

Advisory Committee on
Tax Exempt and Government Entities
(ACT)

III. EP Operational Guidance

Brian L. Anderson, Project Leader
Mary Beth Braitman
Michael P. Coyne
Douglas O. Kant

June 9, 2004

Table of Contents

I.	Executive Summary	3
II.	Analysis.....	3
III.	Principles of Operational Guidance	9
IV.	Operational Guidance for Particular Types of Plans	10
V.	Recommendations	16
VI.	Acknowledgements.....	16
VII.	Exhibits	17

This page left intentionally blank

I. EXECUTIVE SUMMARY

Over the years, the Internal Revenue Service TE/GE Division (TE/GE) has provided much guidance to employers regarding the proper operation of their retirement plans. We, the EP Operational Guidance project team members, recommend that TE/GE provide even more such guidance, especially basic information, such as checklists, useful to small employers.

We also recommend that TE/GE publish comprehensive resource guides, in plain English, on the TE/GE website, for the most common plans involving salary deferrals: 401(k) plans and governmental 403(b) tax-sheltered annuity programs. Rough outlines of such guides are attached as Exhibits G and H, and their component checklists are attached as Exhibits D, E, F, I, J, and K. The guides, and their component checklists, are intended to educate employers regarding best practices, common mistakes, and general responsibilities, so that employers can better operate their plans in compliance with the plan documents and applicable law.

We believe that the time is right for these resource guides. As the 401(k) regulations are finalized and the 403(b) proposed regulations come out, the 401(k) and 403(b) compliance guides should be excellent practical tools for employers.

We further recommend that, if the resource guides are well received by employers, TE/GE provide similar guides for plan participants, so that participants can more easily monitor whether the plans are being properly operated.

Finally, we recommend that TE/GE periodically ask the employee-plans members of ACT to provide input on plan-operational guidance that is under development by TE/GE.

II. ANALYSIS

Employer maintenance of a retirement plan has two general aspects: the plan document and plan operation. The plan document is often the easier of the two; an employer generally has no trouble obtaining a properly-written document from a retirement-plan provider, typically the financial institution that holds the retirement-plan funds. Operation of the plan in compliance with the plan document and with applicable law is where most employers have trouble. Plans with employee salary deferrals, such as 401(k) plans and 403(b) tax-sheltered annuity programs, seem to have an especially-high incidence of plan-operation trouble.

Overall, an abundance of guidance is available to help employers operate their plans properly. Guidance is available from the retirement-plan providers themselves, from professional advisors such as attorneys and consultants, from trade associations and

employer groups, and from the federal government, particularly the U.S. Department of Labor and the Internal Revenue Service.

Unfortunately, much of the currently available plan-operation guidance is not very useful to the typical small employer. Much of the guidance is written for professionals or people who understand retirement-plan fundamentals. Many small employers simply do not understand the guidance, and will not take the time to understand it. As a result, we see a crucial need for very basic, easy-to-understand guidance for employers. A key component of such guidance would be checklists, because checklists are often better than standard narrative text at focusing a reader's attention on what needs to be done.

Recently, TE/GE, through the efforts of its Customer Education and Outreach Division (CE&O), headed by Mark O'Donnell, has been attempting to fill this need. CE&O has been providing employers, particularly those maintaining IRA-based plans, with some very basic retirement-plan operational guidance. Such guidance is characterized as "soft guidance," in contrast to the "hard guidance" (and technical detail) of regulations and Revenue Rulings.

Since beginning the EP Operational Guidance project in August 2003, we have provided input to CE&O in this effort. We encourage TE/GE to continue issuing such guidance. And we recommend that TE/GE go so far as to prepare and disseminate, especially through the TE/GE Internet website, in plain English, comprehensive resource guides for the most common retirement plans involving employee salary deferrals: 401(k) plans and 403(b) tax-sheltered annuity programs. We have prepared the rough beginnings of such guides.

Outgrowth of this Project from Prior ACT Projects

We embarked upon this EP Operational Guidance Project as a natural follow-up to two prior ACT projects:

- (1) In the Small Business Access and Compliance Project Group Report dated June 21, 2002, the ACT made a number of recommendations regarding TE/GE customer education materials. One of the specific recommendations was that TE/GE develop employer plan compliance checklists. Another was that TE/GE develop a "how-to" manual for employers to learn the basics of establishing a retirement plan and properly administering it from year to year. A third was that TE/GE encourage third-party vendors and plan sponsors to develop plan-operation manuals.
- (2) In the TE/GE Education and Outreach Project Group Report dated June 21, 2002, the ACT made recommendations for education and outreach projects for the three components of TE/GE (EO, EP, and FSLG/ITG/TEB). That project

assessed customer needs, reviewed existing TE/GE products and distribution methods, and recommended future projects. The ACT explored (a) the informational materials that TE/GE made available to its customers, (b) TE/GE Customer Account Services contacts with customers through the call site, (c) additional materials that would be useful to TE/GE customers, and (d) methods for TE/GE to disseminate useful information to its customers. The ACT concluded that (a) the Internet should be a critical component of any TE/GE educational efforts, (b) “primer” materials were a missing component, and (c) TE/GE should consider both primary and secondary distribution methods for its materials.

In this EP Operational Guidance Report, we take the prior suggestions to the next level – we recommend that TE/GE publish resource guides for the most common non-IRA-based retirement plans: 401(k) plans, and 403(b) plans. We also make recommendations on operational guidance for IRA-based plans, such as simplified employee pensions (SEPs), salary-reduction SEPs (SAR-SEPs), and SIMPLE IRAs.

The resource guides recommended in this EP Operational Guidance Report are not the kind of plan-operation manuals that the ACT recommended in its Small Business Access and Compliance Project Group Report dated June 21, 2002. Such manuals would undoubtedly be useful. Because of substantial differences between the retirement-plan operations of one employer to another, however, we believe that the drafting of model plan-operation manuals would be more difficult than the drafting of the resource guides recommended in this EP Operational Guidance Report. Perhaps the resource guides can someday become the foundation for model plan-operation manuals.

Project Team Activities

Most of our project activities related to the operational guidance materials described in this report. During each working session, we spent a considerable amount of time on the guidance materials themselves, sometimes by ourselves and sometimes in meetings with TE/GE personnel.

In addition, however, during each meeting, we spent at least some time with Mark O’Donnell and other TE/GE and Treasury personnel discussing their projects currently under way. This helped us put our project in the proper context. More importantly, however, it gave the TE/GE and Treasury personnel an opportunity to preview projects with us that were still in the developmental stages, obtaining suggestions for modification prior to public review.

In one instance, an ACT member invited a marketing executive to an afternoon ACT session to discuss the development of worksheets for small employers with a SEP

or SIMPLE IRA program. The executive's background was in the retail or smallest-employer retirement-plan market. The meeting provided the Treasury and TE/GE staff some insight into whether financial institutions would view such operational guidance materials as helpful to the institutions' clients and whether the institutions would be interested in providing such materials to their clients.

Reasons for Focus on Operational Guidance

Our focus on operational guidance reflects certain opinions that we hold:

- (1) Almost all employers that maintain retirement plans want to operate their plans in compliance with the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA).
- (2) The law governing employer-sponsored plans is extraordinarily complex and detailed, which presents mutual challenges for TE/GE and employers.
- (3) Small employers may be unwilling to purchase (or unable to afford) extensive services from professional advisors and third-party vendors of retirement plans and, accordingly, need more assistance from TE/GE.
- (4) Often the retirement plan vendor's point-of-sale person who assists a small employer in implementing a plan lacks the technical expertise to properly educate the employer regarding its responsibilities.
- (5) The more knowledgeable an employer is regarding retirement-plan operational requirements, the better the employer can monitor whether it is obtaining all the services it needs from its retirement plan providers and third-party administrators (TPAs).
- (6) Existing retirement-plan operational guidance has gaps, especially at simpler, easier-to-understand levels.
- (7) At a future time, after a reasonable amount of plan operational guidance is provided to employers, similar guidance should be provided to plan participants, because educated participants can help monitor whether their employers (and TPAs) are properly operating the plan.

Issues in Preparing Operational Guidance

As we worked on our project, two of the issues we considered were:

What is the objective?

and

Does a lack of technical specificity make a publication misleading?

What Is the Objective?

We believe that, in issuing retirement-plan operation guidance, the primary objective of TE/GE should be to provide basic, usable information to employers, especially small employers that typically do not obtain extensive services from professional advisors. Such an objective is consistent with other guidance already provided by TE/GE, such as the "Retirement Plan Life Cycle" guidance. Such prior guidance was intended to help small businesses understand the benefits and responsibilities of retirement plans. It was also intended to encourage a greater percentage of small employers to establish retirement plans. and to adopt the right kinds of retirement plans for their businesses.

Traditionally, TE/GE has directed a great deal of its guidance towards experienced tax professionals. In some respects, this is the easiest audience for whom to draft guidance. The drafters need not be concerned about the use of technical language, references to rulings, regulations, and other publications, or the inclusion of a great amount of detail.

In drafting educational material to be used by employers rather than tax professionals, however, the technical detail is a serious obstacle to communication. To be effective, the guidance directed at employers should avoid using technical language as much as possible.

