section and a participant's years of service under paragraphs (c)(3) (special section 403(b) catch-up for qualified employees of certain organizations) and (d) (employer contributions for former employees) of this section, an employee must be credited with a full year of service for each year during which the individual is a full-time employee of the eligible employer for the entire work period, and a fraction of a year for each part of a work period during which the individual is a full-time or part-time employee of the eligible employer. An individual's number of years of service equals the aggregate of the annual work periods during which the individual is employed by the eligible employer.

(2) **Work period.** A year of service is based on the employer's annual work period, not the employee's taxable year. For example, in determining whether a university professor is employed full time, the annual work period is the school's academic year. However, in no case may an employee accumulate more than one year of service in a twelve-month period.

(3) **Service with more than one eligible employer**—(i) **General rule.** With respect to any section 403(b) contract of an eligible employer, except as provided in paragraph (e)(3)(ii) of this section, any period during which an individual is not an employee of that eligible employer is disregarded for purposes of this paragraph (e).

(ii) **Special rule for church employees.** With respect to any section 403(b) contract of an eligible employer that is a church-related organization, any period during which an individual is an employee of that eligible employer and any other eligible employer that is a church-related organization that has an association (as defined in section 414(e)(3)(D)) with that eligible employer is taken into account on an aggregated basis, but any period during which an individual is not an employee of a church-related
organization or is an employee of a church-related organization that does not have an
association with that eligible employer is disregarded for purposes of this paragraph (e).

(4) **Full-time employee for full year.** Each annual work period during which an
individual is employed full time by the eligible employer constitutes one year of service.
In determining whether an individual is employed full-time, the amount of work which he
or she actually performs is compared with the amount of work that is normally required
of individuals performing similar services from which substantially all of their annual
compensation is derived.

(5) **Other employees.** (i) An individual is treated as performing a fraction of a
year of service for each annual work period during which he or she is a full-time
employee for part of the annual work period and for each annual work period during
which he or she is a part-time employee either for the entire annual work period or for a
part of the annual work period.

(ii) In determining the fraction that represents the fractional year of service for an
individual employed full time for part of an annual work period, the numerator is the
period of time (such as weeks or months) during which the individual is a full-time
employee during that annual work period, and the denominator is the period of time that
is the annual work period.

(iii) In determining the fraction that represents the fractional year of service of an
individual who is employed part time for the entire annual work period, the numerator is
the amount of work performed by the individual, and the denominator is the amount of
work normally required of individuals who perform similar services and who are
employed full time for the entire annual work period.
(iv) In determining the fraction representing the fractional year of service of an individual who is employed part time for part of an annual work period, the fractional year of service that would apply if the individual were a part-time employee for a full annual work period is multiplied by the fractional year of service that would apply if the individual were a full-time employee for the part of an annual work period.

(6) Work performed. For purposes of this paragraph (e), in measuring the amount of work of an individual performing particular services, the work performed is determined based on the individual’s hours of service (as defined under section 410(a)(3)(C)), except that a plan may use a different measure of work if appropriate under the facts and circumstances. For example, a plan may provide for a university professor’s work to be measured by the number of courses taught during an annual work period in any case in which that individual’s work assignment is generally based on a specified number of courses to be taught.

(7) Most recent one-year period of service. For purposes of paragraph (d) of this section, in the case of a part-time employee or a full-time employee who is employed for only part of the year determined on the basis of the employer’s annual work period, the employee’s most recent periods of service are aggregated to determine his or her most recent one-year period of service. In such a case, there is first taken into account his or her service during the annual work period for which the last year of service’s includible compensation is being determined; then there is taken into account his or her service during his next preceding annual work period based on whole months; and so forth, until the employee’s service equals, in the aggregate, one year of service.
(8) **Less than one year of service considered as one year.** If, at the close of a taxable year, an employee has, after application of all of the other rules in this paragraph (e), some portion of one year of service (but has accumulated less than one year of service), the employee is deemed to have one year of service. Except as provided in the previous sentence, fractional years of service are not rounded up.

(9) **Examples.** The provisions of this paragraph (e) are illustrated by the following examples:

**Example 1.** (i) **Facts.** Individual G is employed half-time in 2004 and 2005 as a clerk by H, a hospital which is a section 501(c)(3) organization. G earns $20,000 from H in each of those years, and retires on December 31, 2005.

(ii) **Conclusion.** For purposes of determining G's includible compensation during G's last year of service under paragraph (d) of this section, G's most recent periods of service are aggregated to determine G's most recent one-year period of service. In this case, since D worked half-time in 2004 and 2005, the compensation D earned in those two years are aggregated to produce D's includible compensation for D's last full year in service. Thus, in this case, the $20,000 that D earned in 2004 and 2005 for D's half-time work are aggregated, so that D has $40,000 of includible compensation for D's most recent one-year of service for purposes of applying paragraphs (b)(2), (c)(3), and (d) of this section.

**Example 2.** (i) **Facts.** Individual H is employed as a part-time professor by public University U during the first semester of its two-semester 2004-2005 academic year. While H teaches one course generally for 3 hours a week during the first semester of the academic year, U's full-time faculty members generally teach for 9 hours a week during the full academic year.

(ii) **Conclusion.** For purposes of calculating how much of a year of service H performs in the 2004-2005 academic year (before application of the special rules of paragraphs (e)(7) and (8) of this section concerning less than one year of service), paragraph (e)(5)(iv) of this section is applied as follows: since H teaches one course at U for 3 hours per week for 1 semester and other faculty members at U teach 9 hours per week for 2 semesters, H is considered to have completed 3/18 or 1/6 of a year of service during the 2004-2005 academic year, determined as follows:

(A) The fractional year of service if H were a part-time employee for a full year is 3/9 (number of hours employed divided by the usual number of hours of work required for that position).
(B) The fractional year of service if H were a full-time employee for half of a year is \( \frac{1}{2} \) (one semester, divided by the usual 2-semester annual work period).

(C) These fractions are multiplied to obtain the fractional year of service: 3/9 times \( \frac{1}{2} \), or 3/18, equals 1/6 of a year of service.

(f) **Excess contributions or deferrals**—(1) **Inclusion in gross income.** Any contribution made for a participant to a section 403(b) contract for the taxable year that exceeds either the maximum annual contribution limit set forth in paragraph (b) of this section or the maximum annual section 403(b) elective deferral limit set forth in paragraph (c) of this section constitutes an excess contribution that is included in gross income for that taxable year. See §1.403(b)-3(d)(1)(iii) and (2)(i) for additional rules, including special rules relating to contracts that fail to be nonforfeitable. See also section 4973 for an excise tax applicable with respect to excess contributions to a custodial account and section 4979(f)(2)(B) for a special rule applicable if excess matching contributions, excess after-tax employee contributions, and excess section 403(b) elective deferrals do not exceed $100.

(2) **Separate account required for certain excess contributions; distribution of excess elective deferrals.** A contract to which a contribution is made that exceeds the maximum annual contribution limit set forth in paragraph (b) of this section is not a section 403(b) contract unless the excess contribution is held in a separate account which constitutes a separate account for purposes of section 72. See also §1.403(b)-3(a)(4) and paragraph (f)(4) of this section for additional rules with respect to the requirements of section 401(a)(30) and any excess deferral.

(3) **Ability to distribute excess contributions.** A contract does not fail to satisfy the requirements of §1.403(b)-3, the distribution rules of §1.403(b)-6 or 1.403(b)-9, or
the funding rules of §1.403(b)-8 solely by reason of a distribution made from a separate account under paragraph (f)(2) of this section or made under paragraph (f)(4) of this section.

(4) Excess section 403(b) elective deferrals. A section 403(b) contract may provide that any excess deferral as a result of a failure to comply with the limitation under paragraph (c) of this section for a taxable year with respect to any section 403(b) elective deferral made for a participant by the employer will be distributed to the participant, with allocable net income, no later than April 15 of the following taxable year or otherwise in accordance with section 402(g). See section 402(g)(2)(A) for rules permitting the participant to allocate excess deferrals among the plans in which the participant has made elective deferrals, and see section 402(g)(2)(C) for special rules to determine the tax treatment of such a distribution.

(5) Examples. The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. (i) Facts. Individual D’s employer makes a $46,000 contribution for 2006 to an individual annuity insurance policy for Individual D that would otherwise be a section 403(b) contract. The contribution does not include any elective deferrals and the applicable limit under section 415(c) is $44,000 for 2006. The $2,000 section 415(c) excess is put into a separate account under the policy. Employer includes $2,000 in D’s gross income as wages for 2006 and, to the extent of the amount held in the separate account for the section 415(c) excess contribution, does not treat the account as a contract to which section 403(b) applies.

(ii) Conclusion. The separate account for the section 415(c) excess contribution is a contract to which section 403(c) applies, but the excess contribution does not cause the rest of the contract to fail section 403(b).

Example 2. (i) Facts. Same facts as Example 1, except that the contribution is made to purchase mutual funds that are held in a custodial account, instead of an individual annuity insurance policy.

(ii) Conclusion. The conclusion is the same as in Example 1, except that the purchase constitutes a transfer described in section 83.
Example 3. (i) **Facts.** Same facts as Example 1, except that the amount held in the separate account for the section 415(c) excess contribution is subsequently distributed to D.

