

Letter to Board of Education Regarding Impact of Changes in Final 403(b) Regulations

The attached letter is provided for your use to advise your Board of Education about the significant changes that will be included in the final 403(b) regulations and the actions that the District will need to take to comply with these changes.

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July 11, 2007

RE: Impact of Final 403(b) Regulations on District 403(b) Plan

Dear School Business Officials and Board Members:

On behalf of our members, we are providing this general information letter to advise you that the Internal Revenue Service (“IRS”) has announced that it expects to issue the final Internal Revenue Code section 403(b) regulations this year. It is anticipated that the new regulations will be effective as of January 1, 2009 (with some clarifications effective as of January 1, 2008), and that all school districts (and other affected employers) must be operating their 403(b) plans in compliance with these new rules by January 1, 2009.

Several of the major changes and clarifications that will be included in the final 403(b) regulations are the following requirements:

- (1) Written Plan Document - each District must adopt one written plan document (which may include attachments) that describes the eligibility requirements, benefits, contribution and distribution limitations, contracts and accounts available under the plan and time and form of benefit payments applicable to all of the 403(b) fund options offered by the District;
- (2) Administration Review - each District will be responsible for verifying that the actions of its 403(b) fund vendors comply with annual contribution limits and plan distribution restrictions, including plan loan and hardship withdrawal rules; and
- (3) Annual Employee Notice - each District will be responsible for identifying all employees who are eligible to participate in the District’s 403(b) plan and providing an annual notice to such employees advising them about the availability of the 403(b) plan and how to enroll in the plan.

With the issuance of these new 403(b) regulations, it is probable that the District will need to take a more active role than it has in the past in making sure that it has all of the necessary plan documentation for its 403(b) plan and confirming that the day-to-day administration of its 403(b) plan is in compliance with the regulatory requirements. These added responsibilities may require the allocation of additional staff hours to handle the new in-house duties that the District assumes in documenting and administering its

403(b) plan. Further, the District should anticipate incurring additional expenses for the administration of its 403(b) plan.

It is important that a District take action to comply with the new 403(b) rules in order to avoid incurring a potential 100% penalty for failure to withhold and remit federal income tax on contributions made to a non-compliant 403(b) plan. The IRS already is increasing its audit enforcement activity of 403(b) plans offered by public school districts across the nation.

Even though the final 403(b) regulations have not yet been issued, a District can begin preparing for compliance with the new rules by taking actions that include but are not limited to: making an inventory of the current 403(b) annuity contracts and custodial accounts that the District offers, gathering documentation and information that will be required to be included in the District's 403(b) written plan document and developing procedures that the District will put into place to make sure that its 403(b) plan administration complies with the regulatory requirements.

We are currently making resources available to our members to assist them in the initial process of preparing for the issuance of the final 403(b) regulations. We will continue to add available resources both before and after the issuance of the final 403(b) regulations. However, we caution you that the information that we provide to our members is general in nature and is not intended to constitute legal or tax advice or opinion in any particular situation. You are advised to consult with your legal counsel and/or tax advisor to determine how the laws discussed apply to your District's specific circumstances.

If you have any comments or questions regarding this matter, please let us know.

Sincerely,

Buckeye Association of School Administrators

Ohio Association of School Business Officials

Ohio School Boards Association

Does Your District Have a 403(b) or 457(b) Plan?

This checklist gives you some questions to ask to initially determine whether your district offers a 403(b) or 457(b) plan. However, this checklist and the accompanying chart are only guides – they do *not* provide a complete description of all plan requirements and should *not* be used as a substitute for a complete plan review.

1. Do you allow employees to make pre-tax contributions from their paycheck to a retirement savings fund, such as a tax-deferred annuity or a mutual fund account?
 Yes / No

If Yes, it is probable that your district has a 403(b) or 457(b) plan.

2. Do you allow employees who have 15 years of service or more to contribute an additional catch-up amount per year (generally between \$3,000 to \$5,000 per year) until the total additional catch-up contribution for all such years equals \$15,000?
 Yes / No

If Yes, it is likely that your district has a 403(b) plan.

3. Do you allow employees to make an additional annual catch-up contribution during each of the three (3) years prior to the year in which the employee attains the normal retirement age as defined in the plan document, up to the maximum annual amount described in the plan document?
 Yes / No

If Yes, it is likely that your district has a 457(b) plan.

4. Do you have several 457(b) plan documents from different vendors or providers of funds in which your employees' 457(b) contributions are invested?
 Yes / No

If Yes, even though you have several plan documents, your district has only one 457(b) plan that is the aggregate of all of the different plan documents and funds in which the 457(b) contributions are invested.

5. Do you have multiple 403(b) vendors offering tax-deferred annuity contracts and/or mutual fund accounts in which your employees' 403(b) contributions are invested?
 Yes / No

If Yes, even though you have multiple 403(b) vendors, your district has only one 403(b) plan that is the aggregate of all of the funds in which the 403(b) contributions are invested.

