherited IRA must satisfy the required minimum distribution rules.

In addition, a Participant or spousal Beneficiary is permitted to roll over eligible amounts from 403(b) Plan directly to a Roth IRA subject to the current Roth IRA conversion rules. The individual will need to pay income taxes on the rollover/conversion, but not the IRS 10% premature distribution penalty tax. Note that rollovers made between 2008 and 2010 (when the adjusted gross income cap for conversions to Roth IRAs is lifted) will only be permissible if the individual does not exceed the adjusted gross income limits.

L. Contract to Contract Exchanges

A contract to contract exchange is a transfer among vendors' funding vehicles within the same 403(b) Plan, subject to the following rules:

- The written 403(b) Plan must provide for the transfer;
- The benefit transferred must be equal to the benefit received by the subsequent vendor (excluding any applicable contractual charges); and
- The distribution rules of the receiving vendor's funding vehicle must be at least as stringent as the prior vendor's funding vehicle;
- In addition, the Employer and vendor must agree to share certain participant information on an ongoing basis, including:
    - whether and when a severance of employment has occurred to determine whether the Participant has a distributable event
    - information on whether a Participant is entitled to a Loan; and
    - information concerning whether the hardship withdrawal rules have been satisfied.

M. Plan-to-Plan Transfers

A plan-to-plan transfer is a transfer among different employers' 403(b) Plans, subject to the following rules:

- The individual whose 403(b) account is being transferred must be an employee or former employee of the employer of the receiving 403(b) Plan;
- Both 403(b) Plans must provide for the transfer in their plan document;
- The benefit transferred must be equal to the benefit received by the subsequent employer's plan (excluding any applicable contract charges);
- The distribution rules of the receiving employer's 403(b) Plan must be at least as stringent as the prior employer's 403(b) Plan; and

If the transfer involved only a portion of the 403(b) account, the receiving 403(b) Plan needs to be able to account for which contributions are Employee contributions and which are Employer contributions.

N. Federal Excise Tax for Premature Distribution

In general, an IRS 10% premature distribution penalty tax applies to the taxable portion of a distribution if a Participant receives a distribution before reaching age 59 1/2.

The IRS 10% premature distribution penalty tax does **not apply** if the distribution is made on account of one of the following reasons:

- Death of the Participant,
- The Participant becomes disabled, as defined by IRS regulations,
- If payments are made in at least annual installments over the life (or life expectancy) of the Participant or the joint lives of the Participant and the designated Beneficiary after separation from service,
- Separation from service on or after attainment of age 55,
- If payments are made for medical care, but not in excess of amounts allowable as a deduction under regulations,
- Corrective distributions of Excess Contributions and Excess Deferrals. (See Sections II-M and N),
- If payments are made to an alternate payee pursuant to a QDRO. (See Section VI-A), or
- Made on account of payment of a federal levy for collection of taxes.

O. Loans

An Employer may offer Loans to Participants under a 403(b) Plan. Loan programs give Participants access to certain amounts of money in their accounts during active employment without incurring tax liability if the Loans are made under certain guidelines. Under a Loan provision, Participants may be allowed to borrow from, and repay Loans directly, to their own accounts. Participants will be required to repay the Loans with interest. The interest is paid from after-tax dollars, is nondeductible, and will be subject to tax when finally withdrawn from the 403(b) Plan. A provision permitting Loans must be provided in the 403(b) Plan document and the Plan must establish written Loan guidelines that outlines the specific rules governing the Loans. The Code and ERISA, if applicable, govern Loans made to Participants under a 403(b) Plan.

In general, loans must:

- Be made available to all Participants on a reasonably equivalent basis. Regulations require that Loans be made available to all Participants without regard to race, color, religion, sex, age or national origin. Loans cannot generally be made available to HCEs on better terms or in a greater amount or percentage than for other Participants. This rule does **not** apply to Participants who are former Employees, retirees, Beneficiaries or alternate payees under a QDRO.

- Be made in accordance with specific provisions that are set forth in the 403(b) Plan.
- Bear a reasonable rate of interest. The rate of interest on a Loan must be "commensurate with the interest rates charged by persons in the business of lending money for Loans which would be made under similar circumstances." Many 403(b) Plan sponsors use a rate between prime rate and prime plus two points. Others use standard bank rates for secured Loans.
- Be adequately secured. Up to 50% of the vested value of a Participant's account balances can be used to secure a loan.
- The Loan must be set forth in a legally enforceable agreement that must specify the amount of the Loan, the term of the Loan and the repayment schedule.

