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Retirement Plans 101:

An Introduction to Section 403(b)

I. Overview

Educational institutions have been offering annuity contracts to their faculty since the early 1900s. The practice of excluding employer contributions to these contracts from an employee's income was officially sanctioned by the Internal Revenue Code (Code) in 1942 when the predecessor to section 403(b) was enacted. In 1958 Section 403(b) was enacted and restrictions were placed on the dollar amounts that could be contributed. This is the section of the Internal Revenue Code under which the pension plans of most 501(c)(3) organizations are now operated. These plans can only be funded with annuity contracts and mutual funds (except for certain church plans which have an additional option.) Many amendments have been made since the original enactment of Section 403(b).

The current attention that these plans are receiving is related to the publication on July 26, 2007 of the first comprehensive revision of the regulations which apply to these plans since 1964. The new regulations, as issued, were generally effective January 1, 2009. However, on December 11, 2008, the Internal Revenue Service issued a notice extending the deadline to adopt new written plans or amend existing plans to comply with the final 403(b) regulations until December 31, 2009. The IRS said that 403(b) plans will be treated as meeting the requirements of section 403(b) during the 2009 calendar year even without having a new or rewritten plan document in place if the following conditions are met:

1. By December 31, 2009, the plan sponsor of the plan has adopted a written 403(b) plan that is intended to satisfy the requirements of 403(b) and the regulations.

2. During 2009, the plan sponsor operates the plan in accordance with a reasonable interpretation of 403(b) and the related regulations.

3. By the end of 2009, the plan sponsor makes its best effort to retroactively correct any operational failure during the 2009 calendar year to conform to the written plan.

The IRS also said that it plans to issue further guidance on 403(b) plans, including establishing a program whereby plan documents can be submitted to the IRS for approval, and a program that will allow plan sponsors to retroactively fix errors in their plans.

There are a number of key areas affected by these new regulations. Under the new rules, for the first time all 403(b) plans must be administered in accordance with a written plan. Technically this written plan may be made up of several documents. As a practical matter, however, this new rule means that plans are generally required to have a written plan document. The document and the funding vehicles (i.e., the annuity contracts and custodial accounts used to fund the plan) must be consistent to maintain the qualification of both the plan and the plan participant. There are also changes to the nondiscrimination rules that apply to the plan, and restrictions on transfers to unapproved funding vehicles made after September24, 2007. These rules make it clear that the plan administrator is responsible for coordinating plan compliance across funding vehicles. Plan administrators will be required to share information with approved and unapproved vendors in order to fulfill their compliance obligations.

New rules also apply to entities operating within a controlled group, to withdrawal restrictions for employer contributions, and with respect to plan terminations. There are changes related to the timing of contribution transmittals and the treatment of "catch-up contributions" for long service and older employees.

II. Employer Eligibility

There are four types of employers who are permitted to set up Section 403(b) plans. Tax-exempts can also have plans that are qualified under section 401(k). Governmental entities generally cannot sponsor 401(k)s.

A. Organizations which are tax-exempt under Sections 501(c)(3) of the Internal Revenue Code. Organizations which are eligible for 501(c)(3) status include colleges, private K-12 schools, research facilities, health and social welfare organizations, hospitals and religious organizations.
B. Public schools and colleges including their governing organizations.
C. Churches and religious organizations
D. Indian tribal governments that were grandfathered as of 1995.

III. The Differences Between 403(b) and 401(k) Plans

For eligible employers, a 403(b) plan generally provides most of the advantages of a qualified retirement plan with several additional benefits. The advantages fall into areas such as simplified nondiscrimination testing, higher overall contributions limits and streamlined Form 5500 reporting obligations (through plan years beginning in 2009). There are also some disadvantages to 403(b) plans, primarily involving permissible investments.