403(b) and 457(b) Plan Comparison Chart

The following chart compares certain significant aspects of 403(b) plans and governmental 457(b) plans. Focus is given to requirements applicable to public education employers. The 403(b) features listed are those in effect prior to the issuance of the final 403(b) regulations.

<i>TYPE OF PLAN:</i>	403(b)	Governmental 457(b)
Plan Sponsor	§ 501(c)(3) tax-exempt organizations; Public education employers	State and local governments
Plan Funding	Employee deferrals permitted; Employer match or base contributions permitted	Employee deferrals permitted; Employer match or base contributions permitted
Eligible Employees	Employee deferrals – all employees (may only exclude those working less than 20 hours per week or contributing less than \$200 per year); Employer contributions: Employees 21 years old with 1 year of service	Employees and independent contractors
Contribution Limit	Employee deferral limit - \$15,500 in 2007 (coordinate with 401(k), SEP and SIMPLE deferrals); Annual contribution limit (for employee and employer contributions): lesser of \$45,000 or 100% of includible compensation	Total annual employee and vested employer contributions limited to lesser of: \$15,500 in 2007 or 100% of includible compensation (no coordination with any other plan required)
Catch-up Contributions	Employee deferral catch-up: after 15 years of service, can defer additional \$3,000 / year, up to \$15,000 maximum; Age 50 catch-up (\$5,000 in 2007) (coordination with 401(k) and SIMPLE plans)	Higher of: Age 50 catch-up (\$5,000 in 2007) (no coordination with any other plan required); or Special 457(b) catch-up permitted up to \$15,500 in 2007 for 3 years prior to normal retirement age stated in plan

403(b)

<i>TYPE OF PLAN:</i>	403(b)	Governmental 457(b)
Source of Deferral Funds	Deferrals generally made from regular compensation and bonus payments; Deferrals can be made from accumulated sick leave and vacation pay if deferral election made before amount paid to participant and amount paid before the later of: 2-1/2 months after employment termination date or end of limitation year including termination date	Deferrals generally made from regular compensation and bonus payments; Deferrals can be made from accumulated sick leave and vacation pay if deferral election made in month before amount paid or made available to participant and amount paid before the later of: 2-1/2 months after employment termination date or end of limitation year including termination date
Post-Retirement Employer Contributions	Employer contributions can be made during 5 years following retirement provided annual contribution is less than or equal to lesser of \$45,000 or 100% of includible compensation based on pay received during last 12 months of work prior to retirement (i.e., maximum additional contribution of \$225,000 over 5 years)	None
Maximum Annual Contribution an Employee Can Make if in 403(b) and 457(b) Plan and All Catch-up Options are Available	For 2007: (1) \$15,500 employee elective deferral to 403(b) plan; (2) \$5,000, catch-up elective deferral to 403(b) plan; (3) \$15,500 total contributions to 457(b) plan; (4) \$15,500 additional special 457(b) catch-up contribution (in 3 years before normal retirement age) -- Total: \$51,500	Same as listed under 403(b) plan

403(b)

<i>TYPE OF PLAN:</i>	403(b)	Governmental 457(b)
Distribution Restrictions	Employee deferral contributions and amounts held in custodial accounts may not be distributed before employee's attainment of age 59-1/2, severance from employment, death, disability or financial hardship; Involuntary cash-outs of \$5,000 permitted (any amount over \$1,000 subject to deposit in default IRA); Distributions must be made by date that is later of date: employee attains age 70-1/2 or retires	Contributions may not be distributed before employee's attainment of age 70-1/2, severance from employment, or unforeseeable emergency; Involuntary or elective one-time cash-outs up to plan balance of \$5,000 permitted (any amount over \$1,000 subject to deposit in default IRA); Distributions must be made by date that is later of date: employee attains age 70-1/2 or retires
Loans	Allowed	Allowed
In-service transfer to governmental defined benefit plan to purchase permissive service credits	Permitted if allowed under annuity contract or custodial account and governmental defined benefit plan allows receipt of such transfers	Permitted
Rollovers	Rollovers permitted from and to 401(k), 401(a), 403(b) and governmental 457(b) plans and IRAs. Must have distributable event under 403(b) plan in order to rollover funds to another type of plan.	Rollovers permitted from and to 401(k), 401(a), 403(b) and governmental 457(b) plans and IRAs. Rollover funds must be kept in separate account as amounts subject to § 72(t) additional 10% tax. 457(b) rollover amounts subject to 457(b) distribution restrictions. Transfers between governmental 457(b) plans permitted.