Indeed, for a large segment of employers, the ultimate objective of soft guidance should not be to teach the employers the law but rather to assist employers in identifying potential problems and asking good questions of their retirement plan service providers. Stated another way, employers can more easily be directed to identify the results of proper operation than to understand the law that governs proper operation. For example, asking an employer whether its SIMPLE IRA is its only retirement plan is a very effective way of assisting an employer in determining whether it is following the law.

Does a Lack of Technical Specificity Make a Publication Misleading?

Some TE/GE staff voiced concerns that the omission of technical details and technical requirements might make plan-operation guidance misleading, thereby hindering compliance. We believe that, at least with regard to guidance published on the IRS website, these concerns can be effectively addressed through the use of

hyperlinks that direct a reader to more-technical information located elsewhere on the website. Well-drafted, plain-English guidance need not be misleading.

With regard to hard-copy printed material, the omission of technical details is not as easy to address. We suggest that TE/GE make frequent use of terms such as "generally" or "may," to signal the reader that additional inquiry would be appropriate. And we suggest that, whenever reasonably possible, in drafting checklists, TE/GE follow each question with an explanation or summary of the requirement that was the basis of the question.

Guidance for Participants

Most of the educational guidance published by the IRS over the past few years has been targeted to tax practitioners, and more recently, to employers who sponsor plans. The IRS should consider whether future educational material should be directed to plan participants. Although plan participants are not involved or responsible for an employer's compliance with the law, they are the ultimate stake holders. Educated employees can be an effective force in furthering compliance if they are aware of their rights as participants.

With regard to IRA-based plans, the need for educational material for employees is more acute. As owners of the IRAs, with the concomitant responsibility for complying with the tax rules applicable to IRAs, employees need to monitor the contribution requirements, the distribution rules, the penalties for taking premature distributions, and the like.

Readability

Any modern discussion concerning improved communications inevitably leads to a discussion regarding "readability." This term most often refers to various mathematical formulae used to measure the ease with which a particular document can be read. Many word processing software programs include variations of readability formulae as part of their grammar and spelling checking function.

We considered whether soft guidance produced by the Service should satisfy a predetermined readability standard. After research and discussion, we determined that strict adherence to readability standards would not be productive. Most readily accessible readability formulae simply count the number of words per sentence and the number of multi-syllable words used within a document. The formulae do not measure whether a document is comprehensible or take into account the complexity of the subject matter.

Guidance regarding tax matters is inherently complex. While the use of shorter sentences and simpler language is a good goal, these characteristics alone will not assure that the Service's guidance accomplishes its primary objective of educating taxpayers. We recommend that the Service continue to focus its attention on avoiding

technical terms and terms of art in its soft guidance. We must acknowledge that much of the soft guidance produced by the Service during the past year has been quite successful in providing plain English explanations of rather complex retirement plan matters.

Distribution Channels

TE/GE has recently been prolific in producing and publishing high-quality educational material with regard to employer-sponsored retirement plans. These materials are most easily accessed through the IRS website. Much of the material found on the website has also been produced in the form of brochures and pamphlets. A challenge facing TE/GE is developing distribution channels to assure that these publications reach the appropriate audience.

We applaud TE/GE on its beginning efforts to create an e-mail listserv for employer sponsors of retirement plans. Such a listserv would be a logical method of informing small employers where to find (and even linking them directly to) plan-operational guidance on the IRS website.

We also recommend that TE/GE Service have the following organizations on its list of potential partners:

BenefitsLink - a website serving the employee benefits community

Small Business Administration

United States Chamber of Commerce

National Association of Enrolled Agents

American Institute of Certified Public Accountants

American Bar Association Section of Taxation

III. PRINCIPLES OF OPERATIONAL GUIDANCE

We recommend that, in issuing soft guidance to employers regarding the operation of their retirement plans in compliance with the plan terms and applicable tax-qualification rules, TE/GE follow certain principles:

- (1) ***Multiple levels of educational materials***, Entry-level materials should be the simplest. Small employers need basic educational materials, written in very plain English. The most basic material should involve checklists.

- (2) **Integration among the levels.** As employers seek further guidance beyond entry-level information, they should be directed to more detailed-level materials. The final level should be the statute, regulations, or other source material.
- (3) **Primarily Internet-based.** The guidance should be written primarily for posting on the TE/GE website to facilitate the linkage between the different levels.
- (4) **Diagnostic Orientation.** Basic guidance should not be designed to make employers experts on the law. Rather, it should be designed to identify potential compliance problems and direct the employer to where assistance is available, such as to the third-party administrator.
- (5) **Employers as Consumers.** Guidance, especially in the form of a “who does what” checklist, can help employers understand the responsibilities of their retirement-plan service providers. Few employers operate their plans without outside assistance from such service providers. Unfortunately, without a basic understanding of plan operational issues, employers are not capable of evaluating the quality of assistance that they are receiving from service providers.

IV. OPERATIONAL GUIDANCE FOR PARTICULAR TYPES OF PLANS

Different kinds of retirement plans require different kinds of operational guidance. We recommend that TE/GE focus first on IRA-based retirement plans and plans with employee salary deferrals, namely, 401(k) plans, 403(b) plans, and 457(b) plans maintained by government entities.

a. Operational Guidance Regarding IRA-Based Plans

Employer-sponsored IRAs, including SEPs, SARSEPs, and SIMPLE IRAs, are an important component of the private pension system. In September 2003, the Investment Company Institute reported on its survey of member-financial institutions regarding the use of SIMPLE IRAs. It found that during the 2002 calendar year, the number of SIMPLE IRA plans increased 11%, the number participants rose 12%, and SIMPLE IRA assets invested in mutual funds increased about 19%. It concluded that the SIMPLE IRA continues to be most popular among employers with 10 or fewer employees.¹

¹ http://www.ici.org/stats/mf/03_simple_stats2.html#TopOfPage. The Investment Company Institute (ICI) is the national association of the U.S. investment company industry. Founded in 1940, its membership includes approximately 8,595 mutual funds, 612 closed-end funds, 124 exchange-traded funds, and five sponsors of unit

SEPS and SIMPLE IRAs present a particularly difficult compliance challenge. They are at once both individual retirement accounts and employer-sponsored retirement plans. On the IRA level, the IRA owner and the financial institution acting as custodian or trustee share responsibility for the establishment and maintenance of the IRA. When amendments are required, the financial institution acting as custodian or trustee must see that all IRAs are timely amended by providing IRA owners with the appropriate new traditional or SIMPLE IRA agreement and amended disclosure statement.²

The employer is responsible for establishing and maintaining the plan by adopting and keeping current the appropriate plan document. More often than not, the document is a model plan offered by the Internal Revenue Service. The financial institution that acts as the IRA custodian or trustee may or may not have direct involvement with the employer in establishing the plan. Additionally, given the “self-help” nature of the SEP and SIMPLE IRA, the employer-sponsor may not be as likely to have professional advisers assisting with compliance matters.

We began our work by editing a SEP checklist (Exhibit A), a SARSEP checklist (Exhibit B), and a SIMPLE IRA checklist (Exhibit C), all of which were prepared by TE/GE as part of its “Retirement Plan Life Cycle” project. These checklists are included in a “Plan Information Packet” for IRA-based retirement plan sponsors. An employer can use the appropriate checklist to conduct a self-audit of its plan. The checklists will not uncover every possible plan error. (For example, the checklists do not ask questions about required amendments.) However, the checklists identify typical operational failures for the relevant type of plan.

The questions on the checklists have been structured to elicit “yes” or “no” answers. If a plan is being operated correctly, all the questions on the checklist will be answered affirmatively. Each checklist concludes with the following statement:

If you answered “No” to any of the above questions, you may have made a mistake in operating your plan. Many mistakes can be corrected easily and without penalty. We suggest that you contact your benefits professional. For more information, visit the IRS Retirement Plans web page at www.irs.gov/ep or call IRS TE/GE Customer Account Services toll-free at 1-877-829-5500.

TE/GE may want to consider adding caveats to all soft guidance, stating that this such material is intended to provide the reader with basic, general information, and

investment trusts. Its mutual fund members represent 86.6 million individual shareholders and manage approximately \$7.6 trillion in investor assets.

² “SEP/SIMPLE Amendments, A Reminder” Greg Tacik, Bankers Systems, Inc. 2002, http://www.complianceheadquarters.com/IRA/IRA_Articles/sep_simple_amendments.html.

encouraging plan sponsors to refer to the law and regulations or professional advice for further guidance. We believe that TE/GE has very creatively and effectively structured these checklists in a fashion that minimizes the risk of them being misleading or inaccurate.

The checklists for employer-sponsored IRAs were used as part of a pilot program to distribute information directly to IRA-based retirement plan sponsors. The IRS identified probable IRA-based plan sponsors, using employee and employer tax information. In November 2003, these taxpayers were sent a package of information, including a contact letter, the plan checklist described above, a feedback postcard, and a copy of Publication 4224 entitled "Retirement Plan Correction Programs." TE/GE received very favorable responses from taxpayers who received the package of information.