Maximum and Minimum Loan Amounts

Loans must be the *lesser of* (a) $50,000 reduced by the Participant's highest outstanding Loan balance during the last 12 months or (b) 50% of the vested account balance. The IRS rationale is that the 50% cap is necessary to ensure that the program meets its primary purpose of providing retirement income.

An Employer can limit loans to a threshold dollar amount. The IRS has approved a safe harbor minimum threshold of up to $1,000.

Loan Repayment Requirements

Loans must be repaid in level payments at least as frequently as quarterly within 5 years. The exception is if the Participant is buying or building his primary residence, then the program can allow a repayment period of more than 5 years.

Truth in Lending Disclosures

If a program makes 25 or more Plan Loans in the current or prior calendar year (or 5 or more Loans secured by a dwelling), it must make federal truth-in-lending disclosures.

P. Spousal Consent

A 403(b) Plan that is subject to ERISA must comply with the Qualified Joint and Survivor Annuity ("QJSA") and Qualified Pre-retirement Survivor Annuity ("QPSA") requirements. In order not to be subject to these rules:

- The Plan must provide that upon death, the Participant's entire vested account balance is payable to the Participant's surviving spouse unless the surviving spouse consents to the designation of another Beneficiary.
- The Participant does not elect payments in the form of a life annuity. (The QJSA/QPSA requirement does not apply at all if the Plan does not offer life annuities as payment options.)

- No amounts transferred from another Plan were subject to the QJSA and QPSA requirements.

If amounts subject to the QJSA and QPSA rules are transferred into the Plan, these amounts remain subject to these rules.

In addition, a Plan may choose to be subject to the QJSA and the QPSA requirements.

<u>Qualified Joint and Survivor Annuity</u>: a QJSA is an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse. The amount of the survivor annuity cannot be less than 50% and not more than 100% of the amount of the annuity that is payable during the joint lives of the Participant and spouse.

<u>Qualified Preretirement Survivor Annuity</u>: a QPSA is an immediate annuity for the life of the surviving spouse purchased with not less than 50% of the value of the Participant's account balance determined as of the date of death.

If a Plan is subject to the QJSA or QPSA requirements, the Plan Administrator must provide each Participant (vested, non-vested, married or unmarried) with a written explanation of the following:

- Terms and conditions of the QJSA or QPSA.
- The Participant's right to make and the effect of an election to waive the QJSA or QPSA.
- The requirement that the spouse must to consent to the Participant's waiver. The spouse's consent must be in writing, must acknowledge the effect of a Participant's waiver, and must be witnessed by a 403(b) Plan representative or notary public. The consent must specify the nonspouse Beneficiaries who will receive benefits upon the Participant's death. It must also specify, in the case of a Participant's waiver of a QJSA, the particular optional form of benefit selected by the Participant.
- The Participant's right to make and the effect of, a revocation of a previously made election to waive the QJSA or QPSA, and
- A description of the condition and other material features of the Plan's other forms of benefit and their relative values.

<u>Waiver of the QJSA</u>

An election to waive the QJSA form of benefit must be made no earlier than 180 days before the date on which the benefit is payable.

Waiver of the QPSA

In general, a Participant may waive the QPSA only after the first day of the Plan Year in which the Participant reaches age 35. A Plan may allow a Participant to waive the QPSA before then if that waiver becomes invalid at the beginning of the Plan Year in which the Participant reaches age 35. A Participant must then execute a new waiver in order to avoid the QPSA requirement. A Participant who separates from service before age 35 is allowed to waive the QPSA any time after the date of separation.

Qualified Optional Survivor Annuity ("QOSA")

A qualified optional survivor annuity is an annuity for the life of the Participant with a survivor annuity for the life of the spouse equal to a percentage of the amount payable during the joint lives of the Participant and the spouse. The waiver rules for an QOSA following the QJSA waiver rules.

The survivor portion of the qualified optional survivor annuity is determined by the 403(b) Plan's QJSA benefit. If the QJSA provides a survivor benefit of less than 75%, the QOSA must have a survivor benefit of 75%. If the QJSA provides a survivor benefit of at least 75%, the QOSA must have a survivor benefit of 50% of the annuity payable during the Participant's lifetime.