403(b)

TYPE OF PLAN:	403(b)	Governmental 457(b)
§ 72(t) Additional 10% Tax	403(b) contributions and rollover funds subject to § 72(t) additional tax when distributed	457(b) contributions not subject to § 72(t) additional tax when distributed; Rollover funds subject to § 72(t) tax when distributed
Trust Requirement	No trust required; Funds must be held in form of individual or group annuity contracts or mutual fund custodial accounts	Trust fund is required
Plan Termination	No procedure available to terminate plan prior to distribution of all plan assets	Plan may be terminated if all plan assets are paid to plan participants as soon as administratively practicable

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IRS Issues Final 403(b) Regulations

On July 23, 2007, the IRS issued the final regulations for 403(b) tax-sheltered annuity plans. These rules finalize rules proposed in November 2004 and provide the first comprehensive guidance issued for 403(b) arrangements in more than 40 years. Like the proposed rules, the 403(b) final regulations consolidate statutory changes, previous IRS rulings and administrative practice into one set of guidance. It is expected that the final 403(b) regulations will be published in the Federal Register on July 26, 2007.

The 403(b) final rules apply to all types of 403(b) plans, including those which receive only employee salary deferral contributions.

Significant Changes from Proposed Rules

The final regulations include most of the clarifications and new rules that were in the proposed 403(b) regulations. A few significant changes from the proposed rules are described below:

Effective Date of Final Rules

The final 403(b) rules are effective as of January 1, 2009. Employers are permitted to follow the new rules now, if they so choose.

There are a few special effective dates for certain specific provisions in the final rules. When applicable, these special dates are noted below.

Written Plan Document

The final 403(b) retains the requirement that the employer must have a written plan document for its 403(b) plan. The written plan document must be adopted by December 31, 2008.

In lieu of having one comprehensive plan document, the written plan document may be composed of a compilation of copies of employee policies, annuity contracts, mutual fund custodial agreements, salary reduction agreements, and other similar materials. If this approach is taken, the employer must ensure that there is no conflict or inconsistency between the incorporated documents. The employer may not have a separate 403(b) plan document for each vendor offering funds under the 403(b) plan.

The written plan document must include eligibility rules, benefits available, applicable limitations, contracts available under the plan and the time and form under which benefit distributions are made. The plan document must also allocate responsibilities between the employer, fund vendors and any other parties to clearly delineate who is responsible for establishing and advising employees of plan eligibility criteria, coordinating plan loan limitations and hardship withdrawal restrictions and advising participants of their rights and benefits under the plan. These responsibilities may not be allocated to employees and other plan participants.

The IRS expects to publish model plan provisions that public school employers may use to set up their written plan document.

Contract Exchanges (Referred to as Revenue Ruling 90-24 Transfers)

Currently, fund vendors permit 403(b) plan participants to transfer funds held in a contract that they selected under their employer's plan to any other contract offered in the marketplace. Under the new 403(b) final regulations, such fund transfers (referred to as "contract exchanges" under the final rules) will be permitted after September 24, 2007, only if:

- (a) the recipient contract includes distribution restrictions that are at least as or more stringent than those in the transferring contract and
- (b) the employer has entered into an agreement with the vendor of the recipient contract that provides that the employer and vendor will provide each other with information on an on-going basis, including information about the participant's employment status, hardship withdrawals and plan loans.

The IRS has the authority at a later time to issue additional rules that may permit contract exchanges in other circumstances.

Plan Loans and Hardship Withdrawals

The final 403(b) regulations retain the provisions from the proposed rules that require 403(b) plan loans and hardship withdrawals to satisfy the same rules as those followed under 401(k) plans. For example, plan loans may not be made if the participant's total amount of outstanding plan loans exceeds certain limits. Hardship withdrawals may only be made upon determination that there is a financial hardship and salary deferrals must be suspended for the sixth-month period following the hardship withdrawal.

The final rules provide that 403(b) participants may not self-certify that these requirements are met. Thus, there must be a coordination procedure in place

between the employer, the fund vendor and any other third party to ensure that the loan and hardship withdrawal rules are satisfied.

Severance from Employment

Severance from employment is defined in the final rules as the date that the employee terminates employment with the employer. It is only at that date that an employee would be eligible to receive a 403(b) distribution, if no other distributable event applies. The employee may get a 403(b) distribution if he is still be employed by another employer in the same controlled group or working for his former employer, just as long as he is not working as an employee for his former employer.

Universal Availability

The final 403(b) rules retain all of the rules included in the proposed regulations regarding universal availability. In general, if an employer offers the opportunity to make salary deferrals to one employee, he must offer that opportunity to all employees. The only employees that he can exclude are those who work less than 1,000 hours for the employer during the year and/or those who contribute less than \$200 per year to the 403(b) plan.

As in the proposed rules, under the final 403(b) rules, the employer is required to provide a “meaningful notice” to all eligible employees at least once per year advising them of the availability of the 403(b) plan and how they can make a salary reduction election to begin making salary deferrals to the plan.

Under the final 403(b) rules, the employer can no longer exclude employees covered by a collective bargaining agreement from making salary deferrals under the 403(b) plan. This rule is in effective as of the earlier of: (a) the date of termination of the collective bargaining agreements in effect on July 26, 2007 or (b) July 26, 2010.