(ii) **Conclusion.** The distribution is included in gross income to the extent provided under section 72 relating to distributions from a section 403(c) contract.

Example 4. (i) **Facts.** Individual E makes section 403(b) elective deferrals totaling $15,500 for 2006, when E is age 45 and the applicable limit on section 403(b) elective deferrals is $15,000. On April 14, 2007, the plan refunds the $500 excess along with applicable earnings of $65.

(ii) **Conclusion.** The $565 payment constitutes a distribution of an excess deferral under paragraph (f)(4) of this section. Under section 402(g), the $500 excess deferral is included in E's gross income for 2006. The additional $65 is included in E's gross income for 2007 and, because the distribution is made by April 15, 2007 (as provided in section 402(g)(2)), the $65 is not subject to the additional 10 percent income tax on early distributions under section 72(t).

§1.403(b)-5 Nondiscrimination rules.

(a) **Nondiscrimination rules for contributions other than section 403(b) elective deferrals.** (1) **General rule.** Under section 403(b)(12)(A)(i), employer contributions and after-tax employee contributions to a section 403(b) plan must satisfy all of the following requirements (the nondiscrimination requirements) in the same manner as a qualified plan under section 401(a):

(i) Section 401(a)(4) (relating to nondiscrimination in contributions and benefits), taking section 401(a)(5) into account.

(ii) Section 401(a)(17) (limiting the amount of compensation that can be taken into account).

(iii) Section 401(m) (relating to matching and after-tax employee contributions).

(iv) Section 410(b) (relating to minimum coverage).

(2) **Nonapplication to section 403(b) elective deferrals.** The requirements of this paragraph (a) do not apply to section 403(b) elective deferrals.
(3) Compensation for testing. Except as may otherwise be specifically permitted under the provisions referenced in paragraph (a)(1) of this section, compliance with those provisions is tested using compensation as defined in section 414(s) (and without regard to section 415(c)(3)(E)). In addition, for purposes of paragraph (a)(1) of this section, there may be excluded employees who are permitted to be excluded under paragraph (b)(4)(ii)(D) and (E) of this section. However, as provided in paragraph (b)(4)(i) of this section, the exclusion of any employee listed in paragraph (b)(4)(ii)(D) or (E) of this section is subject to the conditions applicable under section 410(b)(4).

(4) Employer aggregation rules. See regulations under section 414(b), (c), (m), and (o) for rules treating entities as a single employer for purposes of the nondiscrimination requirements.

(5) Special rules for governmental plans. Paragraphs (a)(1)(i), (iii), and (iv) of this section do not apply to a governmental plan as defined in section 414(d) (but contributions to a governmental plan must comply with paragraphs (a)(1)(ii) and (b) of this section).

(b) Universal availability required for section 403(b) elective deferrals--(1) General rule. Under section 403(b)(12)(A)(ii), all employees of the eligible employer must be permitted to have section 403(b) elective deferrals contributed on their behalf if any employee of the eligible employer may elect to have the organization make section 403(b) elective deferrals. Further, the employee's right to make elective deferrals also includes the right to designate section 403(b) elective deferrals as designated Roth contributions.
(2) **Effective opportunity required.** For purposes of paragraph (b)(1) of this section, an employee is not treated as being permitted to have section 403(b) elective deferrals contributed on the employee's behalf unless the employee is provided an effective opportunity that satisfies the requirements of this paragraph (b)(2). Whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections. A section 403(b) plan satisfies the effective opportunity requirement of this paragraph (b)(2) only if, at least once during each plan year, the plan provides an employee with an effective opportunity to make (or change) a cash or deferred election (as defined at §1.401(k)-1(a)(3)) between cash or a contribution to the plan. Further, an effective opportunity includes the right to have section 403(b) elective deferrals made on his or her behalf up to the lesser of the applicable limits in §1.403(b)-4(c) (including any permissible catch-up elective deferrals under §1.403(b)-4(c)(2) and (3)) or the applicable limits under the contract with the largest limitation, and applies to part-time employees as well as full-time employees. An effective opportunity is not considered to exist if there are any other rights or benefits (other than rights or benefits listed in §1.401(k)-1(e)(6)(i)(A), (B), or (D)) that are conditioned (directly or indirectly) upon a participant making or failing to make a cash or deferred election with respect to a contribution to a section 403(b) contract.

(3) **Special rules.** (i) In the case of a section 403(b) plan that covers the employees of more than one section 501(c)(3) organization, the universal availability requirement of this paragraph (b) applies separately to each common law entity (that is,
applies separately to each section 501(c)(3) organization. In the case of a section 403(b) plan that covers the employees of more than one State entity, this requirement applies separately to each entity that is not part of a common payroll. An eligible employer may condition the employee’s right to have section 403(b) elective deferrals made on his or her behalf on the employee electing a section 403(b) elective deferral of more than $200 for a year.

(ii) For purposes of this paragraph (b)(3), an employer that historically has treated one or more of its various geographically distinct units as separate for employee benefit purposes may treat each unit as a separate organization if the unit is operated independently on a day-to-day basis. Units are not geographically distinct if such units are located within the same Standard Metropolitan Statistical Area (SMSA).

(4) Exclusions.--(i) Exclusions for special types of employees. A plan does not fail to satisfy the universal availability requirement of this paragraph (b) merely because it excludes one or more of the types of employees listed in paragraph (b)(4)(ii) of this section. However, the exclusion of any employee listed in paragraph (b)(4)(ii)(D) or (E) of this section is subject to the conditions applicable under section 410(b)(4). Thus, if any employee listed in paragraph (b)(4)(ii)(D) of this section has the right to have section 403(b) elective deferrals made on his or her behalf, then no employee listed in that paragraph (b)(4)(ii)(D) of this section may be excluded under this paragraph (b)(4) and, if any employee listed in paragraph (b)(4)(ii)(E) of this section has the right to have section 403(b) elective deferrals made on his or her behalf, then no employee listed in that paragraph (b)(4)(ii)(E) of this section may be excluded under this paragraph (b)(4).
(ii) **List of special types of excludable employees.** The following types of employees are listed in this paragraph (b)(4)(ii):

(A) Employees who are eligible under another section 403(b) plan, or a section 457(b) eligible governmental plan, of the employer which permits an amount to be contributed or deferred at the election of the employee.

(B) Employees who are eligible to make a cash or deferred election (as defined at §1.401(k)-1(a)(3)) under a section 401(k) plan of the employer.

(C) Employees who are non-resident aliens described in section 410(b)(3)(C).

(D) Subject to the conditions applicable under section 410(b)(4) (including section 410(b)(4)(B) permitting separate testing for employees not meeting minimum age and service requirements), employees who are students performing services described in section 3121(b)(10).

(E) Subject to the conditions applicable under section 410(b)(4), employees who normally work fewer than 20 hours per week (or such lower number of hours per week as may be set forth in the plan).

(iii) **Special rules.** (A) A section 403(b) plan is permitted to take into account coverage under another plan, as permitted in paragraphs (b)(4)(ii)(A) and (B) of this section, only if the rights to make elective deferrals with respect to that coverage would satisfy paragraphs (b)(2) and (4)(i) of this section if that coverage were provided under the section 403(b) plan.

(B) For purposes of paragraph (b)(4)(ii)(E) of this section, an employee normally works fewer than 20 hours per week if and only if--
(1) 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 (as defined in section 410(a)(3)(C)) in such period; and

(2) 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 so provides, each subsequent 12-month period), the employee worked fewer than 1,000 hours of service in the preceding 12-month period. (See, however, section 202(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829) Public Law 93-406, and regulations under section 410(a) of the Internal Revenue Code applicable with respect to plans that are subject to Title I of ERISA.)

(c) Plan required. Contributions to an annuity contract do not satisfy the requirements of this section unless the contributions are made pursuant to a plan, as defined in §1.403(b)-3(b)(3), and the terms of the plan satisfy this section.

(d) Church plans exception. This section does not apply to a section 403(b) contract purchased by a church (as defined in §1.403(b)-2).

(e) Other rules. This section only reflects requirements of the Internal Revenue Code applicable for purposes of section 403(b) and does not include other requirements. Specifically, this section does not reflect the requirements of ERISA that may apply with respect to section 403(b) arrangements, such as the vesting requirements at 29 U.S.C. 1053.

§1.403(b)-6 Timing of distributions and benefits.

(a) Distributions generally. This section provides special rules regarding the timing of distributions from, and the benefits that may be provided under, a section
403(b) contract, including limitations on when early distributions can be made (in paragraphs (b) through (d) of this section), required minimum distributions (in paragraph (e) of this section), and special rules relating to loans (in paragraph (f) of this section) and incidental benefits (in paragraph (g) of this section).