With some exceptions, elective deferrals offered under Section 403(b) plans must be made available to all employees up to the maximum contribution limits listed below. The ability to make elective deferrals must be "universally available" to all employees. Unlike Section 401(k) plans, no additional nondiscrimination testing is required. So there is no need to test and potentially cut back the contributions of the highly compensated employees based on the average deferral percentage of the non-highly compensated employees as is the case under a 401(k) plan. Certain church plans are exempt from this requirement.

403(b) plans are used as "basic" retirement plans, not just as supplemental plans. It is not uncommon for an employer to have a 403(b) plan that is non-contributory, i.e., no employee contributions are required to receive the employer contribution. A 401(k) plan, even if it is the only plan covering employees, typically requires some employee contribution to receive an employer match.

The tax code has treated 403(b) plans more like IRAs for some purposes, meaning more like an account controlled by the participant. This has allowed some important design flexibilities, most notably with respect to contribution limits. Usually, if an employer sponsors more than one qualified defined contribution plan, all contributions to all the plans are combined to determine whether the contributions are within the Internal Revenue Code's permissible contribution limits (Code section 415). But if an employer has one 401(a) plan and one 403(b) plan covering its employees, those plans do not need to be combined when calculating those limits. The contributions to each plan are treated separately, effectively giving the employee two limits. If the employer had a 401(k) plan instead of a 403(b) in that situation, the total limit would be much lower.

There are also additional contribution limits available only to 403(b) plans. The 15-year catch-up contribution rule allows additional elective deferral contributions of up to $3000 per year to employees with at least 15 years of service who have not fully utilized their elective deferral limits in prior years.

In addition, these plans can be designed to allow employers to continue contributions for terminated employees for up to 5 years after severance from employment. This is a good provision for employers to use in conjunction with early retirement arrangements if the program does not discriminate in favor of highly compensated employees.

Until plan year 2009, 403(b) plans have a much simpler Form 5500 reporting requirement. There is also an exemption from ERISA coverage for a certain type of 403(b) plan that has no employer contributions (i.e., salary reduction only) and very little employer involvement in running the plan. There are some useful operational and liability advantages to being exempt from ERISA.

There are additional differences between a 403(b) plan and a 401(k) plan. The only investment vehicles allowed under 403(b) are annuities, mutual funds and certain church investment funds. 401(k) plans can utilize a much wider variety of investments including brokerage windows allowing investments in individual stocks. In general, 401(k) plans have a single recordkeeper running all the plan administration, regardless of where the assets were invested. Historically, 403(b) plans were operated with each vendor independently managing the assets under its control. The new 403(b) regulations are intended to push 403(b) plans towards the 401(k) recordkeeping model.

IV. Contributions limits

A. Overall Contributions Limits

Includible compensation is the amount of employer compensation that is taken into account when applying the contribution limits required by the Internal Revenue Code. An employee's includible compensation is the amount of compensation which is received from the employer, and which is includible in gross income. Certain amounts earned while working abroad are excluded. However salary reduction amount contributed to retirement plans or cafeteria plans for employee benefits can be included as compensation even though the amounts are not taxable. When applying the limits, the employer must look at includible compensation for the most recent period which may be counted as one year of service.

The maximum overall limit for contributions to a 403(b) plan is governed by section 415. This limit is the lesser of $45, 000 as indexed ($46,000 in 2008) or 100% of compensation. If a participant or the employer contributes amounts to any other 403(b) arrangements provided by the same employer, these amounts must be aggregated. Amounts contributed to other qualified retirement plans (generally, qualified plans under 401(a)) provided by the employer do not need to be aggregated. As mentioned above, the qualified plans have a separate 415 limit providing benefits to employees using both a plan under 403(b) and one under 401(a).

However, if any amounts are contributed to any plan that is deemed to be under the control of the employee, those amounts must be aggregated with the 403(b) plans. A plan is deemed to be under the control of the employee if the employee owns or controls an interest of 50% or greater in the company that established the plan. Thus an employee who establishes a Keogh plan must aggregate the contributions for 415 purposes.

The annual compensation of each participant taken into account in determining allocations shall not exceed $200,000 ($230,000 in 2008), as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. There are certain exceptions to this rule for governmental employers.