Life Insurance

The final 403(b) rules provide that no new life insurance contract may be entered into under the 403(b) plan after September 24, 2007. Any life insurance contract entered into before that date must satisfy the incidental benefit rules, which limit the total amount of the participant’s 403(b) plan assets that may be invested in life insurance.

Conclusion

The above listing summarizes some of the more significant changes included in the final 403(b) regulations, but which were not included in the proposed regulations. There are also significant rules included in the proposed rules that

employers need to know in order to begin complying with the new rules. A summary of all of the significant clarifications and changes are included in the materials we are making available to our membership. You are encouraged to refer to those materials as well.

Now that the final 403(b) regulations have been issued, school districts have the information that they need to begin planning for compliance with these rules. Even though the effective date is not until January 1, 2009, it is important for districts to begin preparations now to make sure that they have time to make arrangements to be in compliance with the new rules by 2009.

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403(b) Fund Transfer Restrictions: Actions You May Wish to Take Now

The final 403(b) regulations that were issued in July 2007 generally have an effective date of January 1, 2009. However, there are two earlier effective dates included in the final regulations that you may wish to respond to now.

Fund Transfers and Contract Exchanges are Limited as of September 25, 2007

Beginning on September 25, 2007, participants may only transfer their 403(b) plan contracts to 403(b) contracts offered by fund vendors who have entered or will enter into an information sharing agreement with your district by January 1, 2009.

Prior to September 25, 2007, under tax-free transfer rules set out in IRS Revenue Ruling 90-24, participants are permitted to transfer amounts held in a 403(b) fund contract to a 403(b) contract offered by any other fund vendor, even if that vendor is not offered under your 403(b) plan.

Actions You May Want to Take Now:

Fund Vendor Agreement

You may wish to take one of the following two approaches with your 403(b) fund vendors:

- 1.** You may wish to request a certification at this time from your current and any prospective 403(b) fund vendors that the vendor will enter into an agreement with you on or before January 1, 2009, to: (a) share information with you necessary to ensure compliance and as required for contract exchanges under Internal Revenue Code section 403(b) and related regulations, (b) ensure that, within the meaning of the final 403(b) regulations, the participant's accumulated benefit after a contract exchange will be at least equal to the participant's accumulated benefit before the exchange, and (c) ensure that the distribution restrictions in the contract after the exchange will be the same or more stringent than the distribution restrictions in the contract before the exchange.

Upon receipt of the certification from the fund vendor, you can list the vendor on a list of fund vendors with whom your 403(b)

participants may enter into contract exchanges and provide that list to participants on a regular basis as updates are made.

By January 1, 2009, you will need to be sure that you enter into service agreements with your fund vendors and such agreements permit the contract exchanges and that your 403(b) plan document is written to permit such contract exchanges.

You do not need to request this certification if you already have a service agreement or hold harmless agreement with your fund vendors that provides for such information sharing and other assurances.

2. In the alternative, you may wish to require your 403(b) fund vendors to enter into a service agreement or information sharing agreement with you that provides for the necessary information sharing and other assurances before you permit your 403(b) participants to enter into contract exchanges with such fund vendors. If this approach is taken, it is likely that there will be a longer time period before you will be able to enter into fund vendor service agreements than just the time period needed to get the certifications from fund vendors mentioned in the option described above. Thus, if you require a fund vendor to enter into a service agreement or information sharing agreement with you before you permit 403(b) contract exchanges with that vendor, there will be some time period after September 24, 2007, where your 403(b) participants will not be able to make 403(b) contract exchanges.

As noted above, you do not need to request a new service agreement if you already have a service agreement or hold harmless agreement with your fund vendors that provides for such information sharing and other assurances. However, you may need to amend or supplement any service agreement that you already have in place to cover these new requirements.

Employee Notice

You may wish to notify your employees that, starting on September 25, 2007, they may only transfer or exchange their 403(b) contracts with fund vendors who either have agreed to enter into or actually entered into an information sharing agreement with you by January 1, 2009 (depending on the approach that you decide to take). The notice should include a list of the fund vendors who have either agreed to enter into or actually entered into an information sharing agreement with you, as applicable. Employees should be advised that they may request at any time an updated list of fund vendors with whom they may enter into 403(b) contract exchanges. In this notice, you may also advise employees of the process that they should follow to request the addition of a particular vendor to the fund vendor list.

New Life Insurance Contracts are Prohibited as of September 24, 2007

Participants may not invest 403(b) plan funds in new separate life insurance contracts starting on September 24, 2007. Life insurance contracts issued before September 24, 2007, are permitted under the 403(b) plan if they satisfy the incidental benefit rule that limits the total amount of a participant's plan assets that may be invested in life insurance.