Unfortunately, a direct mailing to IRA-based plan sponsors on a wide scale would be prohibitively expensive. We encourage TE/GE to disseminate materials through "partners" as much as possible. The IRS has already identified several potential partners for assistance in making soft contacts with sponsors of IRA-based plans:

National Association of Personal Financial Advisers

National Association of Tax Professionals

National Association of Enrolled Agents

Securities Industry Association

Investment Company Institute

American Payroll Association

We recommend that TE/GE add the following organizations to its list of potential partners for dissemination of materials regarding IRA-based plans:

BenefitsLink

The Certified Financial Planners Board of Standards

Bank Administration Institute

American Institute of Certified Public Accountants

American Bar Association Section of Taxation

TE/GE should also consider partnering with organizations that support small business in ways other than through tax and financial services. For example, the

National Federation of Independent Business (NFIB) represents over 600,000 small-businesses, 55% of whom have five or fewer employees and 72% of whom have 10 or fewer employees. These small businesses are the most likely employers to sponsor IRA-based retirement plans. The NFIB maintains a special website, nfib.smallbusiness.com, to allow employers to share advice and educational material. This website should be a useful means of publicizing and distributing the checklists and other IRA-based plan materials.

One danger of using partners to disseminate educational material is that the sources of distribution are no longer in the control of TE/GE. Consequently, there is no way of removing from circulation any material that is no longer viable due to changes in law or regulations. For this reason, TE/GE may wish to limit the number of partners with which it works and may wish to establish protocols with those partners for updating material. Additionally, TE/GE should date all material and invite readers to check the Internal Revenue Service website for more current information.

b. Operational Guidance Regarding 401(k) Plans

Salary reduction plans, such as 401(k) plans and 403(b) tax-sheltered annuity programs, are the primary type of defined-contribution plan. These types of plans are reported by nearly 27.7% of all workers as their primary retirement plans. The average contribution rate by participants is 7.4% of compensation.³

Unlike the IRS model documents available for IRA-based retirement plans, no IRS-published model documents currently exist for 401(k) plans. Moreover, the requirements of the Internal Revenue Code with respect to 401(k) plans are substantially more complex than the requirements of IRA-based retirement plans. Consequently, these plans are typically established by employers with the assistance of attorneys, accountants, benefit consultants or investment institutions. Additionally, many small employers rely on outside service providers for ongoing administration of 401(k) plans.

Presently, a number of projects aimed at providing additional guidance for 401(k) plan sponsors are underway within TE/GE. Among these projects is an effort to accumulate, in a single place, various 401(k) plan compliance materials.

Building on TE/GE's efforts regarding the IRA-based checklists, we drafted a 401(k) plan checklists. A long-form version is Exhibit D. This checklist is not intended to provide comprehensive guidance, but simply to alert an employer to basic operational requirements.

Responding to the long-form version, a TE/GE staff person drafted a short-form checklist that is Exhibit E., entitled "Annual 401(k) Check-up: *Is Your Plan Being*

³ "An Analysis of the Retirement Plan and Pension Topical Module of the SIPP, Craig Copeland, Employee Benefits Research Institute Issue Brief, May 2002.

Operated Properly?” The purpose of the shorter checklist is to make it more inviting to potential readers. We believe there are uses for both checklists.

We also drafted a “Who Does What” 401(k) plan checklist that is found in Exhibit F. It is designed to assist an employer in confirming that all essential administrative functions are being handled by someone, either the employer or a third-party administrator or someone else.

Finally, in Exhibit G, we began a very rough draft of an outline for a comprehensive resource guide for employers that maintain 401(k) plans. This guide is intended to provide more detailed, yet non-technical, information regarding retirement-plan administration. We recommend that TE/GE finish the job that we started and that TE/GE put the finished product on the IRS website, with hyperlinks to appropriate sections of the guide from the checklists described above.

c. Operational Guidance Regarding 403(b) Plans

In Exhibit H, we also began a very rough draft of an outline for a comprehensive resource guide for governmental employers that maintain 403(b) tax-sheltered annuity programs. We likewise recommend that TE/GE finish the job that we started and that TE/GE put the finished product on the IRS website.

In the 403(b) guide draft, we include suggestions for sections on some of the most common problems that occur in 403(b) programs. Additional sections could be added in the future if this guide proves to be useful. We would not expect that such additional sections would be added until after the section 403(b) regulations are published.

Component parts of the 403(b) guide (or stand-alone items) would consist of three sets of checklists. The first checklist, Exhibit I, is directed at elementary and secondary public schools. The second checklist, Exhibit J, is an annual “check-up” for governmental-employer 403(b) programs and is designed to focus on a single year’s changes. The third checklist, Exhibit K, is a “Who Does What” to help governmental employers determine who is responsible for various administrative actions.

Not part of the 403(b) guide, because of its focus on governmental employers, but nevertheless a product of our labors is a fourth checklist, Exhibit L, for nongovernmental employers that maintain 403(b) plans. This checklist is of the “Who Does What” kind.

d. Operational Guidance Regarding Governmental 457(b) Plans

We also drafted a checklist for 457(b) programs sponsored by governmental employers for their employees (and, in some cases, independent contractors). A 457(b) resource guide for such plans could be prepared and patterned after the 403(b)

resource guide for governmental employers. The number of 457(b) plans appears to be increasing in recent years, which supports the usefulness of such a guide.

e. Operational Guidance Regarding Other Kinds of Retirement Plans

We recommend that TE/GE consider whether similar materials should be prepared for other kinds/types of plans. Nevertheless, the prioritization may vary considerably, depending upon the type of plan. Although much of the attention on qualified plans has focused on 401(k) plans, which may include a profit-sharing feature as part of the total plan design, the smallest employers may often use a form of profit-sharing plan without any 401(k) feature. These employers are also candidates for SEP and SIMPLE IRA programs. We believe that the appended materials should be modified for use by these employers.

Other types of retirement plans appear to be less of a priority. The major considerations would be the relative complication of plan design and applicable Code rules and the number of concerned employers and affected employees.

Other types of qualified plans are defined-benefit pension plans, money-purchase pension plans, and target-benefit pension plans. The complex funding and tax deduction rules provide a primary concern for employers that sponsor defined-benefit pension plans. Such plans sometimes provide a different benefit formula for different groups of employees or, where the formula has changed over the years, for different periods of participation. Target-benefit pension plans are also complicated to explain to the uninitiated.

Understandably, the rules for these pension plans are not particularly susceptible to simple descriptions. In addition, there has been little new plan formation in recent years, except with respect to so-called cash-balance pension plans. The emphasis in any materials relating to these plans should be the need for expert advice to administer the plans properly.

Governmental 457(b) plans and non-governmental 457(b) plans are subject to such different rules that the two categories of plans should probably not be handled in the same plan-operation guidance. Governmental 457(b) plans are subject to a trust requirement for plan assets that is similar to the trust rules applicable to qualified retirement plans. Governmental employers generally offer participation in their 457(b) plans to a broad cross-section of employees, similar to coverage mandated for qualified plans. On the other hand, 457(b) plans maintained by tax-exempt (nongovernmental) organizations are not subject to a trust requirement. Such plans are maintained on an unfunded basis. In fact, in order to avoid a conflict between the funding/fiduciary rules of Title I of ERISA and Code section 457(b), participation in such plans is generally limited to senior management employees. Non-governmental 457(b) plan operational guidance should probably wait for awhile.

V. RECOMMENDATIONS

We also recommend that TE/GE:

- (1) Continue to publish plan-operation guidance, especially checklists, for employers.
- (2) Complete the comprehensive resource guides that we began in Exhibits G and H and publish them on the IRS website.
- (3) Someday prepare similar guidance for plan participants.

We also recommend that TE/GE continue to ask the employee-plans members of ACT to preview plan-operational guidance under development by TE/GE, even though the ACT members will also be working on other discrete projects. This role may not result in formal recommendations, but it should nevertheless provide TE/GE with the perspective of an experienced group of practitioners.

VI. ACKNOWLEDGEMENTS

As with all ACT projects, the EP Operational Guidance project would not have been completed without the wholehearted support of the TE/GE staff. Obviously, this Report primarily involved staff of the EP Division of TE/GE. Carol Gold (Director, EP) was very supportive and gracious with her time. Paul Shultz (Director, EP Rulings and Agreements) provided valuable encouragement and suggestions.

As might be expected for a project involving TE/GE customer education materials, Mark O'Donnell (Director, EP Customer Education and Outreach) and Peter McConkey (Staff Assistant), were very involved with the entire project and participated in mutual "brainstorming" sessions. They were also incredibly proactive, asking for ACT input on various initiatives and proceeding to implement numerous suggestions and ideas, without waiting for the project to be completed.

We also spent considerable time with the 401(k) compliance group (including Mikio Thomas, Terry Holloway, Carol Schille, Lisa Mojiri-Azad, and Roger Kuehnle), working with material they had pulled together. Bob Architect (Senior Tax Law Specialist), helped us through the substantial amount of 403(b) materials already available from the IRS and helped us determine where our suggestions would be the most useful.

VII. EXHIBITS

A. SEP Checklist.....	18
B. SARSEP Checklist	19
C. SIMPLE IRA Plan Checklist.....	20
D. 401(k) Plan Checklist (Long Form)	21
E. 401(k) Plan Checklist (Short Form)	24
F. “Who Does What” Checklist	26
G. 401(k) Plan Resource Guide	30
H. Governmental Employers’ 403(b) Program Resource Guide.....	36
I. 403(b) Checklist for Elementary and Secondary Public Schools	42
J. Annual Checkup for Governmental Employer 403(b) Programs	44
K. Governmental Employers 403(b) Program “Who Does What” Checklist.....	45
L. Non-Governmental Employers 403(b) Program “Who Does What” Checklist..	48
M. Checklist for 457(b) Plans of Governmental Employees.....	49

Exhibit A – SEP Checklist



This Checklist is *not* a complete description of all plan requirements, and should *not* be used as a substitute for a complete plan review.