Q. Automatic Rollovers

If a 403(b) Plan provides for an automatic cash out upon a Participant's severance from employment when the Participant fails to elect a distribution method, vested amounts in excess of $1,000 but less than or equal to $5,000 (not counting amounts held in rollover accounts) are subject to automatic rollover to an individual retirement annuity or individual retirement account.

SECTION V – ERISA CONSIDERATIONS

A. 403(b) Plan that are subject to ERISA

All 403(b) Plans are subject to Title I of ERISA unless an exemption applies. There are three scenarios by which a 403(b) Plan can be exempt from ERISA, i.e., the 403(b) Plan is maintained by 1) a government, 2) a church or, 3) is administered in accordance with a safe harbor available for 403(b) Plans that maintain limited Employer involvement.

For those 403(b) Plans sponsored by non-governmental/non-church organizations that are tax-exempt under IRC Section 501(c)(3), a safe harbor exemption may apply if the Employer maintains limited employer involvement by satisfying the following criteria as published by the Department of Labor under Regulation Section 2510.3-2(f):

- Participation is voluntary for Employees (e.g., no negative election or automatic enrollment provisions).
- It is a salary reduction-only 403(b) Plan – that is, the only contributions permitted under the Plan are Salary Reduction and Roth 403(b) contributions. No Employer Contributions are allowed.
- All rights under the 403(b) Plan are enforceable only by the Employee, Beneficiary or authorized representative of the Employee or Beneficiary.
- There is limited Employer involvement in the 403(b) Plan. Limited involvement for an Employer means permitting providers to publicize their products, requesting and summarizing information regarding the available funds or products, collecting salary reduction contributions and forwarding the contributions to the provider(s), signing a group annuity contract with a provider and limiting the number of funds and products under the 403(b) Plan. However, the Employer must provide participants with a reasonable choice of investments. According to the DOL, an Employer may limit the number of providers to which it will forward salary reduction contributions as long as employees may transfer all or a part of their funds to any provider whose annuity contract or custodial account complies with the Code requirements and who is willing to enter into an information sharing agreement with the Employer.
- The Employer cannot receive compensation for performance of its duties under the 403(b) Plan other than compensation to cover reasonable expenses.

In response to the requirement in the final 403(b) regulations that an Employer must be more involved in operating its 403(b) Plan, the DOL released Field Assistance Bulletin (FAB) No. 2007-02 which provides a roadmap for those Employers who wish to continue to maintain their 403(b) Plan under the safe harbor.

The FAB makes clear that the ultimate determination of whether or not a 403(b) Plan meets the non-ERISA safe harbor depends on individual facts and circumstances. As a result, the DOL will make an assessment of such a Plan's non-ERISA status on a case-by-case basis. However, the DOL notes that the following activities would be considered non-discretionary determinations of the Employer and thus be consistent with the requirements of the safe harbor:

- Conduct administrative reviews of the program's structure and operation;
- Fashion and propose corrections;
- Develop improvements to the 403(b) Plan's administrative processes that will obviate the recurrence of tax defects;
- Obtain the cooperation of independent entities needed to correct tax defects;
- Keep records of its activities;
- Certify facts related to an Employee known by the Employer to a funding vehicle provider;
- Adopt a written 403(b) Plan; and
- Periodic review of documents making up the 403(b) Plan for conflicting provisions and compliance with the tax rules.

However, the following Employer activities would cause a 403(b) Plan to fall outside of the safe harbor, causing it to be considered subject to ERISA:

- Authorize plan-to-plan transfers;
- Process distributions;
- Satisfy applicable QJSA requirements;
- Determine eligibility for hardship distributions, QDROs and loans; and
- Negotiate with funding vehicle providers to change the terms of their products for purposes other than compliance with the Code and regulations.

B. ERISA Requirements for Fiduciaries

If a 403(b) Plan is subject to ERISA, there are stringent duties and requirements placed on Plan fiduciaries. A fiduciary is a person who exercises discretionary control over the management of the 403(b) Plan or its assets or who is paid to give investment advice regarding Plan assets. Service providers such as insurance companies, actuaries, attorneys, accountants, brokers and recordkeepers who are performing administrative functions at the direction of the Plan fiduciary are <u>not</u> fiduciaries because they are not considered to be exercising discretion or to be responsible for the management of the 403(b) Plan or its assets. At least one fiduciary must have the ultimate authority to control and manage the operation and administration of the Plan (usually the Plan Administrator).