Actions You May Want to Take Now:

Fund Vendor Agreement

You may wish to request a certification from your current 403(b) fund vendors that no new life insurance contracts will be issued under your 403(b) plan as of September 24, 2007, and any separate life insurance contract issued on or before September 23, 2007, under your 403(b) plan satisfies the limits of the incidental benefit rule.

Employee Notice

You may wish to notify your employees that they may not use their 403(b) funds to purchase a separate new life insurance contract as of September 24, 2007, and that any separate life insurance contract that they purchased on or before September 23, 2007, under the 403(b) plan must satisfy the limits of the incidental benefit rule.

New Rules Are Not Inconsistent with Ohio's "Any Willing Provider" Law

Ohio Revised Code section 9.90 provides that an educational employee has the right to designate any fund vendor for the investment of his 403(b) plan assets. However, under this section, the district board of education has the right to require the fund vendor to enter into a "reasonable agreement" with the district that protects the district from liability associated with the investment of the 403(b) assets. In addition, the district board of education may limit fund vendors to only those vendors that are designated by the greater of: 5 employees or 1% of the district's full-time employees (not to exceed 50 employees).

Because Ohio's "any willing provider" law permits the district's board of education to require a fund vendor to enter into an agreement with the district before the vendor's funds may be offered under the district's 403(b) plan, it is permissible for you to require fund vendors to enter into an agreement with you to meet the new rules described above before you allow the fund vendors to offer their funds for contract exchanges and/or new investments under your 403(b) plan.

In order to apply the law consistently, you should take the same approach with all of your current and prospective 403(b) fund vendors and require the same type of certification or agreement from all of them.

For Your Assistance

To assist you, OASBO, BASA & OSBA have provided a sample employee notice and a sample fund vendor certification agreement that you may use to address these early effective dates. These documents are samples only and should be reviewed by your legal counsel for adaptation to your specific circumstances.

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[SAMPLE FUND VENDOR CERTIFICATION AGREEMENT]

[INSERT DISTRICT NAME]

403(b) TAX-DEFERRED ANNUITY PLAN

APPROVED VENDOR CERTIFICATION AGREEMENT

WHEREAS, this Approved Vendor Certification Agreement (“Agreement”) is entered into between

_____ **[INSERT DISTRICT NAME]**

(“District”) and

_____ **[INSERT FUND VENDOR NAME]** (“Vendor”) as of the day and year on which all parties have executed the Agreement below (“Effective Date”); and

WHEREAS, District makes available to its employees a 403(b) Tax-Deferred Annuity Plan (“Plan”), which provides retirement benefits to eligible employees (the “Participants”) on a tax-favored basis; and

WHEREAS, the Plan is intended to satisfy the requirements under section 403(b) of the Internal Revenue Code, as amended (“Code”) and related regulations; and

WHEREAS, Vendor is a third party provider of annuity contracts and/or custodial accounts; and

WHEREAS, Vendor desires to be designated as an approved vendor under the Plan for the purpose of making contract exchanges as defined under the regulations related to Code section 403(b);

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- I. In consideration for the District’s permission for Vendor to make available its annuity contracts and/or custodial accounts to Participants under the Plan for contract exchanges as defined under the regulations related to Code section 403(b) as of the Effective Date of this Agreement, the Vendor certifies and agrees to the following:
 1. On or before January 9, 2009, Vendor will enter into an agreement with District to:
 - a. Share information with District as necessary to ensure compliance and as required for contract exchanges under Code section 403(b) and related regulations;

- b. Ensure that, within the meaning of the final 403(b) regulations, the Participant's accumulated benefit after a contract exchange will be at least equal to the Participant's accumulated benefit before the exchange; and
 - c. Ensure that the distribution restrictions in the contract after the exchange will be the same or more stringent than the distribution restrictions in the contract before the exchange.
 2. Vendor will not issue new separate life insurance contracts under the Plan after September 23, 2007.
 3. Vendor will ensure and share information as necessary with District to confirm that any separate life insurance contracts issued by Vendor under the Plan on or before September 23, 2007, satisfy the limits of the incidental benefit rule pursuant to the requirements of the final 403(b) regulations and related regulations.
- II. In consideration for Vendor's certifications and agreements set forth above, District certifies and agrees to the following:
 1. On or before January 9, 2009, District will enter into an agreement with Vendor to:
 - a. Share information with Vendor as necessary to ensure compliance and as required for contract exchanges under Code section 403(b) and related regulations.
 2. District will list Vendor as an approved vendor permitted to make available its annuity contracts and/or custodial accounts to Participants under the Plan for contract exchanges as defined under the regulations related to Code section 403(b) as of the Effective Date of this Agreement.
 3. District will provide to Plan Participants and Vendor a list of all approved vendors under the Plan on a periodic basis as such list is updated.
- III. General Terms of the Agreement
 1. Authority. By signing this Agreement, each of the parties states that it has full power, authority and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement. Each party agrees to assume only the responsibilities specified in this

Agreement. Nothing in this Agreement will cause Vendor to be considered the plan administrator, investment manager or other fiduciary of the Plan.