For Business Owner's Use
(DO NOT SEND THIS WORKSHEET TO THE IRS)

Every year it is important that you review the requirements for operating your Simplified Employee Pension (SEP). This Checklist is a "quick tool" to help you keep your plan in compliance with many of the important tax rules. Underlined text below will link you to Internet information.

<p>1. Are all <u>eligible employees</u> participating in the SEP? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Any employee who is at least 21 years of age, was employed by you for 3 of the immediately preceding 5 years, and received <u>compensation</u> from you of at least \$450 during the year (subject to <u>cost-of-living adjustments</u> after 2004) is eligible to participate in a SEP.</p>	<p>6. Are SEP contributions to each employee's IRA <u>limited</u> as required by law? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Contributions to a SEP-IRA are limited to the lesser of 25% of the employee's compensation for the year or \$40,000 for 2003 (\$41,000 for 2004, and subject to cost-of-living adjustments for later years).</p>
<p>2. Is the business that the SEP covers the only <u>business</u> that you and/or your family members own? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Employees of other businesses you and/or your family members own may have to be treated as employees when determining who is an eligible employee under this SEP.</p>	<p>7. Are employer contributions immediately 100% <u>vested</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Employer contributions cannot be conditioned on anything. Once made, the employee owns all contributions.</p>
<p>3. Have you given all of your eligible employees <u>information about the SEP</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>You must give your employees certain information about the SEP, including a copy of the SEP document. Form 5305-SEP is your SEP document if you use the model form.</p>	<p>8. Have you made required <u>top-heavy minimum</u> contributions to the SEP? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>If a SEP is top-heavy or deemed top-heavy, contributions must be made for the non-key employees equal to the lesser of 3% of compensation or a percentage equal to the highest contribution rate of any key employee.</p>
<p>4. Are you determining each eligible employee's <u>compensation</u> using an appropriate definition in accordance with your SEP document? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Compensation used to determine contributions is limited to \$200,000 for 2003, 205,000 for 2004, and is subject to cost-of-living adjustments in later years.</p>	<p>9. Have you <u>deposited employer contributions</u> timely? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Employers have until the due date, including extensions, of their tax return to deposit employer contributions in order to obtain a deduction.</p>
<p>5. Are contributions made only to a <u>traditional IRA</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>All SEP contributions must go to traditional IRAs set up for the eligible employees.</p>	<p>10. If the model Form 5305-SEP was used to set up the plan, is this SEP your business's <u>only employee retirement plan</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>A sponsor of a SEP established using model Form 5305-SEP cannot sponsor another retirement plan, such as a 401(k) plan.</p>

If you answered "No" to any of the above questions, you may have a mistake in the operation of your SEP. Many mistakes can be corrected easily, without penalty and without notifying the IRS.

- contact your benefits professional
- visit the IRS at www.irs.gov/ep
- call the IRS at (877) 829-5500

Exhibit B – SARSEP Checklist

SARSEP CHECKLIST



This Checklist is *not* a complete description of all plan requirements, and should *not* be used as a substitute for a complete plan review.

For Business Owner's Use

(DO NOT SEND THIS WORKSHEET TO THE IRS)

Every year it is important that you review the requirements for operating your Salary Reduction Simplified Employee Pension (SARSEP). This Checklist is a "quick tool" to help you keep your plan in compliance with many of the important tax rules. Underlined text below will link you to Internet information.

<p>1. Was your SARSEP established prior to <u>January 1, 1997</u>, and subsequently amended for <u>current law</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>No new SARSEPs can be established after 1996. SARSEPs should be updated to benefit from the new law.</p>	<p>6. Do <u>50% or more of all eligible employees</u> make employee elective deferrals? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>At least half of your eligible employees must make employee elective deferrals to the SARSEP.</p>
<p>2. Do you have <u>25 or fewer</u> eligible employees? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Only businesses with 25 or fewer eligible employees can contribute to a SARSEP.</p>	<p>7. Are total <u>contributions</u> (employee elective deferrals and nonelective employer contributions) <u>no more than 25% of compensation</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>For 2002 and 2003, contributions are limited to the <u>lesser of 25% of compensation or \$40,000</u>. The dollar amount is adjusted annually for changes in the cost of living. The amount is \$41,000 for 2004. SARSEPs do not permit employers to make matching contributions to participants' accounts.</p>
<p>3. Are <u>all employees</u> who are at least age <u>21</u>, worked for you in at least <u>3 of the last 5 years</u> and have received at least <u>\$450</u> during the year in compensation included in the plan? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Employees of other businesses you and/or your family members own may have to be treated as employees when determining who is an eligible employee under the SARSEP.</p>	<p>8. Did you <u>deposit</u> employee elective deferrals <u>timely</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Employee elective deferrals must be remitted to the appropriate financial institution as soon as possible but, in any event, no later than 15 days following the month in which the employee would have otherwise received the money.</p>
<p>4. Are you determining each eligible employee's <u>compensation</u> using an appropriate definition in accordance with your <u>5305A-SEP document</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Compensation used to determine contributions is limited to \$200,000 for 2003, \$205,000 for 2004, and is subject to cost-of-living adjustments in later years.</p>	<p>9. Did you perform the annual <u>average deferral percentage test</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>The amount deferred each year by each highly compensated employee as a percentage of pay (the deferral percentage) cannot exceed 125% of the average deferral percentage of all eligible nonhighly compensated employees.</p>
<p>5. Are all <u>employee elective deferrals</u> within the <u>appropriate limit: \$12,000 for 2003, \$13,000 for 2004, \$14,000 for 2005</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>For employees age 50 or over, additional <u>catch-up contributions</u> of up to \$2,000 can be made for 2003, \$3,000 for 2004, and \$4,000 for 2005.</p>	<p>10. Have you made <u>required top-heavy minimum</u> contributions to the SARSEP? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Refer to your plan document for information. Most plans are deemed top-heavy, but some plans require annual testing.</p>

If you answered "No" to any of the above questions, you may have a mistake in the operation of your SARSEP. Many mistakes can be corrected easily, without penalty and without notifying the IRS.

■ contact your benefits professional

■ visit the IRS at www.irs.gov/ep

■ call the IRS at (877) 829-5500

Exhibit C – Simple IRA Plan Checklist



This Checklist is *not* a complete description of all plan requirements, and should *not* be used as a substitute for a complete plan review.

For Business Owner's Use

(DO NOT SEND THIS WORKSHEET TO THE IRS)

Every year it is important that you review the requirements for operating your Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) IRA plan. This Checklist is a "quick tool" to help you keep your plan in compliance with many of the important tax rules. Underlined text below will link you to Internet information.

<p>1. Does your business have <u>100 or fewer employees</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Businesses with more than 100 employees (including full-time, part-time, and seasonal employees) with individual earnings of at least \$5,000 yearly cannot establish a SIMPLE IRA plan.</p>	<p>6. Do you give your employees an <u>annual notice</u>, before November 2 of each year, of plan provisions and employer contribution levels for the upcoming year? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>You must give your employees notice of the plan provisions and employer contribution levels, including any plan changes, at least 60 days prior to the start of the next calendar year.</p>
<p>2. Is this SIMPLE IRA plan your business's <u>only retirement plan</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>A business with a SIMPLE IRA plan generally cannot also sponsor any other retirement plan, such as a 401(k) plan.</p>	<p>7. Have you allowed employees to terminate their <u>salary reduction election</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>You must allow your employees, at any time, to stop making deferrals.</p>
<p>3. Do you know how to, and did you, identify your <u>eligible employees</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>An eligible employee is one with compensation of at least \$5,000 per year in any 2 prior years, who is expected to earn at least \$5,000 this year.</p>	<p>8. Have you deposited employee deferrals <u>timely</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>You must deposit an employee's deferral in the IRA as soon as possible, but no later than 30 days following the month in which the employee would have otherwise received the money.</p>
<p>4. Is the business that the SIMPLE IRA plan covers the <u>only business</u> that you and/or your family members own? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Employees of other businesses you and/or your family members own may have to be considered when determining who is an eligible employee under this SIMPLE IRA plan.</p>	<p>9. Have you deposited employer contributions <u>timely</u>? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>As an employer, you have until the due date, including extensions, of your tax return to deposit matching contributions or nonelective contributions.</p>
<p>5. Did you <u>notify your eligible employees</u> of their right to elect salary reduction or modify a prior salary reduction agreement? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>Each year, you must give your employees notice before November 2 of their right to participate in the retirement plan for the next year and to change a prior salary reduction agreement.</p>	<p>10. Are employee deferrals to SIMPLE IRAs <u>limited</u> as required by law? Yes No <input type="checkbox"/> <input type="checkbox"/></p> <p>The deferral limit to a SIMPLE IRA is \$8,000 for 2003, \$9,000 for 2004, and \$10,000 for 2005. Catch-up contributions of participants, aged 50 or over, are limited to an additional \$1,000 for 2003, \$1,500 for 2004, and \$2,000 for 2005.</p>

If you answered "No" to any of the above questions, you may have a mistake in the operation of your SIMPLE IRA plan. Many mistakes can be corrected easily, without penalty and without notifying the IRS.