(b) Distributions from contracts other than custodial accounts or amounts attributable to section 403(b) elective deferrals. Except as provided in paragraph (c) of this section relating to distributions from custodial accounts, paragraph (d) of this section relating to distributions attributable to section 403(b) elective deferrals, §1.403(b)-4(f) (relating to correction of excess deferrals), or §1.403(b)-10(a) (relating to plan termination), a section 403(b) contract is permitted to distribute retirement benefits to the participant no earlier than upon the earlier of the participant's severance from employment or upon the prior occurrence of some event, such as after a fixed number of years, the attainment of a stated age, or disability. See §1.401-1(b)(1)(ii) for additional guidance. This paragraph (b) does not apply to after-tax employee contributions or earnings thereon.

(c) Distributions from custodial accounts that are not attributable to section 403(b) elective deferrals. Except as provided in §1.403(b)-4(f) (relating to correction of excess deferrals) or §1.403(b)-10(a) (relating to plan termination), distributions from a custodial account, as defined in §1.403(b)-8(d)(2), may not be paid to a participant before the participant has a severance from employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½. Any amounts transferred out of a custodial account to an annuity contract or retirement income account, including
earnings thereon, continue to be subject to this paragraph (c). This paragraph (c) does not apply to distributions that are attributable to section 403(b) elective deferrals.

(d) Distribution of section 403(b) elective deferrals—(1) Limitation on distributions

--(i) General rule. Except as provided in §1.403(b)-4(f) (relating to correction of excess deferrals) or §1.403(b)-10(a) (relating to plan termination), distributions of amounts attributable to section 403(b) elective deferrals may not be paid to a participant earlier than the earliest of the date on which the participant has a severance from employment, dies, has a hardship, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½.

(ii) Special rule for pre-1989 section 403(b) elective deferrals. For special rules relating to amounts held as of the close of the taxable year beginning before January 1, 1989 (which does not apply to earnings thereon), see section 1123(e)(3) of the Tax Reform Act of 1986 (100 Stat. 2085, 2475) Public Law 99-514, and section 1011A(c)(11) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342, 3476) Public Law 100-647.

(2) Hardship rules. A hardship distribution under this paragraph (d) has the same meaning as a distribution on account of hardship under §1.401(k)-1(d)(3) and is subject to the rules and restrictions set forth in §1.401(k)-1(d)(3) (including limiting the amount of a distribution in the case of hardship to the amount necessary to satisfy the hardship). In addition, a hardship distribution is limited to the aggregate dollar amount of the participant's section 403(b) elective deferrals under the contract (and may not include any income thereon), reduced by the aggregate dollar amount of the distributions previously made to the participant from the contract.
(3) **Failure to keep separate accounts.** If a section 403(b) contract includes both section 403(b) elective deferrals and other contributions and the section 403(b) elective deferrals are not maintained in a separate account, then distributions may not be made earlier than the later of--

(i) Any date permitted under paragraph (d)(1) of this section; and

(ii) Any date permitted under paragraph (b) or (c) of this section with respect to contributions that are not section 403(b) elective deferrals (whichever applies to the contributions that are not section 403(b) elective deferrals).

(e) **Minimum required distributions for eligible plans**--(1) *In general.* Under section 403(b)(10), a section 403(b) contract must meet the minimum distribution requirements of section 401(a)(9) (in both form and operation). See section 401(a)(9) for these requirements.

(2) **Treatment as IRAs.** For purposes of applying the distribution rules of section 401(a)(9) to section 403(b) contracts, the minimum distribution rules applicable to individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) apply to section 403(b) contracts. Consequently, except as otherwise provided in paragraphs (e)(3) through (e)(5) of this section, the distribution rules in section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in §1.408-8 for purposes of determining required minimum distributions.

(3) **Required beginning date.** The required beginning date for purposes of section 403(b)(10) is April 1 of the calendar year following the later of the calendar year in which the employee attains 70½ or the calendar year in which the employee retires.
from employment with the employer maintaining the plan. However, for any section 403(b) contract that is not part of a governmental plan or church plan, the required beginning date for a 5-percent owner is April 1 of the calendar year following the calendar year in which the employee attains 70½.

(4) **Surviving spouse rule does not apply.** The special rule in §1.408-8, A-5 (relating to spousal beneficiaries), does not apply to a section 403(b) contract. Thus, the surviving spouse of a participant is not permitted to treat a section 403(b) contract as the spouse’s own section 403(b) contract, even if the spouse is the sole beneficiary.

(5) **Retirement income accounts.** For purposes of §1.401(a)(9)-6, A-4 (relating to annuity contracts), annuity payments provided with respect to retirement income accounts do not fail to satisfy the requirements of section 401(a)(9) merely because the payments are not made under an annuity contract purchased from an insurance company, provided that the relationship between the annuity payments and the retirement income accounts is not inconsistent with any rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter). See also §1.403(b)-9(a)(5 for additional rules relating to annuities payable from a retirement income account).

(6) **Special rules for benefits accruing before December 31, 1986.** (i) The distribution rules provided in section 401(a)(9) do not apply to the undistributed portion of the account balance under the section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). The distribution rules provided in section 401(a)(9) apply to all benefits under section 403(b) contracts accruing after December 31, 1986 (post-'86 account balance), including earnings after
December 31, 1986. Consequently, the post-'86 account balance includes earnings after December 31, 1986, on contributions made before January 1, 1987, in addition to the contributions made after December 31, 1986, and earnings thereon.

(ii) The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (d)(6)(iii) of this section and provide such information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer or custodian does not keep such records, the entire account balance is treated as subject to section 401(a)(9).

(iii) In applying the distribution rules in section 401(a)(9), only the post-'86 account balance is used to calculate the required minimum distribution for a calendar year. The amount of any distribution from a contract is treated as being paid from the post-'86 account balance to the extent the distribution is required to satisfy the minimum distribution requirement with respect to that contract for a calendar year. Any amount distributed in a calendar year from a contract in excess of the required minimum distribution for a calendar year with respect to that contract is treated as paid from the pre-'87 account balance, if any, of that contract.

(iv) If an amount is distributed from the pre-'87 account balance and rolled over to another section 403(b) contract, the amount is treated as part of the post-'86 account balance in that second contract. However, if the pre-'87 account balance under a section 403(b) contract is directly transferred to another section 403(b) contract (as permitted under §1.403(b)-10(b)), the amount transferred retains its character as a pre-
'87 account balance, provided the issuer of the transferee contract satisfies the recordkeeping requirements of paragraph (e)(6)(ii) of this section.

(v) The distinction between the pre-'87 account balance and the post-'86 account balance provided for under this paragraph (e)(6) of this section has no relevance for purposes of determining the portion of a distribution that is includible in income under section 72.

(vi) The pre-'87 account balance must be distributed in accordance with the incidental benefit requirement of §1.401-1(b)(1)(i). Distributions attributable to the pre-'87 account balance are treated as satisfying this requirement if all distributions from the section 403(b) contract (including distributions attributable to the post-'86 account balance) satisfy the requirements of §1.401-1(b)(1)(i) without regard to this section, and distributions attributable to the post-'86 account balance satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)). Distributions attributable to the pre-'87 account balance are treated as satisfying the incidental benefit requirement if all distributions from the section 403(b) contract (including distributions attributable to both the pre-'87 account balance and the post-'86 account balance) satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)).

(7) Application to multiple contracts for an employee. The required minimum distribution must be separately determined for each section 403(b) contract of an employee. However, because, as provided in paragraph (e)(2) of this section, the distribution rules in section 401(a)(9) apply to section 403(b) contracts in accordance with the provisions in §1.408-8, the required minimum distribution from one section 403(b) contract of an employee is permitted to be distributed from another section.
403(b) contract in order to satisfy section 401(a)(9). Thus, as provided in §1.408-8, A-9, with respect to IRAs, the required minimum distribution amount from each contract is then totaled and the total minimum distribution taken from any one or more of the individual section 403(b) contracts. However, consistent with the rules in §1.408-8, A-9, only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. Amounts in section 403(b) contracts that an individual holds as a beneficiary of the same decedent may be aggregated, but such amounts may not be aggregated with amounts held in section 403(b) contracts that the individual holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts do not satisfy the minimum distribution requirements for IRAs, nor do distributions from IRAs satisfy the minimum distribution requirements for section 403(b) contracts.

(f) Loans. The determination of whether the availability of a loan, the making of a loan, or a failure to repay a loan made from an issuer of a section 403(b) contract to a participant or beneficiary is treated as a distribution (directly or indirectly) for purposes of this section, and the determination of whether the availability of the loan, the making of the loan, or a failure to repay the loan is in any other respect a violation of the requirements of section 403(b) and these regulations, depends on the facts and circumstances. Among the facts and circumstances are whether the loan has a fixed repayment schedule and bears a reasonable rate of interest, and whether there are repayment safeguards to which a prudent lender would adhere. Thus, for example, a loan must bear a reasonable rate of interest in order to be treated as not being a distribution. However, a plan loan offset is a distribution for purposes of this section.

§§ 1.403(b)-1 through 1.403(b)-5, this section, and §§ 1.408(b)-7 through 1.403(b)-11.
See §1.72(p)-1, Q&A-13. See also §1.403(b)-7(d) relating to the application of section 72(p) with respect to the taxation of a loan made under a section 403(b) contract. (Further, see section 408(b)(1) of Title I of ERISA and 29 CFR 2550.408b-1 of the Department of Labor regulations concerning additional requirements applicable with respect to plans that are subject to Title I of ERISA.)