A fiduciary must:

- Operate the 403(b) Plan for the exclusive benefit of Participants and Beneficiaries, and control expenses of administration,
- make decisions with the level of care, skill, and diligence that a prudent person familiar with retirement plans would use under the same circumstances,
- diversify investments to minimize the risk of large losses, unless it is clearly prudent not to do so,
- hold 403(b) Plan assets within the jurisdiction of U.S. courts,
- act in accordance with the terms of the written Plan documents unless the documents are in conflict with ERISA, and
- not engage in Prohibited Transactions.

The Plan Administrator is responsible for:

- determining eligibility for participation in the 403(b) Plan,
- determination of benefits,
- approval or denial of claims,
- distribution of summary plan descriptions, summary annual reports and statement of vested benefits,
- filing Form 5500 and other required filings,
- engaging an independent qualified public accountant to audit the financial records of the program,
- maintaining the 403(b) Plan records for at least six years,
- determining if a domestic relations order is a QDRO, and
- providing written explanation of rollover treatment to Participants.

A 403(b) Plan fiduciary who breaches his responsibilities may be subject to both criminal and civil penalties.

C. Investment of Plan Assets under ERISA Section 404(c)

One of the most important fiduciary responsibilities is investment of 403(b) Plan assets. Although it is not required, a fiduciary can shift the responsibility for investment losses onto Participants by electing to operate the Plan under ERISA Section 404(c). Under DOL regulations, fiduciary protection is only available in a Participant-directed Plan that meets the following requirements:

- Permits Participants to choose from a broad range of investment alternatives. If the Employer designates certain investments to satisfy the broad range requirement, at least three pooled or core funds must be selected. The broad range requirement is satisfied if the following conditions are met:

    - Participants are given a reasonable opportunity to affect the level of return and degree of risk to which their accounts are subject.
    - Participants are given the opportunity to choose from at least three investment alternatives which (a) are diversified, (b) are materially different in terms of risk and return characteristics, (c) enable Participants to achieve a portfolio with aggregate risk and return characteristics at any point within a range normally appropriate for the Participants, and (d) when combined with other alternatives, tend to minimize through diversification the overall risk of loss.
    - Participants must have the opportunity to diversify so as to minimize the risk of large losses, taking into account the nature of the Plan and the size of the Participants' accounts.

- Provides an opportunity for Participants to exercise control over the assets in their accounts as follows:

    - Participants are permitted to make transfers among investment alternatives with a frequency commensurate with the volatility of the investments. If three core funds are offered to satisfy the broad range requirement, a transfer option must be offered at least quarterly for all three core funds.

    - Participants are provided with sufficient information to permit informed investment decision-making, including:

        - an explanation that the Plan is designed to comply with Section 404(c) and that Plan fiduciaries may be relieved of liability for any losses that are the direct result of the Participants' investment instructions,
        - a description of the available investment alternatives,
        - the procedures for giving investment instructions, including limitations on transfers or any restrictions on the exercise of voting, tender or similar rights and if such rights are passed through to the Participants, all materials relating to the exercise of such rights,
        - the identification of any designated investment manager,
        - a description of any transaction fees associated with a Participant's account,
        - the name, address and telephone number of the fiduciary responsible for providing information to Participants,
        - if an investment is a registered securities product, a copy of the most recent prospectus, and
        - if the Plan permits investment in employer securities, a description of the procedures for maintaining confidentiality of transactions as well as the name or title, address and telephone number of the fiduciary responsible for monitoring compliance with these procedures.

- Participants can give investment instructions to an identified Plan fiduciary who is obligated to comply with those instructions.

In addition to the automatic disclosure rules, fiduciaries must supply certain information and documentation upon the following upon request of a Participant.

Under the Pension Protection Act of 2006, ERISA was amended to provide a safe harbor for Plan fiduciaries investing Participant assets in certain types of default investment alternatives in the absence of Participant investment direction. It is not necessary for a 403(b) Plan to be an ERISA Section 404(c) plan in order for the fiduciary to obtain the relief accorded by the final regulation, which was effective December 24, 2007.

D. Bonding

Every fiduciary of a 403(b) Plan who handles or has authority to handle Plan assets must be bonded. The bond coverage must be at least 10% of the Plan assets handled by the bonded individual. The bond must not be for less than $1,000 and need not be for more than $500,000.

E. 403(b) Written Plan Document

A 403(b) Plan sponsor is required to maintain a "written plan" and operate the 403(b) Plan in accordance with its terms. The written plan must contain all material terms, including eligibility, benefits, applicable limits, contracts available under the 403(b) Plan, and the time and form under which benefit distributions would be made. The written plan may contain certain optional features not required under section 403(b), such as hardship, loans, contract to contract exchanges, plan-to-plan transfers, and acceptance of rollovers into the 403(b) Plan.