■ contact your benefits professional

■ visit the IRS at www.irs.gov/ep

■ call the IRS at (877) 329-5500

Exhibit D 401(k) Plan Checklist (Long Form)**Annual 401(k) Plan Check-List****Plan Document and SPD**

Have you updated your plan document for any changes made this year? *(If you have made any changes, be sure that all your advisors are aware of the changes.)*

Yes No
 NA

If you have amended your plan, have you also amended your summary plan description (SPD)? *(The SPD must be given to each employee within 90 days after the he or she becomes a plan participant. Whenever the plan is amended, the SPD must be amended.)*

Yes No

If you have made changes to your SPD, have you properly informed your employees of the changes? *(If an SPD is materially modified, a summary of the material modification [SMM] must be given to plan participants within 210 days after the end of the plan year in which the modification was adopted.)*

Yes No

Have the trustees of your plan changed? *(If so, you need to inform your TPA of the change and update your plan document and SPD.)*

Yes No

Eligibility and Participation

Have you provided your TPA with a list of **all** employees employed during the year, along with dates of birth, dates of hire, dates of termination, number of hours worked and compensation for the plan year? *(Employers sometimes incorrectly assume that certain employees, such as part-timers, are not covered by the plan. If the TPA is provided with information regarding all employees who receive a Form W-2, the TPA can help ensure that no eligible employees are omitted.)*

Yes No

Did new employees enter the plan on the proper entry date? *(Employers sometimes forget to enroll employees when required, necessitating corrective contributions.)*

Yes No
 NA

Have you established, acquired, or sold any businesses this year and informed your TPA? *(Business ownership changes can create issues regarding participant eligibility, coverage, and nondiscrimination.)*

Yes No

Have you established any new qualified plans this year and informed your TPA? *(Each TPA of each plan should be informed about all plans.)*

Yes No

Contributions

Have you deposited employee deferrals each pay period? *(You are required to deposit employee deferrals into the plan as soon as reasonably possible. Most employers make employee-deferral deposits when making payroll-tax deposits.)*

Yes No

Have you informed your employees age 50 and over of their right to make catch-up deferrals? *(If your plan gives over-age-50 employees the right to make "catch-up" deferrals, you must inform employees of that right.)*

Yes No

Nondiscrimination Testing

Have you identified for your TPA all corporate officers and shareholders? *(To properly test your plan for nondiscrimination, your TPA must know which participants are officers or shareholders.)*

Yes No

If any employees are related (husband/wife; parent/child, etc.), have you provided that information to your TPA? *(Nondiscrimination tests sometimes treat employed family members as if they were one employee.)*

Yes No

In reporting employee compensation to your TPA, have you used the plan's definition of compensation? *(Your plan uses a specific definition of compensation for benefit calculations and nondiscrimination testing. Problems can arise if you don't use the plan's definition.)*

Yes No

Employee Communications

Has the summary annual report (SAR) been distributed to plan participants? *(Each participant is entitled to receive an SAR regarding plan financial matters. The Form 5500 can be provided as an alternative to an SAR.)*

Yes No

Governmental Reporting

Have you filed a Form 5500 this year? *(A Form 5500 annual report must generally be filed within seven months after the plan year end.)*

Yes No

Was your plan audited by an independent accountant? *(Most plans with more than 100 participants are required to be audited and have a copy of the audit report attached to the Form 5500. See instructions to the Form 5500.)*

Yes No

Bonding and Fiduciary Insurance

Do you have adequate fidelity bonding? *(You are required to maintain a fidelity bond protecting the plan against loss from fraud or dishonesty. The bond amount must be at least 10% of plan assets, except that the minimum must be \$1,000 and the maximum need not exceed \$500,000.)*

Yes No

Do you have adequate fiduciary insurance? *(Fiduciary insurance is not required. Nevertheless, many employers provide such coverage for the employees who act as employee-benefit-plan fiduciaries.)*

Yes No

NA

Exhibit E – 401(k) Plan Checklist (Short Form)

Annual 401(k) Check-up
Is Your Plan Being Operated Properly?

PLAN DOCUMENT

- 1) Were any changes made in the operation of the plan also reflected by an amendment to the plan document and the Summary Plan Description (SPD)?
- 2) If any changes were made to the plan document, have you coordinated these changes with your advisors, third party administrator (TPA) and personnel with responsibility for the operation of the plan?

ELIGIBILITY & PARTICIPATION

- 3) Were all eligible employees identified and given the opportunity to make a salary deferral election? *(Employers sometimes forget to enroll employees when required, necessitating corrective contributions from the employer.)*
- 4) Have you provided your advisors and/or TPA with a list of all employees employed during the year, along with hire dates, birth dates, termination dates, number of hours worked, and compensation for the year? *Employers sometimes incorrectly assume certain employees, such as part-timers, are not covered by the plan. By providing the TPA or advisor with information regarding all employees who receive a W-2, you can ensure no eligible employees are omitted.)*

CONTRIBUTIONS

- 5) Have you timely deposited employee deferrals each pay period? *(You are required to deposit employee deferrals into the plan as soon as reasonable possible. Most employers deposit employee deferrals when making payroll tax deposits)*
- 6) If your plan document allows for catch-up contributions, did you inform each of your employees age 50 and over of their right to make catch-up deferrals?

NONDISCRIMINATION TESTING

- 7) Have you identified for your advisor or TPA, all the employees eligible to make a deferral at any time during the plan year, along with any corporate

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
officers and shareholders? <i>(Proper testing of your plan starts with knowing which employees to include on your nondiscrimination test.)</i>	<input type="checkbox"/>	<input type="checkbox"/>
8) Was the plan's definition of compensation used to determine the compensation amounts included on the nondiscrimination tests? <i>(Your plan uses a specific definition of compensation for plan allocations and nondiscrimination testing)</i>	<input type="checkbox"/>	<input type="checkbox"/>
9) Did you know if your plan was a 'Safe Harbor 401(k)' you may limit the number of nondiscrimination tests required, allowing your highly compensated employees to defer up to the maximum IRC 402(g) limit, \$13,000 for 2004? <i>(A safe harbor 401(k) plan requires an employer contribution of either 3% of eligible compensation, or a matching contribution of 100% of the first three percent of deferrals, plus 50% of the next two percent.)</i>	<input type="checkbox"/>	<input type="checkbox"/>
EMPLOYEE COMMUNICATION		
10) Has the Summary Annual Report (SAR) been distributed to plan participants? <i>(Each participant is entitled to receive a SAR regarding plan financial matters)</i>	<input type="checkbox"/>	<input type="checkbox"/>
11) Have you filed a Form 5500 return this year? <i>(A Form 5500 series return must generally be filed within seven months after the plan year end.)</i>	<input type="checkbox"/>	<input type="checkbox"/>
12) Do you have adequate fidelity bonding? <i>(You are required to maintain a fidelity bond protecting the plan from fraud and dishonesty.)</i>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" to any of the above questions, you may have made a mistake in operating your IRC 403(b) plan. Many mistakes can be corrected easily, without penalty and without notifying the IRS. We suggest that you contact your benefits professional. For more information, visit the IRS Retirement Plans web page at www.irs.gov/ep or call IRS TE/GE Customer Account Services toll-free at 1-877-829-5500.

Exhibit F “Who Does What” Checklist

Who Does What
Making Sure Your 401(k) is Well Cared-For

Who is making the federal income tax withholding deposits and preparing Form 1099-R and Form 945? Employer
 TPA
 Other (who?) _____

Who distributes the beneficiary designation forms to employees? Employer
 TPA
 Other (who?) _____

Who retains the beneficiary designation forms signed by employees? Employer
 TPA
 Other (who?) _____

Who determines which employees are eligible to participate? Employer
 TPA
 Other (who?) _____

Who is responsible for making sure that the annual employer contribution is properly allocated to participant accounts according to the plan document? Employer
 TPA
 Other (who?) _____

Who is responsible for determining the vested benefits of each participant? Employer
 TPA
 Other (who?) _____

Who is responsible for determining forfeitures and allocating them? Employer
 TPA
 Other (who?) _____

Who is responsible for reviewing qualified domestic relations orders? Employer
 TPA
 Other (who?) _____

Who is responsible for processing qualified domestic relations orders that have been approved? Employer
 TPA
 Other (who?) _____

Who prepares the Form 5500 for the plan? Employer
 TPA
 Other (who?) _____

Who is responsible for providing participants with information regarding benefit options, such as the joint and survivor annuity option? Employer
 TPA
 Other (who?) _____

EP Operational Guidance

Who is responsible for preparing the summary annual report? Employer
 TPA
 Other (who?) _____

Who is responsible for distributing the summary annual report to participants? Employer
 TPA
 Other (who?) _____

Who is responsible for preparing individual benefit statements for participants? Employer
 TPA
 Other (who?) _____

Who is responsible for preparing illustrations of alternative distribution options? Employer
 TPA
 Other (who?) _____

Who is responsible for providing the distribution election forms to a participant who desires a distribution? Employer
 TPA
 Other (who?) _____

Who is responsible for making investment decisions? Employer
 TPA
 Other (who?) _____

Who is responsible for implementing investment decisions? Employer
 TPA
 Other (who?) _____

Who is responsible for allocating earnings and losses among participant accounts?

Employer
 TPA
 Other (who?) _____

Who is responsible for making sure the plan stays current with changes in pension law?