(g) **Death benefits and other incidental benefits.** An annuity is not a section 403(b) contract if it fails to satisfy the incidental benefit requirement of §1.401-1(b)(1)(ii) (in form or in operation). For purposes of this paragraph (g), to the extent the incidental benefit requirement of §1.401-1(b)(1)(ii) requires a distribution of the participant's or beneficiary's accumulated benefit, that requirement is deemed to be satisfied if distributions satisfy the minimum distribution requirements of section 401(a)(9). In addition, if a contract issued by an insurance company qualified to issue annuities in a State includes provisions under which, in the event a participant becomes disabled, benefits will be provided by the insurance carrier as if employer contributions were continued until benefit distribution commences, then that benefit is treated as an incidental benefit (as insurance for a deferred annuity benefit in the event of disability) that must satisfy the incidental benefit requirement of §1.401-1(b)(1)(ii) (taking into account any other incidental benefits provided under the plan).

(h) **Special rule regarding severance from employment.** For purposes of this section, severance from employment occurs on any date on which an employee ceases to be an employee of an eligible employer, even though the employee may continue to be employed either by another entity that is treated as the same employer where either that other entity is not an entity that can be an eligible employer (such as transferring
from a section 501(c)(3) organization to a for-profit subsidiary of the section 501(c)(3) organization) or in a capacity that is not employment with an eligible employer (for example, ceasing to be an employee performing services for a public school but continuing to work for the same State employer). Thus, this paragraph (h) does not apply if an employee transfers from one section 501(c)(3) organization to another section 501(c)(3) organization that is treated as the same employer or if an employee transfers from one public school to another public school of the same State employer.

(i) Certain limitations do not apply to rollover contributions. The limitations on distributions in paragraphs (b) through (d) of this section do not apply to amounts held in a separate account for eligible rollover distributions as described in §1.403(b)-10(d).

§1.403(b)-7 Taxation of distributions and benefits.

(a) General rules for when amounts are included in gross income. Except as provided in this section (or in §1.403(b)-10(c) relating to payments pursuant to a qualified domestic relations order), amounts actually distributed from a section 403(b) contract are includible in the gross income of the recipient participant or beneficiary (in the year in which so distributed) under section 72 (relating to annuities). For an additional income tax that may apply to certain early distributions that are includible in gross income, see section 72(t).

(b) Rollovers to individual retirement arrangements and other eligible retirement plans—(1) Timing of taxation of rollovers. In accordance with sections 402(c), 403(b)(8), and 403(b)(10), a direct rollover in accordance with section 401(a)(31) is not includible in the gross income of a participant or beneficiary in the year rolled over. In addition, any payment made in the form of an eligible rollover distribution (as defined in

101
section 402(c)(4)) is not includible in gross income in the year paid to the extent the payment is contributed to an eligible retirement plan (as defined in section 402(c)(8)(B)) within 60 days, including the contribution to the eligible retirement plan of any property distributed. For this purpose, the rules of section 402(c)(2) through (7) and (c)(9) apply. Thus, to the extent that a portion of a distribution (including a distribution from a designated Roth account) would be excluded from gross income if it were not rolled over, if that portion of the distribution is to be rolled over into an eligible retirement plan that is not an IRA, the rollover must be accomplished through a direct rollover of the entire distribution to a plan qualified under section 401(a) or section 403(b) plan and that plan must agree to separately account for the amount not includible in income (so that a 60-day rollover to a plan qualified under section 401(a) or another section 403(b) plan is not available for this portion of the distribution). Any direct rollover under this paragraph (b)(1) is a distribution that is subject to the distribution requirements of §1.403(b)-6.

(2) Requirement that contract provide rollover options for eligible rollover distributions. As required in §1.403(b)-3(a)(7), an annuity contract is not a section 403(b) contract unless the contract provides that if the distributee of an eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B)) and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. For purposes of determining whether a contract satisfies this requirement, the provisions of section 401(a)(31) apply to the annuity as though it were a plan qualified under section 401(a) unless otherwise provided in section 401(a)(31).
Thus, the special rule in §1.401(k)-1(f)(3)(ii) with respect to distributions from a designated Roth account that are expected to total less than $200 during a year applies to designated Roth accounts under a section 403(b) plan. In applying the provisions of this paragraph (b)(2), the payor of the eligible rollover distribution from the contract is treated as the plan administrator.

(3) Requirement that contract payor provide notice of rollover option to distributees. To ensure that the distributee of an eligible rollover distribution from a section 403(b) contract has a meaningful right to elect a direct rollover, section 402(f) requires that the distributee be informed of the option. Thus, within a reasonable time period before making the initial eligible rollover distribution, the payor must provide an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. For purposes of satisfying the reasonable time period requirement, the plan timing rule provided in section 402(f)(1) and §1.402(f)-1 applies to section 403(b) contracts.

(4) Mandatory withholding upon certain eligible rollover distributions from contracts. If a distributee of an eligible rollover distribution from a section 403(b) contract does not elect to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover, the eligible rollover distribution is subject to 20-percent income tax withholding imposed under section 3405(c). See section 3405(c) and §31.3405(c)-1 of this chapter for provisions regarding the withholding requirements relating to eligible rollover distributions.

(5) Automatic rollover for certain mandatory distributions under section 401(a)(31). In accordance with section 403(b)(10), a section 403(b) plan is required to
comply with section 401(a)(31) (including automatic rollover for certain mandatory distributions) in the same manner as a qualified plan.

(c) **Special rules.** See section 402(g)(2)(C) for special rules to determine the tax treatment of a distribution of excess deferrals, and see §1.401(m)-1(e)(3)(v) for the tax treatment of corrective distributions of after-tax employee contributions and matching contributions to comply with section 401(m). See sections 402(l) and 403(b)(2) for a special rule regarding distributions for certain retired public safety officers made from a governmental plan for the direct payment of certain premiums.

(d) **Amounts taxable under section 72(p)(1).** In accordance with section 72(p), the amount of any loan from a section 403(b) contract to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is treated as having been received as a distribution from the contract under section 72(p)(1), except to the extent set forth in section 72(p)(2) (relating to loans that do not exceed a maximum amount and that are repayable in accordance with certain terms) and §1.72(p)-1. See generally §1.72(p)-1. Thus, except to the extent a loan satisfies section 72(p)(2), any amount loaned from a section 403(b) contract to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is includible in the gross income of the participant or beneficiary for the taxable year in which the loan is made. A deemed distribution is not an actual distribution for purposes of §1.403(b)-6, as provided at §1.72(p)-1, Q&A-12 and Q&A-13. (Further, see section 408(b)(1) of Title I of ERISA concerning the effect of noncompliance with Title I loan requirements for plans that are subject to Title I of ERISA.)
(e) **Special rules relating to distributions from a designated Roth account.** If an amount is distributed from a designated Roth account under a section 403(b) plan, the amount, if any, that is includible in gross income and the amount, if any, that may be rolled over to another section 403(b) plan is determined under §1.402A-1. Thus, the designated Roth account is treated as a separate contract for purposes of section 72. For example, the rules of section 72(b) must be applied separately to annuity payments with respect to a designated Roth account under a section 403(b) plan and separately to annuity payments with respect to amounts attributable to any other contributions to the section 403(b) plan.

(f) **Aggregation of contracts.** In accordance with section 403(b)(5), the rules of this section are applied as if all annuity contracts for the employee by the employer are treated as a single contract.

(g) **Certain rules relating to employment taxes.** With respect to contributions under the Federal Insurance Contributions Act (FICA) under Chapter 21, see section 3121(a)(5)(D) for a special rule relating to section 403(b) contracts. With respect to income tax withholding on distributions from section 403(b) contracts, see section 3405 generally. However, see section 3401 for income tax withholding applicable to annuity contracts or custodial accounts that are not section 403(b) contracts or for cases in which an annuity contract or custodial account ceases to be a section 403(b) contract. See also §1.72(p)-1, Q&A-15, and §35.3405(c)-1, Q&A-11 of this chapter, for special rules relating to income tax withholding for loans made from certain employer plans, including section 403(b) contracts.
(a) **Investments.** Section 403(b) and §1.403(b)-3(a) only apply to amounts held in an annuity contract (as defined in §1.403(b)-2), including a custodial account that is treated as an annuity contract under paragraph (d) of this section, or a retirement income account that is treated as an annuity contract under §1.403(b)-9.

(b) **Contributions to the plan.** Contributions to a section 403(b) plan must be transferred to the insurance company issuing the annuity contract (or the entity holding assets of any custodial or retirement income account that is treated as an annuity contract) within a period that is not longer than is reasonable for the proper administration of the plan. For purposes of this requirement, the plan may provide for section 403(b) elective deferrals for a participant under the plan to be transferred to the annuity contract within a specified period after the date the amounts would otherwise have been paid to the participant. For example, the plan could provide for section 403(b) elective deferrals under the plan to be contributed within 15 business days following the month in which these amounts would otherwise have been paid to the participant.

(c) **Annuity contracts—(1) Generally.** As defined in §1.403(b)-2, and except as otherwise permitted under this section, an annuity contract means a contract that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity. This paragraph (c) sets forth additional rules regarding annuity contracts.