B. Employee Contributions

Section 402(g) limits an employee's elective deferrals to a specific dollar limit which is established at the beginning of each taxable year. The current limit is $15.500. An employee who is a participant and who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of elective deferrals, up to the maximum age 50 catch-up elective deferrals for the year. The maximum dollar amount of the age 50 catch-up elective deferrals for a year is $5000 for 2008 and is adjusted for cost of living after 2008 to the extent provided under the Code.

There is an additional 15 year catch-up rule for employees of qualified organizations. A qualified organization is an educational organization, a hospital, home health service agency, a health and welfare service agency, or a church, convention or association of churches. If the employer elects, employees at these organizations can contribute up to $3000 per year extra up to a maximum of $15,000 to compensate for contributions they failed to make in prior years. Amounts in excess of the annual 402(g) limit are allocated first to the 15-year catch-up election and then to the age 50 catch-up contributions. In no event can the amount of elective deferrals for a year be more than the participant's compensation for that year.

As of 1/1/09, employers must have the payroll and contribution information to calculate the 15-year catch-up. They can no longer rely on the employee to provide this information. Given the coordination with the age 50 catch up provision, employers should be considering whether or not they want to continue offering this option.

If the participant is or has been a participant in more than one Section 403(b) plan, or any other plan that permits elective deferrals under Section 402(g) of the Code, then all of these plans are considered as one plan for purposes of applying Section 402(g). The plan administrator needs to take into account any other plan maintained by any employer in the controlled group. The plan administrator also needs to take into account any other plan about which the employee provides information.

C. Correcting Excess Contributions

If contributions are made to the plan by a good faith mistake of fact, these contributions can be withdrawn from the plan within one year from the time the contribution is made. The amount refunded should be adjusted for any income or loss in value. The contribution should be returned directly to either the participant or the employer, whichever made the contribution in error.

If the elective deferral on behalf of a participant for a calendar year exceeds the limitations permitted by Section 402(g), then the amounts in excess of the applicable limitation are included in gross income for that year. Unless the excess contribution is distributed on a timely basis, the excess contribution will be taxed again when it is actually distributed. The excess contribution must be distributed by April 15th of the year following the year in which the excess contribution was made. Any gain on the contribution must be distributed as well, and will be taxed in the year of the distribution.

D. Qualified Military Service

An employee whose employment is interrupted by qualified military service may elect to make additional contributions upon resumption of employment with the employer equal to the maximum that the employee could have contributed during that period if the employee's employment with the employer had continued (at the same level of compensation) without the interruption or leave, reduced by the contributions, if any, actually made for the employee during the period of the interruption or leave. This right generally applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). If the plan provides for a matching contribution by the employer, the employee contribution must be matched at the same rate that it would have been matched had contributions actually have been made during the period of military service. The tax code limits that apply to employer and employee contributions do not apply in the year that these "makeup" contributions are made. However, the amounts of these contributions are subject to the limits that would have applied in the years for which the contributions are being made.

V. Plan Requirements

A. Employee Contributions

Employee contributions pursuant to a salary reduction agreement must meet the "universal availability" rule (except for certain churches.) This means that all employees must be permitted to make elective deferral contributions as soon as they become employed. However the following exclusions are permitted:

(i) Employees whose elective deferral is less than $200 per year;
(ii) Employees who are eligible under another Section 403(b) plan, Section 401(k) plan, or a Section 457 eligible governmental plan of the employer which permits an amount to be contributed or deferred at the election of the employee;
(iii) Employees who are non-resident aliens described in Section 410(b)(3)(C);
(iv) Employees who are students performing services described in Section 3121(b)(10);
(v) Employees who normally work fewer than 20 hours per week and less than 1000 hours per year.

B. Employer contribution

Every employee covered by the plan who satisfies the plan's age and service requirements is eligible to participate in the plan. In typical plan designs, the age to participate is generally 21 and the service requirement (waiting period) is generally one year. However a two year waiting period is allowed if the plan provides for immediate vesting. In additional, certain educational institutions can require a minimum age requirement of 26.