2. Duration. The term of this Agreement ends on the date of execution of an information sharing agreement as necessary to ensure compliance and as required for contract exchanges under Code section 403(b) and related regulations on or before January 1, 2009.

3. Notices. Notices under this Agreement must be in writing and sent by certified mail, return receipt requested to the addresses listed at the end of this Agreement.

4. Nonexclusive Agreement. Nothing in this Agreement shall be construed as limiting or restricting the rights of any of the parties to enter into any other contracts with any other person or entity.

5. Governing Law. THIS AGREEMENT IS TO BE INTERPRETED, GOVERNED, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO APPLICABLE TO CONTRACTS EXECUTED AND DELIVERED IN THAT STATE (without giving effect to its choice of laws' principles).

6. Successors. The benefits and obligations of this Agreement apply to each party and to its heirs, successors and assigns.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by the counterpart.

8. Entire Agreement and Amendment. This Agreement is the entire agreement between the parties with regard to the matters it covers and supersedes all previous agreements and documents with regard to those matters. The waiver by any party of a breach of any provision of this Agreement is not a waiver of any later breach. Only the parties to this Agreement may modify this Agreement, and all modifications must be in writing.

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IN WITNESS WHEREOF, this Agreement is effective as of the day and year on which all parties to this Agreement have executed this Agreement as indicated below.

[INSERT DISTRICT NAME] ("DISTRICT")	[INSERT VENDOR NAME] ("VENDOR")
By: _____ (Signature)	By: _____ (Signature)
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Dated: _____	Dated: _____
Phone: _____	EIN: _____
Phone: _____	Phone: _____
Contact Person and Address for Notices:	Contact Person and Address for Notices:
_____	_____
_____	_____
_____	_____
_____	_____

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[SAMPLE EMPLOYEE NOTICE]**403(b) TAX-DEFERRED ANNUITY PLAN****SUMMARY NOTICE OF MATERIAL CHANGES****FUND TRANSFER AND LIFE INSURANCE CHANGES**

This Notice describes rules that apply to the 403(b) Tax-Deferred Annuity Plan (“403(b) Plan”) offered by your district (“Employer”). These rules are effective as of September 24 and 25, 2007, as described in this Notice. As of these effective dates, the information in this Notice supercedes relevant portions of materials previously provided to you regarding the 403(b) Plan and this Notice is to be incorporated into your copy of such materials.

403(b) Fund Transfers and Contract Exchanges May Only be Made to Approved Vendors as of September 25, 2007

Beginning on September 25, 2007, you may only transfer your 403(b) Plan contracts to contracts offered by fund vendors who have entered into an agreement with your Employer as of the date of the contract transfer or exchange. (Note: These fund transfers or contract exchanges are also referred to as Revenue Ruling 90-24 transfers.)

The fund vendors who have entered into an agreement with your Employer will be listed on an Approved Vendor list provided by your Employer. A copy of the current Approved Vendor list is attached to this Notice.

The Approved Vendor list will be updated as your Employer enters into agreements with fund vendors. You may request a copy of the current Approved Vendor list you’re your Employer.

If you would like a particular fund vendor to be added to the Approved Vendor list, you should follow your Employer’s procedures for requesting an additional vendor.

No New Life Insurance Contracts in 403(b) Plan as of September 24, 2007

Beginning on September 24, 2007, you may not use your 403(b) Plan funds to purchase a separate new life insurance contract under the 403(b) Plan.

Further, any separate life insurance contract that you purchased on or before September 23, 2007, under the 403(b) Plan must satisfy limits imposed under the incidental benefit rule. The incidental benefit rule limits the total amount of your 403(b) Plan assets that may be invested in life insurance.

If you have any questions regarding these rules, please contact ***[INSERT CONTACT NAME AND TELEPHONE NUMBER OF DISTRICT CONTACT]***.

403(b) TAX-DEFERRED ANNUITY PLAN
APPROVED VENDOR LIST
AS OF [INSERT DATE OF ISSUANCE]

[INSERT LIST OF NAMES OF FUND VENDORS WHO HAVE ENTERED INTO CERTIFICATIONS OR AGREEMENTS (AS APPLICABLE) WITH YOU]

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403(b) Plan Final Regulations: Basic Action Plan Checklist and Timeline for Compliance by 2009

The 403(b) Plan final regulations are here and the IRS model plan language has been issued. What should a District do now to get itself ready to comply by January 1, 2009?

A basic Action Plan Checklist and Timeline is set out below as a guide for you to follow in getting your District ready to satisfy the new 403(b) rules by 2009. To reflect a desire expressed by many of our members, the Timeline set out below has been accelerated so that it can be followed by a District that would like to have most 403(b) compliance actions completed before the beginning of the 2008 – 2009 school year.