(2) **Certain insurance contracts.** Neither a life insurance contract, as defined in section 7702, an endowment contract, a health or accident insurance contract, nor a property, casualty, or liability insurance contract meets the definition of an annuity contract.
contract. See §1.401(f)-4(e). If a contract issued by an insurance company qualified to issue annuities in a State provides death benefits as part of the contract, then that coverage is permitted, assuming that those death benefits do not cause the contract to fail to satisfy any requirement applicable to section 403(b) contracts, for example, assuming that those benefits satisfy the incidental benefit requirement of §1.401-1(b)(1)(i), as required by §1.403(b)-6(g).

(3) Special rule for certain contracts. This paragraph (c)(3) applies in the case of a contract issued under a State section 403(b) plan established on or before May 17, 1982, or for an employee who becomes covered for the first time under the plan after May 17, 1982, unless the Commissioner had before that date issued any written communication (either to the employer or financial institution) to the effect that the arrangement under which the contract was issued did not meet the requirements of section 403(b). The requirement that the contract be issued by an insurance company qualified to issue annuities in a State does not apply to a contract described in the preceding sentence if one of the following two conditions is satisfied and that condition has been satisfied continuously since May 17, 1982--

(i) Benefits under the contract are provided from a separately funded retirement reserve that is subject to supervision of the State insurance department; or

(ii) Benefits under the contract are provided from a fund that is separate from the fund used to provide statutory benefits payable under a state retirement system and that is part of a State teachers retirement system (including a state university retirement system) to purchase benefits that are unrelated to the basic benefits provided under the
retirement system, and the death benefit provided under the contract does not at any
time exceed the larger of the reserve or the contribution made for the employee.

(d) **Custodial accounts**—(1) **Treatment as a section 403(b) contract.** Under
section 403(b)(7), a custodial account is treated as an annuity contract for purposes of
§§1.403(b)-1 through 1.403(b)-7, this section and §§1.403(b)-9 through 1.403(b)-11.
See section 403(b)(7)(B) for special rules regarding the tax treatment of custodial
accounts and section 4973(c) for an excise tax that applies to excess contributions to a
custodial account.

(2) **Custodial account defined.** A custodial account means a plan, or a separate
account under a plan, in which an amount attributable to section 403(b) contributions (or
amounts rolled over to a section 403(b) contract, as described in §1.403(b)-10(d)) is
held by a bank or a person who satisfies the conditions in section 401(f)(2), if--

(i) All of the amounts held in the account are invested in stock of a regulated
investment company (as defined in section 851(a) relating to mutual funds);

(ii) The requirements of §1.403(b)-6(c) (imposing restrictions on distributions with
respect to a custodial account) are satisfied with respect to the amounts held in the
account;

(iii) The assets held in the account cannot be used for, or diverted to, purposes
other than for the exclusive benefit of plan participants or their beneficiaries (for which
purpose, assets are treated as diverted to the employer if the employer borrows assets
from the account); and

(iv) The account is not part of a retirement income account.
(3) **Effect of definition.** The requirement in paragraph (d)(2)(i) of this section is not satisfied if the account includes any assets other than stock of a regulated investment company.

(4) **Treatment of custodial account.** A custodial account is treated as a section 401 qualified plan solely for purposes of subchapter F of subtitle A and subtitle F of the Internal Revenue Code with respect to amounts received by it (and income from investment thereof). This treatment only applies to a custodial account that constitutes a section 403(b) contract under §§1.403(b)-1 through 1.403(b)-7, this section and §§1.403(b)-9 through 1.403(b)-11 or that would constitute a section 403(b) contract under §§1.403(b)-1 through 1.403(b)-7, this section and §§1.403(b)-9 through 1.403(b)-11 if the amounts held in the account were to satisfy the nonforfeitability requirement of §1.403(b)-3(a)(2).

(e) **Retirement income accounts.** See §1.403(b)-9 for special rules under which a retirement income account for employees of a church-related organization is treated as a section 403(b) contract for purposes of §§1.403(b)-1 through 1.403(b)-7, this section and §§1.403(b)-9 through 1.403(b)-11.

(f) **Combining assets.** To the extent permitted by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), trust assets held under a custodial account and trust assets held under a retirement income account, as described in §1.403(b)-9(a)(6), may be invested in a group trust with trust assets held under a qualified plan or individual retirement plan. For this purpose, a trust includes a custodial account that is treated as a trust under section 401(f).
§1.403(b)-9 Special rules for church plans.

(a) Retirement income accounts--(1) Treatment as a section 403(b) contract.

Under section 403(b)(9), a retirement income account for employees of a church-related organization (as defined in §1.403(b)-2) is treated as an annuity contract for purposes of §§1.403(b)-1 through 1.403(b)-8, this section, §1.403(b)-10 and §1.403(b)-11.

(2) Retirement income account defined--(i) In general. A retirement income account means a defined contribution program established or maintained by a church-related organization under which--

(A) There is separate accounting for the retirement income account's interest in the underlying assets (namely, there must be sufficient separate accounting in order for it to be possible at all times to determine the retirement income account's interest in the underlying assets and to distinguish that interest from any interest that is not part of the retirement income account);

(B) Investment performance is based on gains and losses on those assets; and

(C) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries (and for this purpose, assets are treated as diverted to the employer if there is a loan or other extension of credit from assets in the account to the employer).

(ii) Plan required. A retirement income account must be maintained pursuant to a program which is a plan (as defined in §1.403(b)-3(b)(3)) and the plan document must state (or otherwise evidence in a similarly clear manner) the intent to constitute a retirement income account.
(3) **Ownership or use constitutes distribution.** Any asset of a retirement income account that is owned or used by a participant or beneficiary is treated as having been distributed to that participant or beneficiary. See §§1.403(b)-6 and 1.403(b)-7 for rules relating to distributions.

(4) **Coordination of retirement income account with custodial account rules.** A retirement income account that is treated as an annuity contract is not a custodial account (as defined in §1.403(b)-8(d)(2)), even if it is invested solely in stock of a regulated investment company.

(5) **Life annuities.** A retirement income account may distribute benefits in a form that includes a life annuity only if—

(i) The amount of the distribution form has an actuarial present value, at the annuity starting date, equal to the participant’s or beneficiary’s accumulated benefit, based on reasonable actuarial assumptions, including regarding interest and mortality; and

(ii) The plan sponsor guarantees benefits in the event that a payment is due that exceeds the participant’s or beneficiary’s accumulated benefit.

(6) **Combining retirement income account assets with other assets.** For purposes of §1.403(b)-8(f) relating to combining assets, retirement income account assets held in trust (including a custodial account that is treated as a trust under section 401(f)) are subject to the same rules regarding combining of assets as custodial account assets. In addition, retirement income account assets are permitted to be commingled in a common fund with amounts devoted exclusively to church purposes (such as a fund from which unfunded pension payments are made to former employees.
of the church). However, unless otherwise permitted by the Commissioner, no assets of the plan sponsor, other than retirement income account assets, may be combined with custodial account assets or any other assets permitted to be combined under §1.403(b)-8(f). This paragraph (a)(6) is subject to any additional rules issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter).

(7) **Trust treated as tax exempt.** A trust (including a custodial account that is treated as a trust under section 401(f)) that includes no assets other than assets of a retirement income account is treated as an organization that is exempt from taxation under section 501(a).

(b) **No compensation limitation up to $10,000.** See section 415(c)(7) for special rules regarding certain annual additions not exceeding $10,000.

(c) **Special deduction rule for self-employed ministers.** See section 404(a)(10) for a special rule regarding the deductibility of a contribution made by a self-employed minister.

---

§1.403(b)-10 Miscellaneous provisions.

(a) **Plan terminations and frozen plans--(1) In general.** An employer is permitted to amend its section 403(b) plan to eliminate future contributions for existing participants or to limit participation to existing participants and employees (to the extent consistent with §1.403(b)-5). A section 403(b) plan is permitted to contain provisions that provide for plan termination and that allow accumulated benefits to be distributed on termination. However, in the case of a section 403(b) contract that is subject to the distribution restrictions in §1.403(b)-6(c) or (d) (relating to custodial accounts and
section 403(b) elective deferrals), termination of the plan and the distribution of
accumulated benefits is permitted only if the employer (taking into account all entities
that are treated as the same employer under section 414(b), (c), (m), or (o) on the date
of the termination) does not make contributions to any section 403(b) contract that is not
part of the plan during the period beginning on the date of plan termination and ending
12 months after distribution of all assets from the terminated plan. However, if at all
times during the period beginning 12 months before the termination and ending 12
months after distribution of all assets from the terminated plan, fewer than 2 percent of
the employees who were eligible under the section 403(b) plan as of the date of plan
termination are eligible under the alternative section 403(b) contract, the alternative
section 403(b) contract is disregarded. To the extent a contract fails to satisfy the
nonforfeitability requirement of §1.403(b)-3(a)(2) at the date of plan termination, the
contract is not, and cannot later become, a section 403(b) contract. In order for a
section 403(b) plan to be considered terminated, all accumulated benefits under the
plan must be distributed to all participants and beneficiaries as soon as administratively
practicable after termination of the plan. For this purpose, delivery of a fully paid
individual insurance annuity contract is treated as a distribution. The mere provision for,
and making of, distributions to participants or beneficiaries upon plan termination does
not cause a contract to cease to be a section 403(b) contract. See §1.403(b)-7 for rules
regarding the tax treatment of distributions, including §1.403(b)-7(b)(1) under which an
eligible rollover distribution is not included in gross income if paid in a direct rollover to
an eligible retirement plan or if transferred to an eligible retirement plan within 60 days.
(2) **Employers that cease to be eligible employers.** An employer that ceases to be an eligible employer may no longer contribute to a section 403(b) contract for any subsequent period, and the contract will fail to satisfy §1.403(b)-3(a) if any further contributions are made with respect to a period after the employer ceases to be an eligible employer.