According to the IRS, the "written plan" may be either a Plan document or a collection of documents (including the contracts, Salary Reduction Agreements, employee handbooks, etc). However, in the preamble to the final 403(b) regulations, the IRS strongly suggests that a 403(b) Plan be operated under a single plan document, especially in a multiple vendor environment.

F. IRS 403(b) Plan Qualification

Currently the IRS does not currently have a determination letter program with respect to the tax-qualified status of 403(b) Plans. If an Employer adopts the IRS model provisions on a word-for-word or on a substantially similar basis, the IRS will deem that 403(b) Plan to have the equivalent of a favorable private letter ruling from the IRS. Alternatively, a sponsor of a 403(b) arrangement that does not reflect the IRS model provisions may apply to the National Office of the IRS for a private letter ruling with respect to the Plan. However, the majority of the 403(b) Plans operate without obtaining a private letter ruling.

G. Plan Amendments

An Employer may amend its 403(b) Plan document for either changes required by law or for business reasons. In the absence of published guidance, many commentators believe that a 403(b) Plan must be amended to include a provision prior to the end of the year in which the provision would be effective. In the alternative, there are other commentators who believe that a 403(b) Plan must be amended to include a provision prior the effective date of such provision. Ultimately, there is no clear consensus on this subject.

H. IRS Plan Reporting Filings

Form 5500, also known as the annual report, must be filed by a 403(b) Plan by the last day of the 7th month after the close of the plan year. A 403(b) Plan using 403(b)(1) annuities or 403(b)(7) custodial accounts as the sole funding vehicles for providing retirement benefits is subject only to limited Form 5500 reporting. In addition, for years prior to the 2009 Plan year, no independent auditors' report is required.

In general, effective for Plan Years beginning on or after January 1, 2009, 403(b) Plans subject to Title I of ERISA will be required to:

- Disclose financial information with respect to Plan assets and Plan fees;
- Prepare various schedules as appropriate; and
- Meet annual audit requirements utilizing a qualified independent accountant

I. Disclosure Requirements

A Plan Administrator must automatically provide the following to Participants:

Summary plan description ("SPD") – summary of the provisions of the Plan in language understandable by the average Participant which outlines the administrative provisions of the Plan and contains a statement of ERISA-protected rights. If a significant percentage of Participants (if a Plan covers less than 100 Participants, 25%, or if a Plan cover 100 or more Participants, the lesser of 500 or 10%) are literate only in the same non-English language, the Plan Administrator must attach a notice (in the non-English language) which offers assistance to Participants in their own language. For a new Plan an SPD must be provided to Participants within 120 days after the later of the effective date of the Plan or the date on which the Plan was adopted. An updated SPD must be furnished every 5 years for Plans that have been amended; otherwise, an SPD must be redistributed every 10 years. New Participants must receive an SPD within 90 days of becoming a Participant. Beneficiaries must receive an SPD within 90 days after benefits commence. An SPD need not be filed with the DOL but must be provided to the DOL upon request.

Summary of material modifications ("SMM") – summary of any material modifications to the 403(b) Plan document and any change in information required to be included in the SPD. An SMM must be provided to Participants within 210 days after the close of the Plan Year in which the modification was adopted unless the changes or modifications are described in a timely distributed SPD. As with an SPD, an SMM need not be filed with the DOL but must be provided to the DOL upon request.

Summary annual report ("SAR") – summary of the annual report (Form 5500). The basic information provided in the SAR must include the name of the Plan and employer identification number, and the period covered by the annual report. A basic financial statement of the Plan and a notice to Participants that the full annual report (with any additional information) is available for inspection. A SAR must be furnished annually to Participants and is not required to contain any information not found on the Form 5500.

A Plan Administrator must provide to Participants upon written request such documents as a statement of vested account (not more frequently than once a year), the latest annual report, 403(b) Plan documents, any collective bargaining agreement, etc. within 30 days of receipt of a written request. If a Plan Administrator fails to provide the requested information, he may be subject to a fine of up to $110 a day.

J. Claims Procedures

A benefits claim is a request made by or on behalf of a Participant or Beneficiary for 403(b) Plan benefits.