NOTE: The purpose of this Checklist is to provide you with an initial reference guide to prepare your District for compliance with the 403(b) rules. This Checklist does not list all actions that must be taken by a compliant plan and it is not intended to be a comprehensive list of all actions that your District must take for 403(b) compliance. The Checklist is provided as a general information source for our members. You are advised to consult with legal counsel and/or a tax advisor to determine the action plan and timeline that best fits your District's specific circumstances.

403(b) Compliance: Basic Action Plan Checklist and Timeline

Dec. 2007:

- 1. Educate yourself about responsibilities of the District under the new 403(b) rules.

Jan. – Feb. 2008:

- 2. Identify all of the investment providers that your District currently sends contributions to under the 403(b) plan.
- 3. Identify all investment providers that do not receive contributions but have received contract exchanges from your District's 403(b) plan since September 24, 2007.
- 4. Request copies of the annuity contracts and custodial account agreements for the investment products offered in your District by the investment providers that you identified in items 2 and 3 above.
- 5. Identify the current features of your District's 403(b) plan and determine if you want to make any changes in how the 403(b) plan operates going forward:
 - a. Who is eligible to participate in the 403(b) plan (e.g., all employees, those working less than 20 hours per week, etc.)?
 - b. What types of contributions go into the 403(b) plan (e.g., employee salary deferrals, employer contributions, post-retirement employer contributions, Roth 403(b) contributions)?
 - c. Do you require automatic enrollment in the 403(b) plan for all new employees?
 - d. Do you allow participants to roll amounts into your District's 403(b) plan from a previous employer's 403(b) plan?
 - e. Do you permit participant loans from 403(b) plan assets?
 - f. Do you permit participant hardship withdrawals from 403(b) plan assets?
 - g. Do you permit contract exchanges to investment providers who do not receive 403(b) plan contributions?

- h. What is your 403(b) plan year?
 - i. Who makes administrative decisions about your District's 403(b) plan?
6. Identify the types of 403(b) service providers (e.g., investment provider third party administrator, common or volume remitter, independent third party administrator, legal counsel, etc.) with whom your District would like to work and send out requests for procurement (RFPs) to select such service providers.

Mar. – Apr. 2008:

- 7. Select 403(b) service providers with whom your District will work and negotiate service agreements with such service providers.
- 8. Board adopts policy for selection of investment providers.
- 9. Draft 403(b) Plan Document and summary plan description to provide to participants.
- 10. Draft standard 403(b) Salary Reduction Agreement.
- 11. Draft Service Agreement and Information Sharing Agreement for investment providers.
- 12. Review all annuity contracts and custodial account agreements of investment providers.
- 13. Negotiate Service Agreements and Information Sharing Agreements with investment providers and select investment providers.

May – June 2008:

- 14. Request and review all prior year contribution, contract exchange and distribution data needed from selected and prior investment providers.
- 15. Draft District 403(b) Administrative Procedures.
- 16. Board adopts 403(b) Plan Document and District 403(b) Administrative Procedures.
- 17. Identify all employees eligible for 403(b) participation.
- 18. Prepare employee 403(b) enrollment packages and annual meaningful notice of eligibility.

July – Aug. 2008:

- 19. Conduct 403(b) enrollment meeting and benefits fair for eligible employees to describe employee’s rights and responsibilities under new 403(b) rules and educate employees about availability of 403(b) plan.

Sept. – Dec. 2008:

- 20. Develop 403(b) Plan Document file that includes:
 - a. 403(b) Plan Document
 - b. Salary Reduction Agreements
 - c. Copies of annuity contracts and custodial agreements
 - d. Investment Provider Service Agreements and Information Sharing Agreements
 - e. Third Party Administrator Service Agreement and any other service provider agreements
 - f. District 403(b) Administrative Procedures
- 21. Implement on-going administrative procedures for reviewing and monitoring 403(b) Plan operations regarding eligibility determination, contributions, distributions, contract exchanges, etc.
- 22. Implement annual process to review and amend, as needed, all documents and materials in 403(b) Plan Document file
- 23. Implement annual process to review and select 403(b) investment providers.

Sample Questions to Ask Potential 403(b) Service Providers

As your District prepares to comply with the new 403(b) final regulations by 2009, one of your first considerations is whether to contract with one or more 403(b) service providers and, if so, what type(s) of service provider to use.

To assist you in determining if your District will use one or more 403(b) service providers and what type(s) of service provider to use, some basic descriptions of typical types of 403(b) service providers are set out below and sample questions are provided to help you determine the type(s) of services that a provider offers.