Years of service are generally computed by counting all hours that an employee works during the plan year. All employees in eligible classifications who work more than 1000 hours must be included. Alternative methods of calculating service such as elapsed time or equivalencies may be used in calculating 1000 hours. Special rules apply for determining years of service where there has been a break in service.

Nondiscrimination rules also apply to these plans. For employer contributions, it is permissible to exclude certain categories of employees. However, the employer must meet certain coverage tests showing that the coverage categories were not selected in an effort to favor the highly compensated employees. Similarly, the definition of compensation used as well as any benefits, rights and features provided under the plan must meet certain nondiscrimination tests. Governmental and church plans are exempt from most of these nondiscrimination rules.

The following employees may be excluded from participation and do not need to be included in the coverage test:

(i) Employees who are students performing services described in Section 3121(b)(10);
(ii) Non resident aliens described in Section 410(b)(3)(c);
(iii) Members of a collective bargaining unit unless the agreement with that unit allows participation in this plan.

VI. ERISA

Section 403(b) plans established by not-for-profit employers are subject to ERISA unless they meet an exemption found in Title I of ERISA. Plans that are established by governmental entities or churches are not subject to ERISA (although church plans may elect to be covered.) To qualify for the Title I exemption, the plans must be completely voluntary and employer involvement must generally be extremely limited. The employer can administer salary reduction agreements but should not get involved with operational aspects of the plan. All of the rights under the custodial account and annuity contracts should be administered directly with the employees. The new regulations under 403(b) have raised concerns that the new compliance obligations being imposed on employers may cause plans that were previously exempt under ERISA to lose that exemption.

If your plan is subject to ERISA, it is subject to a number of requirements. These obligations fall into a number of categories: fiduciary, disclosure, financial reporting and filings and bonding requirements.

A. Fiduciary

Under ERISA, any person who exercises discretionary authority with respect to the management of the plan or plan assets is a fiduciary. This includes people who handle claims and provide investment advice for a fee. Every plan is required to designate a “named fiduciary” in its plan document. By definition, the named fiduciary has the authority to control and manage the operation and administration of the plan. In addition, a person can be a fiduciary by virtue of his or her responsibilities under the plan. Because a plan administrator will typically be exercising discretionary authority over the plan, he or she will be a fiduciary with respect to those functions. Fiduciaries are obligated to administer the plan in accordance with the terms of the plan unless those terms violate ERISA.

Fiduciary duties and administrative responsibilities can be delegated to other persons or entities. That delegation should be in writing and clearly define the duties that are being delegated. It is advisable to have the party accept the delegation in writing. Selecting a service provider to which fiduciary duties or administrative responsibilities will be delegated is itself a fiduciary decision that should be made with prudence. The fiduciary then has a continuing obligation to monitor the performance of the service provider.

All fiduciaries must meet the standards set out in ERISA. This means they must act for the exclusive benefit of participants, act prudently with the care and skill of someone familiar with such matters, diversify investments and administer the plan in accordance with its terms. Fiduciaries may be liable for the breaches of their co-fiduciaries. They have an obligation to act when they become aware of a breach by one of their co-fiduciaries.

Section 404(c) of ERISA provides some relief from fiduciary liability for investment losses. This section applies when defined contribution plans allow participants to make investment elections. In a plan that meets the requirements of 404(c), fiduciaries will not be held liable for the investment decisions made by participants with respect to their own accounts. To qualify for this relief, participants must be given a broad range of investment alternatives, each investment alternative must offer sufficient internal diversification, transfers between investment must be available with an appropriate level of frequency and participant must be provided with the information to make informed investment decisions. Fiduciaries are still obligated to use prudence in selecting the investment choices available under the plan and monitoring their performance.

Employers can purchase fiduciary liability insurance to protect the fiduciaries acting in good faith on behalf of the Plan. Otherwise fiduciaries are personally liable for any breach.