(b) **Contract exchanges and plan-to-plan transfers**—(1) **Contract exchanges and transfers**—(i) **General rule.** If the conditions in paragraph (b)(2) of this section are met, a section 403(b) contract held under a section 403(b) plan is permitted to be exchanged for another section 403(b) contract held under that section 403(b) plan. Further, if the conditions in paragraph (b)(3) of this section are met, a section 403(b) plan is permitted to provide for the transfer of its assets (including any assets held in a custodial account or retirement income account that are treated as section 403(b) contracts) to another section 403(b) plan. In addition, if the conditions in paragraph (b)(4) of this section (relating to permissive service credit and repayments under section 415) are met, a section 403(b) plan is permitted to provide for the transfer of its assets to a qualified plan under section 401(a). However, neither a qualified plan nor an eligible governmental plan under section 457(b) may transfer assets to a section 403(b) plan, and a section 403(b) plan may not accept such a transfer. In addition, a section 403(b) contract may not be exchanged for an annuity contract that is not a section 403(b) contract. Neither a plan-to-plan transfer nor a contract exchange permitted under this paragraph (b) is treated as a distribution for purposes of the distribution restrictions at §1.403(b)-6. Therefore, such a transfer or exchange may be made before severance
from employment or another distribution event. Further, no amount is includible in gross income by reason of such a transfer or exchange.

(ii) **ERISA rules.** See §1.414(l)-1 for other rules that are applicable to section 403(b) plans that are subject to section 208 of the Employee Retirement Income Security Act of 1974 (88 Stat. 829, 865).

(2) **Requirements for contract exchange within the same plan**—(i) **General rule.** A section 403(b) contract of a participant or beneficiary may be exchanged under paragraph (b)(1) of this section for another section 403(b) contract of that participant or beneficiary under the same section 403(b) plan if each of the following conditions are met:

(A) The plan under which the contract is issued provides for the exchange.

(B) The participant or beneficiary has an accumulated benefit immediately after the exchange that is at least equal to the accumulated benefit of that participant or beneficiary immediately before the exchange (taking into account the accumulated benefit of that participant or beneficiary under both section 403(b) contracts immediately before the exchange).

(C) The other contract is subject to distribution restrictions with respect to the participant that are not less stringent than those imposed on the contract being exchanged, and the employer enters into an agreement with the issuer of the other contract under which the employer and the issuer will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting contract, or any other contract to which contributions have been made by the employer, to satisfy section 403(b),
including information concerning the participant's employment and information that takes into account other section 403(b) contracts or qualified employer plans (such as whether a severance from employment has occurred for purposes of the distribution restrictions in §1.403(b)-6 and whether the hardship withdrawal rules of §1.403(b)-6(d)(2) are satisfied).

(2) Information necessary for the resulting contract, or any other contract to which contributions have been made by the employer, to satisfy other tax requirements (such as whether a plan loan satisfies the conditions in section 72(p)(2) so that the loan is not a deemed distribution under section 72(p)(1)).

(ii) **Accumulated benefit.** The condition in paragraph (b)(2)(i)(B) of this section is satisfied if the exchange would satisfy section 414(l)(1) if the exchange were a transfer of assets.

(iii) **Authority for future guidance.** Subject to such conditions as the Commissioner determines to be appropriate, the Commissioner may issue rules of general applicability, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), permitting an exchange of one section 403(b) contract for another section 403(b) contract for an exchange that does not satisfy paragraph (b)(2)(i)(C) of this section. Any such rules must require the resulting contract to set forth procedures that the Commissioner determines are reasonably designed to ensure compliance with those requirements of section 403(b) or other tax provisions that depend on either information concerning the participant's employment or information that takes into account other section 403(b) contracts or other employer plans (such as whether a severance from employment has
occurred for purposes of the distribution restrictions in §1.403(b)-6, whether the hardship withdrawal rules of §1.403(b)-6(d)(2) are satisfied, and whether a plan loan constitutes a deemed distribution under section 72(p)).

(3) Requirements for plan-to-plan transfers. (i) A plan-to-plan transfer under paragraph (b)(1) of this section from a section 403(b) plan to another section 403(b) plan is permitted if each of the following conditions are met—

(A) In the case of a transfer for a participant, the participant is an employee or former employee of the employer (or the business of the employer) for the receiving plan.

(B) In the case of a transfer for a beneficiary of a deceased participant, the participant was an employee or former employee of the employer (or business of the employer) for the receiving plan.

(C) The transferor plan provides for transfers.

(D) The receiving plan provides for the receipt of transfers.

(E) The participant or beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that participant or beneficiary immediately before the transfer.

(F) The receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under §1.403(b)-6, the receiving plan imposes restrictions on distributions to the participant or beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan.

(G) If a plan-to-plan transfer does not constitute a complete transfer of the participant's or beneficiary's interest in the section 403(b) plan, the transferee plan
treats the amount transferred as a continuation of a pro rata portion of the participant's or beneficiary's interest in the section 403(b) plan (for example, a pro rata portion of the participant's or beneficiary's interest in any after-tax employee contributions).

(ii) **Accumulated benefit.** The condition in paragraph (b)(3)(i)(D) of this section is satisfied if the transfer would satisfy section 414(l)(1).

(4) **Purchases of permissive service credit by contract-to-plan transfers from a section 403(b) contract to a qualified plan**—(i) **General rule.** If the conditions in paragraph (b)(4)(ii) of this section are met, a section 403(b) plan may provide for the transfer of assets held in the plan to a qualified defined benefit plan that is a governmental plan (as defined in section 414(d)).

(ii) **Conditions for plan-to-plan transfers.** A transfer may be made under this paragraph (b)(4) only if the transfer is either--

(A) For the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under the receiving defined benefit plan; or

(B) A repayment to which section 415 does not apply by reason of section 415(k)(3).

(c) **Qualified domestic relations orders.** In accordance with the second sentence of section 414(p)(9), any distribution from an annuity contract under section 403(b) (including a distribution from a custodial account or retirement income account that is treated as a section 403(b) contract) pursuant to a qualified domestic relations order is treated in the same manner as a distribution from a plan to which section 401(a)(13) applies. Thus, for example, a section 403(b) plan does not fail to satisfy the distribution restrictions set forth in §1.403(b)-6(b), (c), or (d) merely as a result of distribution made
pursuant to a qualified domestic relations order under section 414(p), so that such a
distribution is permitted without regard to whether the employee from whose contract
the distribution is made has had a severance from employment or another event
permitting a distribution to be made under section 403(b). In the case of a plan that is
subject to Title I of ERISA, see also section 206(d)(3) of ERISA under which the
prohibition against assignment or alienation of plan benefits under section 206(d)(1) of
ERISA does not apply to an order that is determined to be a qualified domestic relations
order.

(d) **Rollovers to a section 403(b) contract**—(1) **General rule.** A section 403(b)
contract may accept a contribution that is an eligible rollover distribution (as defined in
section 402(c)(4)) made from another eligible retirement plan (as defined in section
402(c)(8)(B)). Any amount contributed to a section 403(b) contract as an eligible
rollover distribution is not taken into account for purposes of the limits in §1.403(b)-4,
but, except as otherwise specifically provided (for example, at §1.403(b)-6(i)), is
otherwise treated in the same manner as an amount held under a section 403(b)
contract for purposes of §§1.403(b)-3 through 1.403(b)-9 and this section.

(2) **Special rules relating to after-tax employee contributions and designated Roth
contributions.** A section 403(b) plan that receives an eligible rollover distribution that
includes after-tax employee contributions or designated Roth contributions is required to
obtain information regarding the employee's section 72 basis in the amount rolled over.
A section 403(b) plan is permitted to receive an eligible rollover distribution that includes
designated Roth contributions only if the plan permits employees to make elective
deferrals that are designated Roth contributions.
(e) **Deemed IRAs.** See regulations under section 408(q) for special rules relating to deemed IRAs.

(f) **Defined benefit plans**--(1) **Defined benefit plans generally.** Except for a TEFRA church defined benefit plan as defined in paragraph (f)(2) of this section, section 403(b) does not apply to any contributions or accrual under a defined benefit plan.