NOTE: The purpose of these basic descriptions and the list of Sample Questions is to provide you with an initial reference guide for considering 403(b) service provider options. These basic descriptions are not intended to describe the services offered by any particular service provider, but rather to assist the reader in initially distinguishing between service providers. It is to be emphasized that each service provider is different. Some providers may not offer the services typically provided in their industry, while others may offer services in addition to those typically performed. Further, this list of Sample Questions is not intended to be a comprehensive list of all questions that you should ask of a potential 403(b) service provider, but rather is to be used as an initial guideline of some basic questions to ask potential service providers. In all cases when considering a potential 403(b) service provider, the reader is cautioned to ask questions and carefully review the provider's service agreement in order to determine the specific services that will be provided under the agreement. The reader is further advised to consult with legal counsel when reviewing and negotiating an agreement with a service provider.

Basic Descriptions of Typical 403(b) Service Providers

There are a number of different types of 403(b) service providers available. Some of the more common types of service providers are the following:

- (1) **Investment provider third party administrator (TPA)** – is one or more of the investment providers who receive contributions from your District’s 403(b) plan that offers third party administration services (i.e., 403(b) plan documentation and operational compliance services) for 403(b) plans.
- (2) **Independent third party administrator (TPA)** – is a company that does not have any affiliation with 403(b) investment providers that offers third party administration services (i.e., 403(b) plan documentation and operational compliance services) for 403(b) plans.
- (3) **Common or volume remitter** – is a company or investment provider that receives the total amount of 403(b) contributions from the District each payroll period and calculates and forwards the portion of the contributions due to each investment provider. This service provider may or may not offer additional types of third party administration services (i.e., 403(b) plan documentation and operational compliance services).
- (4) **Financial consultant conducting investment review** – is a company that reviews the performance, quality and cost of investments offered by 403(b) investment providers and recommends investment providers and products to offer under a 403(b) plan. This service provider may or may not offer additional types of third party administration services (i.e., 403(b) plan documentation and operational compliance services).
- (5) **Legal counsel** – with employee benefits expertise can (a) provide individually designed 403(b) plan documentation or can review standardized 403(b) plan documentation offered by other types of 403(b) service providers; (b) review and negotiate service agreements with 403(b) service providers; (c) advise the District on its 403(b) plan document and operational compliance responsibilities; and (d) advise the District on applicable state law requirements that must be satisfied.

Further details regarding the typical services provided by each of these types of 403(b) service providers are set out in the accompanying chart titled “403(b) Plan Service Provider Options.”

Sample Questions to Ask Potential 403(b) Service Providers

1. List and describe all 403(b) related plan documents that you provide and your administrative process for ensuring on-going plan document compliance.
2. Describe your procedures, if any, for obtaining service agreements, information-sharing agreements, hold harmless agreements and any other agreements from 403(b) investment providers.
3. Describe your administrative process and interface with the District in determining employee eligibility for the 403(b) plan and reviewing and identifying any eligibility determination errors.
4. Describe if and how you will notify District employees about their eligibility for the District's 403(b) plan.
5. Describe your privacy policies regarding District employee data, including whether all or any portion of District employee data is shared with any investment provider or agent of an investment provider.
6. Describe your administrative process for annual employee plan enrollment and deferral changes in a 403(b) plan.
7. Describe if and how you will educate employees about the 403(b) plan.
8. Do you offer consolidated billing and common remitting? If so, what is the standard time for deposit of the contributions once received from the District? How is the remittance audited?
9. If common remitting is provided, do you earn interest on 403(b) plan contributions? If so, describe the time period during which such interest is earned.
10. Describe how you will monitor employees to maximize their contributions through multiple investment providers while staying within annual contribution limits.
11. Describe how you will perform annual contribution testing and provide testing results to the District.
12. Describe what types of information you obtain from investment providers working with the District and when and how you obtain such information.

13. For 403(b) plans with multiple investment providers, describe your administrative procedures for review and approval of: (a) distributions, (b) participant loans, (c) hardship withdrawals, (d) contract exchanges and (e) plan-to-plan transfers.
14. Describe the types and frequency of reports that you provide to the District.
15. Describe how plan errors are identified to the District and corrected.
16. Disclose all charges and costs to be assessed to the school districts for your plan administration services.
17. Can 403(b) plan participants and/or investment providers be charged for any 403(b) plan administration costs? If so, describe how such charges are passed on to participants and/or investment providers.
18. Describe any ownership or affiliation relationship or agreement that you have with any 403(b) investment provider.
19. Describe any fees, commissions or other types of payments that you receive from any 403(b) investment provider.
20. How many years have you been providing school districts nationwide with 403(b) plan administration?
21. Describe your policy regarding the District's ownership of the 403(b) plan data. How often and in what format is plan data transferred to the District?
22. What software or systems do you maintain? Is your software or systems privately owned or do you utilize another firm's software or systems? Please describe in detail.
23. Describe what makes your services unique to any other 403(b) service provider in the industry.
24. Please provide a copy of your administration procedures and policies for 403(b) plan administration.
25. Please provide a copy of your standard 403(b) plan service agreement.
26. Please provide a copy of your errors and omissions policy.

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