B. Disclosure

ERISA requires that participants and beneficiaries be provided with important information about the benefit plans that cover them. The administrator is responsible for disseminating this information by distributing a number of specified documents.

<u>Summary Plan Description:</u> A Summary Plan Description ("SPD") is a written summary of the provisions of a plan. It should be understandable to the average plan participant, as well as accurate and comprehensive. In general, the SPD must be distributed to new plan participants within 90 days of their participation date. New SPDs must be distributed to plan participants at least every five years if amendments have been made to the plan, and every ten years even if no amendments have been made.

<u>Summary of Material Modifications</u>: A Summary of Material Modifications ("SMM") is a notice that must be distributed to participants and beneficiaries when there is any change in fundamental plan information that is contained in the SPD. For example, an SMM would need to be provided if changes were made to the plan's eligibility rules, schedule of benefits, or vesting schedule. The SMM must be distributed no later than 210 days after the end of the plan year during which the change was adopted. As with the SPD, the SMM must be written so that it is understandable to the average plan participant. The SMM is not required if the plan change is incorporated in an SPD and distributed prior to the date that the SMM would have been required.

Summary Annual Report: As its name suggests, the Summary Annual Report ("SAR") provides participants and beneficiaries with a descriptive summary of the report filed by the plan with the IRS and DOL on Form 5500. The regulations under ERISA provide the required format for the SAR. The SAR must be distributed within nine months after the close of the plan year, unless the plan has been granted an extension to file the Form 5500. In that case, the SAR must be furnished within two months after the end of the extension period.

In addition to furnishing the above materials when required, the plan administrator must make copies of key documents (the plan document, the SPD, the annual report and other documents under which the plan is established or operated) available in the principal office of the employer and at other locations necessary to allow participants an opportunity to inspect them. In addition, upon written request the plan administrator must provide participants and beneficiaries a copy of these documents. The plan administrator may charge a reasonable fee for providing these documents.

Quarterly Reports: For plan years beginning after December 31, 2006, if a plan permits participants to direct their investments, the plan administrator must furnish pension benefit statements to all participants and beneficiaries at least once a quarter. Among other information, the statements must include the total benefits accrued, the benefits that have vested or the earliest date on which benefits will become vested, the value of each investment to which assets in the individual accounts have been allocated, an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment, and an explanation of the importance of a well-balanced and diversified investment portfolio. Alternatively, the vesting information may be provided annually. The statements may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.

C. Financial Reporting and Filings

Plan administrators must file an annual report with the Department of Labor (DOL) for each plan. This report is due by the last day of the seventh month following the end of the plan year. Currently, the report required for Section 403(b) plans is very short and basic. Beginning with 2009 plan years, 403(b) plans will be subject to the same 5500 reporting requirements as qualified plans. The form will require detailed information on finances, investments and operations. In addition, plans with more than 100 participants will be required to obtain an opinion from an independent auditor.

Plan administrators must also send a Summary Annual Report to all participants by the last day of the ninth month following the end of the plan year.

D. Bonding Requirements

ERISA requires that every person handling plan funds or property must be covered by a fidelity bond for at least 10% of the amount of funds that the person handles. This bond must be obtained from an approved surety company. This bond protects the plan against loss through fraud or dishonesty.

Generally, bonds do not need to cover amounts handled by banks or insurance companies. You should review your coverage once a year or any time you change personnel or service providers.

VII. Distribution restrictions

Except as set out below, you may receive a distribution of any amount attributable to elective deferrals only after the earliest of the following events: severance of employment, death, disability, attaining age 59 ½ , eligibility for a qualified reservist distribution or termination of the plan. You may receive a distribution of accumulations attributable to employer contributions when permitted under the terms of the plan. Contracts issued after January 1, 2009 must restrict distributions of amounts attributable to employer contributions to no earlier than the participant's severance from employment or upon the prior occurrence of some event, such as a fixed number of years, the attainment of a stated age, or disability. Amounts accumulated prior to 12/31/88 have more liberal distribution requirements.