Employer
 TPA
 Other (who?) _____

Exhibit G – 401(k) Plan Resource Guide

401(k) PLAN RESOURCE GUIDE

If you are an employer that has established a 401(k) plan, this guide is for you. You've chosen a 401(k) plan provider and, with the provider's assistance, designed the plan as desired. You are ready to start (or continue) plan operations and contributions.

First, congratulations on offering this important employee benefit. A 401(k) plan can create significant retirement security for you and your employees. For a list of advantages that a 401(k) plan can offer to employers and employees, see "[Lots of Benefits.](#)"

Second, we would like to provide this guide as a resource for you as you operate your plan in compliance with the law. We have tried to make this a very practical guide that describes some of the fundamental questions you may have in operating your plan. We have also included discussions of common problems and issues that employers experience. We hope this guide helps you to operate this important employee benefit. Please let us know any suggestions you have for ways to improve this guide or additional items that would help you with your 401(k) plan.

For information about choosing a retirement plan, such as whether a section 401(k) plan is best for you, see "Choosing a Retirement Solution for Your Small Business" [*Insert hyperlink*]. For information about choosing a retirement plan provider, go to www.selectaretirementplan.com, an interactive website sponsored by the Department of Labor, the U.S. Chamber of Commerce, and the Small Business Administration. For general information about establishing a section 401(k) plan see the Internal Revenue Service publication "401(k) Plans for Small Business" [*Insert hyperlink*].

The Plan Documents

The law requires that you administer your plan in accordance with the governing document, which is called the "plan document." Your plan document may consist of a separate adoption agreement and an underlying or "basic" plan document and a separate trust, or it might be a single document.

The law also requires you to provide your employees with a document that explains the terms of the plan in easy-to-understand language. This document is called the "summary plan description" or "SPD." Beware of reading the SPD in lieu of reading the plan document. The SPD is not intended to contain all the details of the plan.

You may have other documents associated with your retirement plan, such as record keeper agreements, investment adviser agreements, salary deferral forms, and other administrative documents.

You should become familiar with your plan document, and especially with the provisions that relate to the topics described in this guide.

Who Is Responsible for Your Plan?

Ultimately, you are responsible for the proper administration of your plan. However, like most employers, you may have hired one or more service providers to assist you. A typical service provider might be a record keeper, accountant, bank, or investment firm. In this guide, we will refer to your primary service provider as your “third-party administrator” or “TPA.”

We have prepared a “Who Does What Checklist” to help plan sponsors like you identify the role of your various service providers. *[Insert hyperlink.]*

Who is Eligible to Participate (Eligibility and Participation)?

A very common mistake employers make in maintaining 401(k) plans is excluding employees who should be included in the plan. To avoid this mistake, start by considering all of your employees (everyone who receives a W-2).

For guidance on whether you should classify a worker as an employee or an independent contractor go to www.irs.gov/publications/p15a/index.html or see www.irs.gov/businesses/small/article/0,,id=99921,00.html.

We recommend that you prepare your census to include all employees, not just eligible participants. Make sure that the census data is reconciled with your annual payroll data to avoid any inadvertent errors! In our experience, we found this area to be the one that creates the most errors.

Your employee census should list every employee who received wages during the year. You should also include in your census, each employee’s date of birth, date of hire, date of termination of employment (if applicable), hours worked, and wages for the year.

Another common mistake is failing to include employees of related employers. Sometimes separate employers must be treated as one. This is true, for example, when different employers or under common control or are affiliated in certain ways. *[If possible, insert a hyperlink to relevant material.]*

Eligibility Requirements. Your plan may have eligibility requirements, such as a requirement that an employee be a minimum age or complete a specified amount of service before becoming a participant. Be sure to be familiar with any age and service requirements in your plan.

If your plan has eligibility requirements, it is probably necessary to track hours and years of service. This is because the law has very specific rules on how you count service for retirement plan purposes. These rules will be found in your plan document as well.

Typically, a “year of service” for retirement plan purposes is 1,000 hours of work. An employee who works 20 hours per week will work 1,000 hours or more during the year. So you can see that some part-time employees may become eligible to participate in your plan.

Rehired Employees. Special rules apply if you rehire a former employee. Generally, you must count all of an employee’s service with you in determining eligibility to participate. Additionally, a former employee who was a plan participant usually becomes a plan participant immediately upon being rehired. Be sure to advise your plan administrator whenever you rehire a former employee.

Entry Dates. “Entry Dates” are the dates on which an eligible employee becomes a participant. The law requires that an employee become a participant within six months after meeting the eligibility requirements. Because of this rule, many plans have at least two entry dates: the first day of the year and the first day of the seventh month of the year. Other plans have one entry date each month. Be sure to be familiar with your plan’s entry dates. Entry dates will be included in your plan document.

Entry dates are very important! If you fail to make an eligible employee a participant on the proper entry date, you violate the law. You will be required to make up contributions for the employee whose participation was improperly delayed.

Employees on Leave.

Collectively-Bargained Employees. If you have employees who are members of a union, they might be excluded from your 401(k) plan. It depends upon the provisions in your plan document. If you want to exclude union employees from your plan, be sure to inform the person who drafts your plan.

How Can Money go into the Plan (Contributions)

Employer Contributions. Usually, an employer is not required to contribute to a 401(k) plan. However, some employers include provisions in their plans that require a contribution, such as a required matching contribution. Matching contributions need not be part of your 401(k) plan. If you include a matching contribution provision, the matching contributions may be required or may be discretionary.

In addition to matching contributions, the plan usually permits employers to make a discretionary contribution. The maximum deductible contribution by an employer is 25% of the wages of all plan participants.

Employee Contributions. As you already know, the main purpose of a 401(k) plan is to permit employees to defer part of their wages and have the deferred amount contributed to the plan on their behalf. The employee's deferral is referred to as an "elective deferral." Tax law imposes a limit on an employee's elective deferrals each calendar year. The maximum permitted elective deferral is an amount equal to the lesser of 100% of the employee's wages or (in 2004) \$13,000. (The dollar limitation changes from time to time.)

Many 401(k) plans impose a lower limit on elective deferrals than the limit described above. If your plan imposes a lower limit, the lower limit controls.

Catch-up Contributions.

The Rollover Contributions. Your plan may permit an employee to roll money into your plan from other plans. If your plan permits rollovers, you must notify new employees of this right.

Timing of Contributions. As the sponsor of a 401(k) plan, you need to be aware of the rules that apply to the timing of contributions. First, with respect to any employer contributions, such as a matching contribution or discretionary contribution, the contribution must be made on or before the date on which you file your business tax return. If you extend your return, you will have a longer time to make an employer contribution. Contributions made before you file your tax return are treated as if they were made on the last day of the plan year.

Special rules apply to employees' elective deferrals. Since the amounts withheld from wages are the employees' money, you are required to deposit this money into the plan as soon as reasonably possible. It is a good practice to make a contribution of elective deferrals at the same time you deposit your payroll taxes each pay period.

Top Heavy Minimum Contributions (If Plan is “Top Heavy”). A plan is considered "top-heavy" if 60% or more of the money in the plan is for the benefit of "key employees." The definition of "key employees" includes certain officers and shareholders of your company. It *may* also include certain family members. Your plan administrator should determine whether your plan is top-heavy.

If your plan is top-heavy, you *may be required* to make a minimum contribution for your participants. Consult with your professional advisors regarding any minimum contribution requirements.

General Limits on Contribution Amounts

[Explain how the limits apply to multiple plans. It is important to explain to the employer that this issue must be referred to the TPA.]

Determining Compensation [401(a)(17)]

Special Limits on Contributions by/for Highly Compensated Employees (Nondiscrimination Testing)

“Safe Harbor” 401(k) Plans

Who Makes Plans Investment Decisions

Employer-Directed Accounts

Employee-Directed Accounts

ERISA Section 404(c)

DOL and Fiduciary Requirements

Prohibited Transactions

When and How Is an Employee Entitled to Money from the Plan (Vesting)?

Plan Loans

Hardship Distributions

Minimum Required Distributions

Automatic Cash-outs of Small Accounts

Distribution Forms and Distribution Options

Joint and Survivor Requirements

Rollovers

Splitting Accounts Upon Divorce (Qualified Domestic Relations Orders)

Federal Income Tax Withholding

Form 1099R

Reporting Distributions

When Amounts are Forfeited From Plan Accounts (Vesting)

General Vesting Rules

Top Heavy Vesting

Forfeitures

What Documents Must Be Provided to Participants

Salary Reduction Forms

Beneficiary Designation Forms

Summary Plan Description and Material Modifications

Summary Annual Reports

Individual Benefit Statements

Potential Penalties for Failing to Provide Requested Information

What Government Reporting is Required?

Form 5500 [*Link to Form 5500 Instructions.*]

Are Independent Audits Required?

Bonding Requirements and Fiduciary Insurance

Will the IRS approve your 401(k) Plan

Pre-approved plans

Plans submitted for approval

What Happens if I make a Mistake (Correction Issues)?

Correcting Operational Errors

“Lost” Participants

Exhibit H

GOVERNMENTAL EMPLOYERS' 403(b) PROGRAM RESOURCE GUIDE

If you are an employer that has established a Section 403(b) program, or are responsible for administering a 403(b) program, this guide is for you. You have chosen one or more 403(b) program vendors and, with their assistance, designed the plan as desired. You are ready to continue (or start) plan operations and contributions.