(2) **TEFRA church defined benefit plans.** See section 251(e)(5) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, for a provision permitting certain arrangements established by a church-related organization and in effect on September 3, 1982 (a TEFRA church defined benefit plan) to be treated as section 403(b) contract even though it is a defined benefit arrangement. In accordance with section 403(b)(1), for purposes of applying section 415 to a TEFRA church defined benefit plan, the accruals under the plan are limited to the maximum amount permitted under section 415(c) when expressed as an annual addition, and, for this purpose, the rules at §1.402(b)-1(a)(2) for determining the present value of an accrual under a nonqualified defined benefit plan also apply for purposes of converting the accrual under a TEFRA church defined benefit plan to an annual addition. See section 415(b) for additional limits applicable to TEFRA church defined benefit plans.

(g) **Other rules relating to section 501(c)(3) organizations.** See section 501(c)(3) and regulations thereunder for the substantive standards for tax-exemption under that section, including the requirement that no part of the organization's net earnings inure to the benefit of any private shareholder or individual. See also sections 4941 (self dealing), 4945 (taxable expenditures), and 4958 (excess benefit transactions), and the
regulations thereunder, for rules relating to excise taxes imposed on certain
transactions involving organizations described in section 501(c)(3).

§1.403(b)-11 Applicable dates.

(a) General rule. Except as otherwise provided in this section, §§1.403(b)-1
through 1.403(b)-10 apply for taxable years beginning after December 31, 2008.

(b) Collective bargaining agreements. In the case of a section 403(b) plan
maintained pursuant to one or more collective bargaining agreements that have been
ratified and in effect on [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN
THE FEDERAL REGISTER], §§1.403(b)-1 through 1.403(b)-10 do not apply before the
earlier of--

(1) The date on which the last of the collective bargaining agreements terminates
(determined without regard to any extension thereof after [INSERT DATE OF
PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]); or

(2) [INSERT DATE THAT IS THREE YEARS AFTER DATE OF PUBLICATION
OF THIS DOCUMENT IN THE FEDERAL REGISTER].

(c) Church conventions; retirement income account. (1) In the case of a section
403(b) plan maintained by a church-related organization for which the authority to
amend the plan is held by a church convention (within the meaning of section 414(e)),
§§1.403(b)-1 through 1.403(b)-10 do not apply before the first day of the first plan year
that begins after December 31, 2009.

(2) In the case of a loan or other extension of credit to the employer that was
entered into under a retirement income account before [INSERT DATE OF
PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER], the plan does
not fail to satisfy §1.403(b)-9(a)(2)(C) on account of the loan or other extension of credit if the plan takes reasonable steps to eliminate the loan or other extension of credit to the employer before the applicable date for §1.403(b)-9(a)(2) or as promptly as practical thereafter (including taking steps after [[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]] and before the applicable date).

(d) Special rules for plans that exclude certain types of employees from elective deferrals. (1) If, on [[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]], a plan excludes any of the following categories of employees, then the plan does not fail to satisfy §1.403(b)-5(b) as a result of that exclusion before the first day of the first taxable year that begins after December 31, 2009:

(i) Employees who make a one-time election to participate in a governmental plan described in section 414(d) that is not a section 403(b) plan.

(ii) Professors who are providing services on a temporary basis to another educational organization (as defined under section 170(b)(1)(A)(ii)) for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original educational organization.

(iii) Employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement from eligibility to make elective deferrals.

(2) If, on [[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]], a plan excludes employees who are covered by a collective bargaining agreement from eligibility to make elective deferrals, the plan does not fail to
satisfy §1.403(b)-5(b) (relating to universal availability) as a result of that exclusion before the later of--

(i) The first day of the first taxable year that begins after December 31, 2008; or

(ii) The earlier of--

(A) The date on which the related collective bargaining agreement terminates (determined without regard to any extension thereof after [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]); or

(B) [INSERT DATE THAT IS THREE YEARS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

(3) In the case of a governmental plan (as defined in section 414(d)) for which the authority to amend the plan is held by a legislative body that meets in legislative session, the plan does not fail to satisfy §1.403(b)-5(b) as a result of any exclusion in paragraph (d)(1)(i), (d)(1)(ii), (d)(1)(iii), or (d)(2) of this section before the earlier of--

(i) The close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after January 1, 2009; or

(ii) January 1, 2011.

(e) Special rules for plans that permit in-service distributions. (1) Section 1.403(b)-6(b) does not apply to a contract issued by an insurance company before January 1, 2009.

(2) Any amendment to comply with the requirements of §1.403(b)-6 (disregarding paragraph (e)(1) of this section) that is adopted before January 1, 2009, or such later date as may be permitted under guidance issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin
(see §601.601(d)(2)(ii)(b) of this chapter), does not violate section 204(g) of the Employee Retirement Income Security Act of 1974 to the extent the amendment eliminates or reduces a right to receive benefit distributions during employment.

(f) Special rule for life insurance contracts. Section 1.403(b)-8(c)(2) does not apply to a contract issued before [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

(g) Special rule for contracts received in an exchange. Section 1.403(b)-10(b)(2) does not apply to a contract received in an exchange that occurred on or before [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN FEDERAL REGISTER] if the exchange (including the contract received in the exchange) satisfies such rules as the Commissioner has prescribed in guidance of general applicability at the time of the exchange.

(h) Special rule for coordination with regulations under section 415. Section 1.403(b)-3(b)(4)(ii) is applicable for taxable years beginning on or after July 1, 2007.

(i) Special rule for coordination with regulations under section 402A. Sections 1.403(b)-3(c), 1.403(b)-7(e), and 1.403(b)-10(d)(2) are applicable with respect to taxable years beginning on or after January 1, 2007.

§1.403(d)-1 [Removed]

Par. 8. Section 1.403(d)-1 is removed.

Par. 9. Section 1.414(c)-5 is redesignated as §1.414(c)-6 and new §1.414(c)-5 is added to read as follows:

§1.414(c)-5 Certain tax-exempt organizations.
(a) **Application.** This section applies to an organization that is exempt from tax under section 501(a). The rules of this section only apply for purposes of determining when entities are treated as the same employer for purposes of section 414(b), (c), (m), and (o) (including the sections referred to in section 414(b), (c), (m), (o), and (t)), and are in addition to the rules otherwise applicable under section 414(b), (c), (m), and (o) for determining when entities are treated as the same employer. Except to the extent set forth in paragraphs (d), (e), and (f) of this section, this section does not apply to any church, as defined in section 3121(w)(3)(A), or any qualified church-controlled organization, as defined in section 3121(w)(3)(B).

(b) **General rule.** In the case of an organization that is exempt from tax under section 501(a) (an exempt organization) whose employees participate in a plan, the employer with respect to that plan includes the exempt organization whose employees participate in the plan and any other organization that is under common control with that exempt organization. For this purpose, common control exists between an exempt organization and another organization if at least 80 percent of the directors or trustees of one organization are either representatives of, or directly or indirectly controlled by, the other organization. A trustee or director is treated as a representative of another exempt organization if he or she also is a trustee, director, agent, or employee of the other exempt organization. A trustee or director is controlled by another organization if the other organization has the general power to remove such trustee or director and designate a new trustee or director. Whether a person has the power to remove or designate a trustee or director is based on facts and circumstances. To illustrate the rules of this paragraph (b), if exempt organization A has the power to appoint at least 80
percent of the trustees of exempt organization B (which is the owner of the outstanding shares of corporation C, which is not an exempt organization) and to control at least 80 percent of the directors of exempt organization D, then, under this paragraph (b) and §1.414(b)-1, entities A, B, C, and D are treated as the same employer with respect to any plan maintained by A, B, C, or D for purposes of the sections referenced in section 414(b), (c), (m), (o), and (t).

(c) Permissive aggregation with entities having a common exempt purpose—(1)

General rule. For purposes of this section, exempt organizations that maintain a plan to which section 414(c) applies that covers one or more employees from each organization may treat themselves as under common control for purposes of section 414(c) (and, thus, as a single employer for all purposes for which section 414(c) applies) if each of the organizations regularly coordinates their day-to-day exempt activities. For example, an entity that provides a type of emergency relief within one geographic region and another exempt organization that provides that type of emergency relief within another geographic region may treat themselves as under common control if they have a single plan covering employees of both entities and regularly coordinate their day-to-day exempt activities. Similarly, a hospital that is an exempt organization and another exempt organization with which it coordinates the delivery of medical services or medical research may treat themselves as under common control if there is a single plan covering employees of the hospital and employees of the other exempt organization and the coordination is a regular part of their day-to-day exempt activities.

(2) Authority to permit aggregation. (i) For determining when entities are treated as the same employer under section 414(b), (c), (m), and (o), the Commissioner may
issue rules of general applicability, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), permitting other types of combinations of entities that include exempt organizations to elect to be treated as under common control for one or more specified purposes if—

(A) There are substantial business reasons for maintaining each entity in a separate trust, corporation, or other form; and

(B) Such treatment would be consistent with the anti-abuse standards in paragraph (f) of this section.

(ii) For example, this authority might be exercised in any situation in which the organizations are so integrated in their operations as to effectively constitute a single coordinated employer for purposes of section 414(b), (c), (m), and (o), including common employee benefit plans.