A claim is deemed filed when the claimant follows a reasonable procedure established by the 403(b) Plan for claims filing. If no procedure has been established, the claim is considered filed when the claimant makes a written or oral communication reasonably calculated to bring the claim to the attention of the individual or committee that primarily handles the Employer's benefit matters. ERISA generally requires a 403(b) Plan to provide adequate notice in writing of the denial of a claim for benefits and to give a reasonable opportunity for full and fair review of the decision to deny the claim. DOL regulations provide the following guidelines for determining when claims procedures are reasonable:

- the procedures must be described in the SPD;
- the procedures must not contain any provision, or be administered in such a way, that improperly prevents or hampers filing or processing a claim;
- the procedures must comply with the rules for claim procedures set forth in the DOL regulations; and
- the procedures must specifically provide for certain written notices to Participants and Beneficiaries.

K. Missing Participants

The Department of Labor (DOL) issued Field Advisory Bulletin 2004-02 to provide guidance to defined contribution plan fiduciaries regarding action steps required when Participants or Beneficiaries cannot be located upon Plan termination. The guidance discusses what methods a 403(b) Plan can use to attempt to locate missing individuals as well as next steps if all efforts to find these individuals have failed.

If a 403(b) Plan has not kept track of Participants no longer employed by the Employer or Beneficiaries who still have account balances under the Plan, fiduciaries frequently have difficulty locating these individuals.

According to the DOL guidance, a retirement plan must make an effort to locate a missing Participant or Beneficiary before determining that the individual cannot be located. The search method used should take into consideration the size of the account balance and the expenses involved in attempting to locate the missing individual. This guidance provides a roadmap to assist retirement plans in locating missing individuals, as well as next steps if an individual cannot be located.

Step One: Search Methods

- A 403(b) Plan should first attempt to deliver notice to Participants and Beneficiaries by routine methods, such as delivering notice by first class mail or electronic notification.

- Next, if a Participant or Beneficiary still cannot be located, a 403(b) Plan should attempt to find the missing individual through EACH of the below search methods, *regardless* of the size of the account balance. These methods are:
  - Use Certified Mail.

  - Check Related Plan Records. A 403(b) Plan must ask both the Employer and administrator(s) of related plans (e.g., health plans) to search their records for a more current address for the missing individual. If there are privacy concerns, the 403(b) Plan can request the Employer or other 403(b) Plan fiduciary to contact or forward a letter on behalf of the 403(b) Plan to the Participant or Beneficiary, requesting the individual to contact the 403(b) Plan.

  - Check with Designated Plan Beneficiary. A 403(b) Plan should attempt to identify and contact any individual that the missing individual has designated as a Beneficiary in a related plan for updated information concerning the location of the missing individual. If there are privacy concerns, the 403(b) Plan can request the Employer or other Plan fiduciary to contact or forward a letter on behalf of the 403(b) Plan to the Participant or Beneficiary, requesting the individual to contact the 403(b) Plan.

- Use a Letter-Forwarding Service. A 403(b) Plan may choose either the IRS (www.irs.gov) or Social Security Administration (www.ssa.gov) letter-forwarding service and use it in attempting to locate a missing Participant or Beneficiary.

- Other Possible Search Options. In addition to using the search methods discussed above, a 403(b) Plan may consider the use of Internet search tools, commercial locator services, and/or credit reporting agencies to locate a missing Participant, while factoring in the cost of any such service against the size of the account balance.

Step Two: Distribution Options

After utilizing all of the search methods described above, if a 403(b) Plan still cannot locate a missing individual, the Plan may distribute the account balance in accordance with one of the following distribution options:

- Individual Retirement Plan Rollovers – A 403(b) Plan can establish an IRA for the missing individual. Note that a 403(b) Plan must follow the "automatic rollover" rules (see Section IV-Q) (which typically apply to amounts greater than $1,000 but no more than $5,000) regardless of the account balance.

- Alternative Arrangements – If providers are not willing to issue a rollover IRA to a missing individual, the 403(b) Plan may either establish (1) an interest-bearing federally insured bank account in the name of a missing individual or (2) transfer the missing individual's account balance to the state unclaimed property funds in the state in which the individual was last known to reside or work. Unfortunately, since these are distributions, neither of these methods would preserve the tax-deferred status of the amounts. In addition, the amounts distributed would become subject to mandatory income tax withholding and a possible additional tax for premature distributions and any interest accrued would also be subject to income taxation.

Other Considerations

IRS Withholding Rules. The DOL's guidance specifically states that retirement plans should *not* use 100% income tax withholding as a means to distribute plan benefits to missing Participants or Beneficiaries.