We are providing this guide as a resource for you as you operate your plan in compliance with the law. We have tried to make this a very practical guide that describes the fundamental questions you may have in operating the plan. We have also included discussions of common problems and issues that employers experience. We hope this guide helps you to administer this important employee benefit. Please let us know any suggestions you have for ways to improve this guide or additional items that would help you with your 403(b) program.

Additional Resources

Additional information that may be helpful to you may be found in:

- For common questions employers and employees have, see "Frequently Asked Questions regarding Tax-Sheltered Annuities" *[insert hyperlink]*;
- For information on recent law changes, see "Partnership for Compliance – Tax Sheltered Annuities," IRC 403(b) Outreach Program *[insert hyperlink]*;
- For information on correcting mistakes, see "403(b) Plan Checklist" and Employee Plans Compliance Resolution System *[insert hyperlink]*;
- IRS Publication 571, Tax Sheltered Annuity Plans for Employees of Public Schools and Certain Tax-Exempt Organizations, *[insert hyperlink]*;
- IRS Examination Guidelines on 403(b) Programs *[insert hyperlink]*
- **[NOTE: Eventually will insert the final regulations link here also.]**

The Program Documents

A 403(b) program may have several governing documents. Depending on the type of program you have, you may have a "plan" document outlining the primary program terms, a group annuity contract, a trust agreement and/or a program description. Different 403(b) programs and vendors use different documents. Only in an employee salary reduction only program might there be only individual annuity contracts, where there are no group documents available. One of the first things you should do when you begin administering the program is to make sure you have all up-to-date, fully signed documents for your 403(b) program. Check with your vendor or vendors, and the prior administrator for the documents. These contain what should be your primary reference point when you or other employees have questions about the program.

You may have other documents associated with your program, such as recordkeeper agreements, investment adviser agreements, salary deferral forms, and other administrative documents.

Who Is Responsible for the Program?

Ultimately, in many cases, the employer is responsible for the proper administration of the 403(b) program. The employer is responsible for withholding the proper amount for employees' salaries for federal tax. If an employee exceeds the amount of contribution that can be properly deferred into the plan, the excess is taxable income to the employee. The employer could be subject to penalties for federal income tax withholding and FICA (if applicable) taxes that should have been withheld on the excess contribution. However, like many employers, you may have hired one or more service providers to assist you or to actually be responsible for the program. A typical service provider might be a recordkeeper, accountant, bank, or investment firm. In this guide, we will refer to your primary service provider as your "third-party administrator" or "TPA."

Many governmental employers feel they are "insulated" from any responsibility due to "hold harmless" agreements with the vendors. While that can provide some protection and recovery, remember that the "hold harmless" agreement is between the school system and its vendors. If the 403(b) program has failures that result in additional federal withholding or FICA tax, the employer will be responsible for the proper amount of tax due. If those amounts can be recovered under a hold harmless agreement that is fine, but that could be long after the IRS payments are due.

Who is Eligible to Participate

A very common mistake employers make in maintaining 403(b) programs is excluding employees who should be included or at least offered the choice of contributing or not to the program. To avoid this mistake, start by considering all of your employees (everyone who receives a W-2). *[Cross-link to publications regarding who should get a W-2.]* We recommend that you prepare your census to include all employees, not just eligible participants. Make sure that the census data is reconciled with your annual payroll data to avoid any inadvertent errors! In our experience, we found this area to be the one that creates the most errors. Special care should be taken to comply with this requirement. Non-compliance could result in the entire 403(b) program losing its tax-favored treatment.

Once an employer permits any employee to elect a salary deferral into a 403(b) program, the opportunity must be extended to all employees of the organization who may elect to make contributions of more than \$200 pursuant to a salary reduction agreement. There may not be age and service requirements imposed on this ability. In addition, meaningful notice of this right should be given to all employees. Consider giving a notice as part of their initial employment package. Also, consider additional periodic notices of this right, for example, at the beginning of each school year.

There are certain employees who may be excluded. Employees who may be excluded include:

- employees who are participants in an eligible deferred compensation plan (457 or 401(k)) or participants in another 403(b) program,
- non-resident aliens,
- certain students, and
- employees who normally work less than 20 hours per week.

If you have employer contributions to the 403(b) program, your program may have eligibility requirements for these contributions (e.g., age, service, employee classification). Those requirements will make it necessary for the school to track when an employee becomes eligible for the employer contributions.

Where to go for Additional Information and Assistance

The IRS has several ways to assist you in administering a 403(b) program

- For specific questions, the IRS EP Call Site is available at _____
- The IRS currently has a program called the Section 403(b) Tax Sheltered Annuity Partnership for Compliance. Under the Partnership for Compliance, trained and experienced IRS employees will be made available to provide educational services relating to section 403(b) tax sheltered annuity arrangements including delivering speeches, participating in panel discussions, conducting training sessions and helping prepare newsletter articles. Through these services, the IRS can provide information about the unique aspects of tax law applicable to tax sheltered annuities and the problems that arise with them. For example, information can be provided on the impact to both the employer and employee if excess contributions have been made, improper compensation had been included for calculating excludible amounts, or early distributions have been made to employees. Organizations interested in section 403(b) tax sheltered annuities may request educational services under the Partnership for Compliance.

Additional Issues that the IRS may wish to cover in subsequent editions of the Governmental Employer Resource Guide

In this section, we note areas that we think the IRS may decide it would be helpful to add in the future. Depending on customer usage and comments, this Guide could serve as an entry point to all pertinent IRS materials.

- **How Can Money go into the Plan (Contributions)**
 - **Employer Contributions**
 - **Employee Contributions**
 - **Timing of Contributions**

- **Limits on Contributions**

[Include explanation of how the limits apply to multiple plans. It is important to explain to the employer that this issue must be referred to the TPA.]

- **Determining Compensation [401(a)(17)]**

- **Catch-up Contributions**

- **When Is an Employee Entitled to Money from the Plan (Vesting)?**

- **General Vesting Rules**

- **Forfeitures**

- **When can a Participant Take Money Out Of the Plan (Loans and Distributions)?**

- **Plan Loan Discussion and Documents**

- **Hardship Distributions**

- **Minimum Required Distributions**

- **Involuntary Cash-Outs**

- **Federal Income Tax Withholding**

- **Form 1099R**

- **What do Participants need to receive about the Plan**

- **Salary Reduction Forms**

- **Beneficiary Designation Forms**

- **Individual Benefit Statements**

- **Who Is in Charge of Investments?**

- **Employer-Directed Accounts**

- **Employee-Directed Accounts**

- **What Happens if I make a Mistake (Corrections Issues)?**

[We thought this discussion could be useful in this section.] In order to use the IRS voluntary correction program, a 403(b) program plan sponsor must have established practices and procedures in place and routinely followed to facilitate

compliance with the Internal Revenue Code, but through an oversight or a mistake in applying them or an inadequacy in the procedures, an operational failure occurred. The practices and procedures may be at the plan sponsor, vendor or third party administrator level. A determination about whether the plan sponsor has practices and procedures in place will be made based on the facts and circumstances in each case. Some examples of practices and procedures are (1) payroll procedures that identify contributions in excess of the salary deferral limit; (2) a procedure to review contribution limitations for participants; (3) a system to review part-time employees or substitute teachers to assure all eligible employees are given the opportunity to participate; and (4) a procedure to identify participants who are eligible for extra amounts in their deferral contributions. As noted above, the determination of the presence of practices and procedures is based upon the facts and circumstances in each case. The individual examples above may not necessarily result in a finding that practices and procedures exist. It should be noted that these practices and procedures must be reasonably designed to promote and facilitate overall compliance with the requirements for 403(b) programs.

- **What is a Qualified Domestic Relations Order?**

Additional Issues the IRS may wish to cover in subsequent editions of the Non-Governmental Employer Resource Guide

In this section, we note areas that we think the IRS may decide it would be helpful to add in the future.

Are there any special benefit rules (Nondiscrimination Testing)? [Non-Governmental Edition]

- **Safe Harbor Plans**
- **Distribution Forms and Distribution Options**
 - **Joint and Survivor Requirements [Non-Governmental Edition]**
- **Rollovers**
- **Summary Annual Report [Non-Governmental Edition]**
- **Summary Plan Description and Material Modifications [Non-Governmental Edition]**
- **Potential Penalties for Failing to Provide Requested Information**
- **What Government Reporting is Required? [Non-Governmental Edition]**
 - **Form 5500 [Link to Form 5500 Instructions.]**

- **Are Independent Audits Required? [Non-Governmental Edition]**
- **What are the Bonding Requirements/Fiduciary Insurance Requirements? [Non-Governmental Edition]**
 - **Section 404(c) [Non-Governmental Edition]**
 - **DOL and Fiduciary Requirements [Non-Governmental Edition]**
 - **Prohibited Transactions [Non-Governmental Edition]**