(d) Permissive disaggregation between qualified church controlled organizations and other entities. In the case of a church plan (as defined in section 414(e)) to which contributions are made by more than one common law entity, any employer may apply paragraphs (b) and (c) of this section to those entities that are not a church (as defined in section 403(b)(12)(B) and §1.403(b)-2) separately from those entities that are churches. For example, in the case of a group of entities consisting of a church (as defined in section 3121(w)(3)(A)), a secondary school (that is treated as a church under §1.403(b)-2), and several nursing homes each of which receives more than 25 percent of its support from fees paid by residents (so that none of them is a qualified church-controlled organization under §1.403(b)-2 and section 3121(w)(3)(B)), the nursing homes may treat themselves as being under common control with each other, but not
as being under common control with the church and the school, even though the
nursing homes would be under common control with the school and the church under
paragraph (b) of this section.

(e) Application to certain church entities under section 3121(w)(3). [Reserved].

(f) Anti-abuse rule. In any case in which the Commissioner determines that the
structure of one or more exempt organizations (which may include an exempt
organization and an entity that is not exempt from income tax) or the positions taken by
those organizations has the effect of avoiding or evading any requirements imposed
under section 401(a), 403(b), or 457(b), or any applicable section (as defined in section
414(t)), or any other provision for which section 414(c) applies, the Commissioner may
treat an entity as under common control with the exempt organization.

(g) Examples. The provisions of this section are illustrated by the following
text.

Example 1. (i) Facts. Organization A is a tax-exempt organization under section
501(c)(3) which owns 80% or more of the total value of all classes of stock of
corporation B, which is a for profit organization.

(ii) Conclusion. Under paragraph (a) of this section, this section does not alter
the rules of section 414(b) and (c), so that organization A and corporation B are under
common control under §1.414(c)-2(b).

Example 2. (i) Facts. Organization M is a hospital which is a tax-exempt
organization under section 501(c)(3) and organization N is a medical clinic which is also
a tax-exempt organization under section 501(c)(3). N is located in a city and M is
located in a nearby suburb. There is a history of regular coordination of day-to-day
activities between M and N, including periodic transfers of staff, coordination of staff
training, common sources of income, and coordination of budget and operational goals.
A single section 403(b) plan covers professional and staff employees of both the
hospital and the medical clinic. While a number of members of the board of directors of
M are also on the board of directors of N, there is less than 80% overlap in board
membership. Both organizations have approximately the same percentage of
employees who are highly compensated and have appropriate business reasons for
being maintained in separate entities.
(ii) Conclusion. Under paragraph (a) of this section, this section does not alter the rules of section 414(b) and (c), so that organization A and corporation B are under common control under §1.414(c)-2(b).

Example 2. (i) Facts. Organization M is a hospital which is a tax-exempt organization under section 501(c)(3) and organization N is a medical clinic which is also a tax-exempt organization under section 501(c)(3). N is located in a city and M is located in a nearby suburb. There is a history of regular coordination of day-to-day activities between M and N, including frequent transfers of staff, coordination of staff training, common sources of income, and coordination of budget and operational goals. A single section 403(b) plan covers professional and staff employees of both the hospital and the medical clinic. While a number of members of the board of directors of M are also on the board of directors of N, there is less than 80% overlap in board membership. Both organizations have approximately the same percentage of employees who are highly compensated and have appropriate business reasons for being maintained in separate entities.

(ii) Conclusion. M and N are not under common control under this section, but, under paragraph (c) of this section, may choose to treat themselves as under common control, assuming both of them act in a manner that is consistent with that choice for purposes of §1.403(b)-5(a), sections 401(a), 403(b), and 457(b), and any other applicable section (as defined in section 414(t)), or any other provision for which section 414(c) applies.

Example 3. (i) Facts. Organization O and P are each tax-exempt organizations under section 501(c)(3). Each organization maintains a qualified plan for its employees, but one of the plans would not satisfy section 410(b) (or section 401(a)(4)) if the organizations were under common control. The two organizations are closely related and, while the organizations have several trustees in common, the common trustees constitute fewer than 80 percent of the trustees of either organization. Organization O has the power to remove any of the trustees of P and to select the slate of replacement nominees.

(ii) Conclusion. Under these facts, pursuant to paragraphs (b) and (f) of this section, the Commissioner treats the entities as under common control.

(h) Applicable date. This section applies for plan years beginning after December 31, 2008.

Par. 10. For each entry listed in the "Location" column, remove the language in the "Remove" column and add the language in the "Add" column in its place.
<table>
<thead>
<tr>
<th>Location</th>
<th>Remove</th>
<th>Add</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1.101-1(a)(2)(ii)</td>
<td>paragraph (a) or (b) of §1.403(b)-1</td>
<td>§1.403(b)-3</td>
</tr>
<tr>
<td>§ 1.101-1(a)(2)(ii)</td>
<td>paragraph (c)(3) of §1.403(b)-1</td>
<td>§1.403(b)-7</td>
</tr>
<tr>
<td>§1.401(a)(9)-1, A-1</td>
<td>§1.403(b)-3</td>
<td>§1.403(b)-6(e)</td>
</tr>
<tr>
<td>§1.401(a)(31)-1, introductory text</td>
<td>§1.403(b)-2</td>
<td>§1.403(b)-7(b)</td>
</tr>
<tr>
<td>§1.401(a)(31)-1, A-1(b)(3)</td>
<td>§1.403(b)-2</td>
<td>§1.403(b)-7(b)</td>
</tr>
<tr>
<td>§1.402(c)-2, introductory text</td>
<td>§1.403(b)-2</td>
<td>§1.403(b)-7(b)</td>
</tr>
<tr>
<td>§1.402(c)-2, A-1(b)(4)</td>
<td>§1.403(b)-2</td>
<td>§1.403(b)-7(b)</td>
</tr>
<tr>
<td>§1.402(f)-1, introductory text</td>
<td>§1.403(b)-2</td>
<td>§1.403(b)-7(b)</td>
</tr>
<tr>
<td>§1.403(a)-1(a)</td>
<td>§1.403(b)-1</td>
<td>§§1.403(b)-1 thru 1.403(b)-9 1.403(b)-10</td>
</tr>
<tr>
<td>§1.403(c)-1, all locations</td>
<td>§1.403(b)-1(b)</td>
<td>§1.403(b)-3</td>
</tr>
<tr>
<td>§1.403(c)-1, all locations</td>
<td>§1.403(b)-1(b)(2)</td>
<td>§1.403(b)-3(c)</td>
</tr>
</tbody>
</table>

**PART 31—EMPLOYMENT TAXES, INCOME TAXES, PENALTIES, PENSIONS, RAILROAD RETIREMENT, REPORTING AND RECORDKEEPING REQUIREMENTS, SOCIAL SECURITY, UNEMPLOYMENT COMPENSATION**

Par. 11. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 12. For each entry listed in the "Location" column, remove the language in the "Remove" column and add the language in the "Add" column in its place.
§31.3405(c)-1, all locations | §1.403(b)-2, Q&A-1 | §1.403(b)-7(b)
§31.3405(c)-1, A-1(b) | §1.403(b)-2, Q&A-3 | §1.403(b)-7(b)
§31.3405(c)-1, A-1(b) | §1.403(b)-2, Q&A-1 and Q&A-2 | §1.403(b)-7(b)
§31.3405(c)-1, A-2 | §1.403(b)-2, Q&A-2 | §1.403(b)-7(b)

PART 54—EXCISE TAXES. PENSIONS, REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 13. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 14. For each entry listed in the "Location" column, remove the language in the "Remove" column and add the language in the "Add" column in its place.

<table>
<thead>
<tr>
<th>Location</th>
<th>Remove</th>
<th>Add</th>
</tr>
</thead>
<tbody>
<tr>
<td>§54.4974-2, A-3(a)(2)</td>
<td>§1.403(b)-3</td>
<td>§1.403(b)-6(e)</td>
</tr>
</tbody>
</table>

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 15. The authority citation for part 602 continues to read in part as follows:

Par 16. In §602.101, paragraph (b) is amended by removing the entry for §1.403(b)-2 and adding entries to the table for §§1.403(b)-7 and 1.402(b)-10 to read as follows:

§602.101 OMB Control numbers.

<table>
<thead>
<tr>
<th>CFR part or section where Identified and described</th>
<th>Current OMB control No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td></td>
</tr>
</tbody>
</table>

1.403(b)-7 ......................................................1545-1341
1.403(b)-10 .....................................................1545-2088

Deputy Commissioner for Services and Enforcement

Approved:

Assistant Secretary of Treasury (Tax Policy)
Par 12. In §602.101, paragraph (b) is amended by removing the entry for 1.403(b)-2 and adding an entry to the table for 1.403(b)-7 to read as follows:

<table>
<thead>
<tr>
<th>CFR part or section where identified and described</th>
<th>Current OMB control No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.403(b)-7</td>
<td>1545-1341</td>
</tr>
<tr>
<td>1.403(b)-10</td>
<td>1545-2068</td>
</tr>
</tbody>
</table>

Kevin M. Brown  
Deputy Commissioner for Services and Enforcement

Approved: July 2, 2007  
Eric Solomon  
Assistant Secretary of Treasury (Tax Policy)

Certified Copy

977