USA PATRIOT Act. The IRS will not require the customer identification and verification provision (CIP) when a 403(b) Plan establishes an account for a missing individual. The CIP requirements will apply when the missing individual first contacts the IRA issuer or federally insured bank to claim the account balance.

State law issues. A 403(b) Plan should be aware of any state laws, including those governing signature requirements and escheat, which are beyond the scope of the DOL guidance.

SECTION VI - MISCELLANEOUS

A. Qualified Domestic Relations Orders ("QDRO")

Although benefits under a 403(b) Plan are not permitted to be assigned or alienated, a Plan may provide that a Participant's account balance be subject to a domestic relations order. A domestic relations order is a judgment, decree, or other order made pursuant to a state domestic relations law that relates to the provision of child support, alimony, or marital property rights (including the division of community property). An order may provide that all or a portion of a Participant's account balances be paid to an "alternate payee" pursuant to a Qualified Domestic Relations Order ("QDRO"). An alternate payee is either the Participant's spouse, former spouse, child, or other dependent.

The Plan Administrator is responsible for determining whether a domestic relations order is a QDRO. In order for a QDRO to be "qualified," it must contain the following information:

- the name and last known mailing address of the Participant and each alternate payee,
- the name of each plan to which the order applies,
- the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee, and
- the number of payments or time period to which the order applies.

In order for a QDRO to be "qualified," it must NOT contain the following:

- the order must NOT require a 403(b) Plan to provide an alternate payee or Participant with any type or form of benefit, or any option not otherwise provided under the 403(b) Plan,
- the order must NOT require a 403(b) Plan to provide for increased benefits,
- the order must NOT require a 403(b) Plan to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO, and
- the order must NOT require a 403(b) Plan to pay benefits to an alternate payee in the form of a QJSA for the lives of the alternate payee and his subsequent spouse.

<u>QDROs - Plan Administrator Responsibilities</u>

Providing a model or sample QDRO to Participants and/or their attorneys can be a time-saver to everyone involved. The model document would include suggested wording for a QDRO that is specific to your 403(b) Plan. An attorney, or the Participant or spouse (if representing himself) would insert the names, addresses and the distribution amount, then present the order to the judge or other official for signature.

Once the Plan Administrator receives a signed domestic relations order, he must determine whether or not the order meets the criteria of a QDRO.

If your 403(b) Plan document allows an alternate payee to take an immediate distribution, then the alternate payee's distribution election should be stated in the QDRO.

QDRO Resources

Additional information can be found at http://www.dol.gov/ebsa/Publications/qdros.html, including a booklet entitled QDROs: The Division of Pensions Through Qualified Domestic Relations Orders, which provides useful information for those drafting and reviewing domestic relations orders.

B. IRS Tax Liens and Levies

The IRS has the right to impose a tax lien or levy on a 403(b) Plan account. However, the 403(b) Plan should not distribute any 403(b) Plan assets to the IRS until the Participant has attained a distributable event as specified in the 403(b) Plan document. Distributable events are generally when a Participant attains age 59 1/2, has a severance from employment, retires, becomes disabled or becomes subject to RMDs (the later of attaining age 70 1/2 or retiring from employment with the Employer). (See Sections IV-A, B and C)

C. Bankruptcy

A Participant's account under a 403(b) Plan is exempt from the claims of that Participant's creditors in a bankruptcy proceeding. A Participant in a 403(b) Plan who is involved in a bankruptcy proceeding should not list a Loan from the Plan as a debt because it is collateralized by the outstanding balance of the Loan.

D. IRS Correction Programs for Sponsors of 403(b) Plans

The ECPRS is a comprehensive system of correction programs for sponsors of 403(b) Plans that have not met applicable Code requirements for a period of time. This system permits employers to correct qualification failures thereby continue to provide their employees with retirement benefits on a tax-favored basis. The three components of the EPCRS are:

- the Self-Correction Plan (**SCP**), which permits 403(b) Plan sponsors to correct certain Plan failures without contacting the IRS or incurring a fee,
- the Voluntary Correction Plan (**VCP**), which permits a 403(b) Plan sponsor to, any time before audit, pay a limited fee and receive the Service's approval for correction of Plan failures, and
- the Audit Closing Agreement Plan (**Audit CAP**), which permits a 403(b) Plan sponsor to pay a sanction and correct a 403(b) Plan failure while the Plan is under audit.