A. Hardship Rules

Certain amounts may be withdrawn on account of hardship. A hardship distribution may be made if it is on account of a participant's immediate and heavy financial need and the distribution is necessary to meet that need. In the event that the "safe harbor" method is selected by the employer to determine whether a distribution is necessary to meet a participant's financial need, all elective deferrals contributions to the participant's accounts in all plans maintained by the employer will be suspended for six months.

Distributions for the following reasons will be deemed an immediate and heavy financial need which is eligible for a hardship distribution under the regulations:

- Expenses for medical care as defined under Section 213(d);
- Costs directly related to the purchase of a principal residence for the employee;
- Qualified Education Expenses as defined under IRC Regulation Section 1.401(k)-1;
- Payments necessary to prevent eviction or foreclosure from the employee's principal residence;
- Payment for burial or funeral expenses of the employee's deceased parents, spouse, children or dependents; or
- Expenses for the repair of damage to the employee's principal residence as defined under Code Section 155.

Employers may designate other events to be hardships if they chose to or they may choose to evaluate each case individually.

If the Plan elects the safe harbor, then a distribution is deemed necessary to satisfy financial need as follows:

- The employee has obtained all other currently available distributions under this plan and all other plans maintained by the employer; and

- The employee will be prohibited from making elective contributions and employee contributions to the plan and other plans maintained by the employer for a period of six months after receipt of the hardship distribution.

The **p**lan can elect that the employer will not rely on the safe harbor and will determine whether a distribution is necessary to satisfy financial need in each case. In such case, the distribution will not be treated as necessary to satisfy the financial need to the extent the need may be satisfied from other resources that are reasonably available to the employee. Other resources include insurance, liquidation of the employee's assets, or other distributions or loans from plans maintained by the employer or any other employer.

B. Loans

Loans may be permitted under the plan for elective deferral contributions in accordance with the terms of the funding vehicle from which the loan is taken. No loan to a participant under the plan may exceed the lesser of:

(a) $50,000, reduced by the greater of

(i) the outstanding balance on any loan from the plan to the participant on the date the loan is made or

(ii) the highest outstanding balance on loans from the plan to the participant during the one-year period ending on the day before the date the loan is approved by the plan administrator (not taking into account any payments made during such one-year period); or

(b) one half of the value of the participant's vested account balance (as of the valuation date immediately preceding the date on which such loan is approved by the plan administrator).

Any loan from any other plan maintained by the employer and any related employer shall be treated as if it were a loan made from the plan, and the participant's vested interest under any such other plan shall be considered a vested interest under this plan. A plan administrator can limit the number of loans that a participant takes per year.

C. Spousal Rights

If the plan offers annuities as an option, the vested account balance of a married participant will be paid in the form of a qualified joint and survivor annuity (QJSA). A QJSA is an annuity for the life of the participant with a survivor annuity for the life of his spouse which is neither (i) less than one-half of, nor (ii) greater than, the amount of the annuity payable during the joint lives of the participant and his spouse. A married participant will also be permitted to choose a distribution in the form of a qualified optional survivor annuity (QOSA). A QOSA is an annuity for the life of the participant with a survivor annuity for the life of the spouse that is 75% (if the QJSA provides for a survivor annuity that is less than 75%) or 50% (if the QJSA provides for a survivor annuity that is 75% or more) of the amount which is payable during the joint lives of the participant and the spouse, and is the actuarial equivalent of a single annuity for the life of the participant. If a married participant dies prior to the annuity starting date, the vested account balance will be paid to the participant's spouse in the form of a qualified preretirement survivor annuity (QPSA), unless the surviving spouse has waived his or her rights to a QPSA by consenting to a qualified election. A QPSA is a survivor annuity for the life of a participant's surviving spouse, the actuarial equivalent of which is not less than 50 % of the participant's vested account balance. A qualified election is an election to waive the QJSA or the QPSA which is presented along with the consent of the spouse.