Exhibit I – 403(b) Checklist for Elementary and Secondary Public Schools

GENERAL CHECKLIST FOR 403(b) PROGRAMS OF

ELEMENTARY AND SECONDARY PUBLIC SCHOOLS

- 1) Does your organization qualify as a K-12 public school? (These are as described in IRC 170(b)(1)(A)(ii).) (If your organization is not a public school, but an eligible tax-exempt organization, see the Checklist for 403(b) Plans of Eligible Tax-Exempt Organizations.)
- 2) Are all employees who work more than 20 hours per week given the opportunity to make a salary deferral?
- 3) Are salary deferrals limited in a calendar year to the amounts under federal law? (*Salary deferrals are limited to \$13,000 for 2004, \$14,000 for 2005.*) (*See IRC 402(g).*)
- 4) Are the total employer and employee contributions limited so as not to exceed federal limits? (*Total of employee and employer contributions cannot exceed the lesser of \$41,000 for 2004 or 100% of includible compensation.*) (*See IRC 415(c).*)
- 5) If the 15 years of service catch-up contributions are being made, are the employees' 15 years of service all with the same employer? (*For the 15 year catch-up, an employee must meet the 15-year requirement at his/her current employer. In addition, a calculation must be made to determine prior usage of this catch-up.*)
- 6) Are the age 50 catch-up contributions limited to the federal maximum amounts and does the program allow for such contributions? (*Allowable amounts are \$3,000 for 2004, \$4,000 for 2005. (See IRC 402(g).)*)
- 7) Does your 403(b) program's annuity investment contract contain nontransferability provisions?
- 8) If your program offers 5-year post separation contributions, are amounts contributed using a non-elective method? (*Amounts or contributions to the 403(b) program that an employee has an option of receiving in cash are considered elective deferrals. Post separation contributions need to be employer contributions.*)

	YES	NO
1)	<input type="checkbox"/>	<input type="checkbox"/>
2)	<input type="checkbox"/>	<input type="checkbox"/>
3)	<input type="checkbox"/>	<input type="checkbox"/>
4)	<input type="checkbox"/>	<input type="checkbox"/>
5)	<input type="checkbox"/>	<input type="checkbox"/>
6)	<input type="checkbox"/>	<input type="checkbox"/>
7)	<input type="checkbox"/>	<input type="checkbox"/>
8)	<input type="checkbox"/>	<input type="checkbox"/>

- 9) Are the contributions to the 403(b) program kept separate from any cafeteria plan/125/flexible benefit contributions?
- 10) If you allow loans from the 403(b) program and you have multiple vendors, are all loans to a participant aggregated to test against the IRS limits of the lesser of \$50,000 or 50% of the participant's total 403(b) value? *(If not, violations of the loan limits can occur.) (See IRC 403(b)____.)*

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

If you answered “No” to any of the above questions, you may have made a mistake in operating your IRC 403(b) plan. Many mistakes can be corrected easily, without penalty and without notifying the IRS. We suggest that you contact your benefits professional. For more information, visit the IRS Retirement Plans web page at www.irs.gov/ep or call IRS TE/GE Customer Account Services toll-free at 1-877-829-5500.

Exhibit J – Annual Checkup for Governmental Employer 403(b) Programs

ANNUAL CHECKUP FOR 403(b) PROGRAMS FOR GOVERNMENTAL EMPLOYERS

[In this checklist, we would anticipate seeing brief explanations and comments added – we have included some examples of the types of things we would see being added.]

<u>DOCUMENTS GOVERNING PROGRAM</u>	
Have you updated the documents for the program for any changes made this year?	<input type="checkbox"/> Yes or <input type="checkbox"/> No
If you have made changes to your plan, have you properly informed your employees of the changes?	<input type="checkbox"/> Yes or <input type="checkbox"/> No
Who are the current 403(b) providers? Have the providers changed? If so, you may need to update your plan document.	<input type="checkbox"/> Yes or <input type="checkbox"/> No
<u>ELIGIBILITY AND PARTICIPATION</u>	
Have you provided your 403(b) provider with a list of all employees employed during the year, along with dates of birth, dates of hire, dates of termination, number of hours worked and compensation for the plan year?	<input type="checkbox"/> Yes or <input type="checkbox"/> No
Did new employees enter the plan on the proper entry date?	<input type="checkbox"/> Yes or <input type="checkbox"/> No
Have you adopted any new retirement plans this year?	<input type="checkbox"/> Yes or <input type="checkbox"/> No
<u>CONTRIBUTIONS</u>	
Have you deposited employee deferrals each pay period?	<input type="checkbox"/> Yes or <input type="checkbox"/> No
Have you informed your employees age 50 and over of their right to make catch-up contributions?	<input type="checkbox"/> Yes or <input type="checkbox"/> No

Exhibit K – Governmental Employers 403(b) Program “Who Does What” Checklist

GOVERNMENTAL EMPLOYERS 403(b) PROGRAM
“WHO DOES WHAT” CHECKLIST

This checklist is intended to help employers and vendors identify between themselves who is to handle aspects of program administration

<p>Who is making the federal income tax withholding deposits? Who is preparing the Form 1099R and Form 945?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who distributes the beneficiary designation forms?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who retains the beneficiary designation forms?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who determines which employees are eligible to participate?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who is responsible for making sure that the annual employer contribution is allocated correctly?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>If your plan provides for hardship distributions, who determines whether a participant is eligible for a hardship distribution?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>

<p>Who is responsible for determining the vested benefits of each participant?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who is responsible for determining forfeitures and allocating them?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who is responsible for reviewing qualified domestic relations orders?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who is responsible for processing qualified domestic relations orders that have been approved?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who is responsible for providing the distribution election forms to a participant who desires a distribution?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who is responsible for making investment decisions?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>
<p>Who is responsible for implementing investment decisions?</p>	<p><input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____</p>

<p>Who is responsible for allocating earnings and losses among participants' accounts?</p>	<p><input type="checkbox"/> Employer</p> <p><input type="checkbox"/> TPA</p> <p><input type="checkbox"/> Other (who?) _____</p> <p>_____</p>
<p>Who is responsible for notifying you if an amendment is required?</p>	<p><input type="checkbox"/> Employer</p> <p><input type="checkbox"/> TPA</p> <p><input type="checkbox"/> Other (who?) _____</p> <p>_____</p>
<p>Who is responsible for informing you about changes in pension law?</p>	<p><input type="checkbox"/> Employer</p> <p><input type="checkbox"/> TPA</p> <p><input type="checkbox"/> Other (who?) _____</p> <p>_____</p>

Exhibit L – Non-Governmental Employers 403(b) Program “Who Does What” Checklist

NON-GOVERNMENTAL EMPLOYERS 403(b) PROGRAM
"WHO DOES WHAT" CHECKLIST

This checklist is intended to help employers and vendors identify between themselves who is to handle aspects of program administration

Who prepares the Form 5500 for the plan?	<input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____
Who is responsible for providing participants with information regarding benefit options such as the joint and survivor annuity option?	<input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____
Who is responsible for preparing the summary annual report?	<input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____
Who is responsible for distributing the summary annual report to participants?	<input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____
Who is responsible for preparing individual benefit statements for participants?	<input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____
Who is responsible for preparing illustrations of alternative distribution options?	<input type="checkbox"/> Employer <input type="checkbox"/> TPA <input type="checkbox"/> Other (who?) _____ _____

Exhibit M – 457(b) Checklist for Plans of Governmental Employees

**CHECKLIST FOR 457(b) PLANS OF
GOVERNMENTAL EMPLOYEES**

	YES	NO
1) Does your organization qualify as a state or local governmental unit?	<input type="checkbox"/>	<input type="checkbox"/>
2) Does an eligible employee’s opportunity to make a salary deferral election only apply to future compensation?	<input type="checkbox"/>	<input type="checkbox"/>
3) If the plan covers any independent contractors, are they required to complete or terminate any contract with the governmental unit to receive plan distributions?	<input type="checkbox"/>	<input type="checkbox"/>
4) Are salary deferrals limited in a calendar year to the amounts under federal law? (Salary deferrals are limited to \$13,000 for 2004, \$14,000 for 2005.) (See IRC 457(b).)	<input type="checkbox"/>	<input type="checkbox"/>
5) Does your plan allow participants to make “catch-up” contributions during the 3 years prior to his or her year of normal retirement age? (This option is available to participants who had not made the maximum deferral contribution in earlier years.)	<input type="checkbox"/>	<input type="checkbox"/>
6) If the plan allows “catch-up” contributions by participants who are age 50 or older, are such contributions limited to the federal maximum amounts? (Allowable amounts are \$3,000 for 2004, \$4,000 for 2005.)	<input type="checkbox"/>	<input type="checkbox"/>
7) Has your governmental unit established a trust or comparable custodial account or annuity contract to hold the assets of the plan for the exclusive benefit of plan participants?	<input type="checkbox"/>	<input type="checkbox"/>
8) Are employee deferral contributions transferred to the trust, custodial account, or annuity contract within a reasonable period of time?	<input type="checkbox"/>	<input type="checkbox"/>
9) If your plan allows the distribution of smaller accounts (under \$5,000 in 2004) prior to termination of employment, is the option restricted to employees who have not participated in the plan during the last two years?	<input type="checkbox"/>	<input type="checkbox"/>

- 10)** If you allow loans from the 457(b) program, are all loans to a participant aggregated to test against the IRC limits of the lesser of \$50,000 or ____% of the participant's total 457(b) value? (If not, a participant may be immediately taxable.)
- 11)** If your program allows a distribution when a participant is faced with an unforeseeable-emergency, is such a distribution limited to situations where the emergency may not be relieved by other resources available to the participant?

If you answered “No” to any of the above questions, you may have made a mistake in operating your IRC 457(b) plan. Many mistakes can be corrected easily, without penalty and without notifying the IRS. We suggest that you contact your benefits professional. For more information, visit the IRS Retirement Plans web page at www.irs.gov/ep or call IRS TE/GE Customer Account Services toll-free at 1-877-829-5500.

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>