For further information regarding EPCRS please visit the IRS website at
http://www.irs.gov/pub/irs-irbs/irb08-35.pdf

E. DOL'S Voluntary Fiduciary Correction Program ("VFCP") and the Delinquent Filer Voluntary Correction Program ("DFVC")

The VFC Program is designed to encourage employers to voluntarily comply with the Employee Retirement Income Security Act (ERISA) by self-correcting certain violations. VFCP describes how to apply acceptable methods for correcting violations, and examples of potential violations and corrective actions.

ERISA requires annual 5500 reporting requirements within specified deadlines for certain 403(b) Plan (see Section V-H), along with civil penalties for failure to comply with the requirements. The DFVC Program encourages those Employers who failed to meet their obligations to comply through the assessment of reduced civil penalties.

Additional information can be obtained from the following website: http://www.dol.gov/ebsa/

F. Termination of a 403(b) Plan

A 403(b) Plan can be terminated, provided that benefits are distributed as soon as administratively practicable upon termination.

APPENDIX A

COMPARISON BETWEEN 403(b)(1) ANNUITY CONTRACT AND 403(b)(7) CUSTODIAL ACCOUNT RULES

	403(b)(1) Annuity Contracts	**403(b)(7) Custodial Accounts**
Issuer	An insurance company qualified to do business in the state.	A state or federal bank, trust company, insured credit union, entity under the supervision of the state banking commissioner, or other person who has made satisfactory demonstration to Commissioner of Internal Revenue.
Document Issued	Annuity contract purchased for an employee by an eligible employer. An annuity option must be offered under the contract, consistent with state insurance law.	Custodial account must be created by a written agreement between the employer and custodian that is a valid contract under local law.
Investments	Investment in fixed and/or separate account investment offerings under the annuity contract.	Investment *solely* in stock of regulated investment company (or companies). Investment earnings (dividends) are reinvested in regulated investment company shares until distribution.
Nontransferability	Contract must be nontransferable.	Custodial account must be nontransferable.
Direct Rollovers	Direct rollover option must be provided as a distribution option.	Direct rollover option must be provided as a distribution option.
Annual Elective Deferral Limit under Section 402(g)	Contract must provide that the amount of salary reduction contributions permitted under the contract cannot exceed the Code Section 402(g) annual limit for an individual's salary reduction contributions.	Custodial agreement must provide that the amount of salary reduction contributions permitted under the custodial account cannot exceed the Code Section 402(g) annual limit for an individual's salary reduction contributions.

	403(b)(1) Annuity Contracts	403(b)(7) Custodial Accounts
Distributable Events	Employee Deferrals (including earnings) may generally be distributed only upon your: • Attainment of age 59 ½ • Severance from employment • Death • Disability, or • Hardship. **<u>Note</u>:** Hardship withdrawals are limited to Employee Deferrals made after 12/31/88. **<u>Exceptions to the above distribution rules</u>**: No IRC withdrawal restrictions apply to: • ’88 cash value (Employee Deferrals (including earnings) as of 12/31/88) • Employer Contributions (including earnings) Note, however, Employer Contributions made to an annuity contract issued after December 31, 2008 may not be paid or made available before a distributable event occurs. Such amounts may be distributed upon: (i) the participant’s severance from employment, or (ii) the occurrence of an event, such as after a fixed number of years, the attainment of a stated age, or disability.	Employee Deferrals and Employer Contributions (including earnings) may only be distributed upon your: • Attainment of age 59 ½ • Severance from employment • Death • Disability, or • Hardship. **<u>Note</u>:** Hardship withdrawals are limited to: • Employee Deferrals; and • ’88 cash value (Earnings on Employee Deferrals and Employer Contributions (including earnings) as of 12/31/88)
RMD	RMD rules apply to amounts contributed after 12/31/86 (including post-1986 earnings on the 12/31/86 account value), provided that the issuer keeps records necessary to identify the pre-1987 account value.	RMD rules apply to amounts contributed after 12/31/86 (including post-1986 earnings on the 12/31/86 account value), provided that the custodian keeps records necessary to identify the pre-1987 account value.
Information Reporting on Distributions	Reported on Form 1099-R.	Reported on Form 1099-R.
Excise Tax for Excess Contributions	Not applicable	6% cumulative federal excise tax payable by the employee on excess contributions to the extent that the contribution to the 403(b)(7) exceeds the Section 415(c) limit. The tax applies to the excess contribution only, not to attributable earnings