D. Minimum Distribution rules

A participant's vested account balance must be distributed in accordance with the minimum distribution requirements of Section 401(a)(9) of the Code and the regulations thereunder, including the incidental benefit requirements contained therein, and the rules set forth in Treasury Regulations 1.403(b)-6.

In general, a participant's account balance must be distributed, beginning no later than the required beginning date, over a period not exceeding the life or life expectancy of the participant or the lives or joint life expectancies of the participant and a designated beneficiary.

However, the distribution rules of section 401(a)(9) do not apply to the participant's undistributed account balance valued as of December 31, 1986 and exclusive of subsequent earnings. The account balance as of December 31, 1986 must be distributed in accordance with the incidental benefit rules of Treasury Regulations 1.401-1(b)1(i), in general the later of age 75 or severance of employment.

If the Participant dies prior to the commencement of the distribution of the participant's vested account balance, the balance will be distributed to the designated beneficiary within five years after the death of employee. However, if a distribution to the designated beneficiary begins within a year of the death of the participant, the beneficiary may receive payments over his life or life expectancy.

Notwithstanding the above, if the designated beneficiary is the participant's surviving spouse, the required beginning date will not be earlier than the date on which the participant would have attained age 70 ½. In determining whether to require that distributions begin from the plan, the plan administrator may consider the application of the aggregation rule in Treasury Regulations 1.403(b)-6(e)(7) which permits the employee to aggregate all of his or her 403(b) contracts for purposes of meeting the minimum distribution requirements.

VIII. Exchanges and Transfers

A. Contract exchanges

A participant or beneficiary is permitted to change the investment of his or her account balance among the funding vehicles under the plan (subject to any limitations contained in the funding vehicles). However, an investment change that includes an investment with a vendor that is not eligible to receive contributions under the plan is subject to the additional conditions listed below:

1. The participant or beneficiary must have an account balance immediately after the exchange that is at least equal to the account balance of that participant or beneficiary immediately before the exchange (taking into account the account balance of that participant or beneficiary in the funding vehicle immediately before the exchange);

2. The agreement with the receiving vendor has distribution restrictions with respect to the participant that are not less stringent than those imposed on the investment being exchanged; and

3. The employer enters into an agreement with the receiving vendor for the other contract or custodial account under which the employer and the vendor will from time to time in the future provide each other with the information necessary to meet the requirements of section 403(b) and the applicable regulations.

B. Plan to plan transfers

If the plan permits plan-to-plan transfers to another plan, those transfers must meet the conditions below:

(a) Each participant and beneficiary must have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred;
(b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under Section 403(b) of the Code, the other plan shall impose restrictions on distributions to the participant or beneficiary whose assets are transferred that are not less stringent than those imposed under the plan; and
(c) In addition, if the transfer does not constitute a complete transfer of the participant's or beneficiary's interest in the plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or beneficiary's interest in any after-tax employee contributions).

C. Rollovers

A participant or the beneficiary of a deceased participant (or a participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the participant in a direct rollover. In the case of a distribution to a beneficiary who at the time of the participant's death was neither the spouse of the participant nor the spouse or former spouse of the participant who is an alternate payee under a qualified domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the beneficiary as an inherited IRA, and only if permitted under the plan.

IX. How are distributions taxed?

The contributions made under the plan are not currently includible in income for federal income tax purposes. Contributions made on a salary reduction basis (elective deferrals) are subject to Social Security tax and Federal Unemployment taxes. Any growth in the accumulation attributable to investment earnings or credited interest is not subject to current taxation. All amounts distributed from the plan will be taxed as ordinary income unless the plan includes a Roth account. For Roth accounts, all distributions are received on an after-tax basis. In addition, if you take a distribution prior to age 59 ½, you may be subject to a 10% penalty tax on the distribution. There are some exceptions to this tax, including if you die or become disabled. You should consult your tax advisor for further information about the federal and state tax treatment of the contributions and distributions under the plan.