ASPPA
WORKING FOR AMERICA'S RETIREMENT

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May 30, 2007

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Office of Tax Policy
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1500 Pennsylvania Avenue, NW
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Joseph Grant
Director, Rulings and Agreements
Employee Plans
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Final 403(b) regulation effective date

Dear Messrs. Reeder and Grant:

The American Society of Pension Professionals & Actuaries (ASPPA) is writing to comment on the upcoming Internal Revenue Code (Code) §403(b) regulations that are likely to be released mid-year. In particular, we are concerned about the January 1, 2008, effective date and request your consideration of a further delay of the effective date in order to accommodate effective compliance.

ASPPA is a national organization of more than 6,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

Discussion of Issue

The Proposed Regulations under Code §403(b), originally released in 2004, would result in sweeping changes for the establishment, maintenance and administration of 403(b) arrangements. We assume that the final regulations, when released, will carry forward much of the revised regulatory scheme reflected in the proposed regulations. Whether or not these sweeping changes are appropriate in all respects is not the focus of this letter. Rather, our concern is with the timing of the effective date of the regulations once they are issued in final form.

On August 29, 2006, the Internal Revenue Service (IRS) issued Announcement 2006-136, which stated that the effective date of the final 403(b) regulations would be extended to January 1, 2008. Given that we are approaching August 2007 and the final regulations have not been released, ASPPA believes it would be appropriate to provide for an additional extension for the same reasons the IRS determined the initial extension was warranted.

Compliance with the requirements of the final regulations will require substantial changes in the operations and procedures of most 403(b) plan sponsors and providers. This is especially true in the public school district and non-ERISA tax-exempt markets. For school districts in states such as California and Texas, which by law are required to permit virtually any provider to offer annuities or investments to the district employees, the district itself has little to do with the arrangement other than providing a payroll function. Typically, they do not have consultants on hand to assist them in meeting the changed regulatory environment, and they will need to go through an RFP process (as mandated by state or local law) to engage such consultants to assist them. Thus, complying with the regulations will require material changes for such districts.

Smaller tax exempt entities will face many of the same problems and have an added problem, as they lack the financial resources to respond quickly to the needed changes.

Once the regulations are issued, it will take time for plan sponsors and their advisers to digest the new rules, determine what changes are needed and then take steps to bring their arrangements into compliance. Indeed, for many sponsors, a significant educational component will be required to introduce them to concepts that, until now, are quite alien.

In light of the extensive changes that the regulations will presumably entail, the difficulties that many 403(b) sponsors will have in meeting the requirements, and the time that will be required to analyze and determine how to comply with the regulations, we strongly urge that the effective date of the final regulations be no sooner than the beginning of the second year after their release. Thus, for example, if the regulations were finalized in August of this year, we would urge that the effective date for compliance be no sooner than January 1, 2009.

One possible approach, which has been applied in the case of the final regulations under Code §409A, would be for the regulations to be effective at an earlier date (*e.g.,* January 1, 2008) but permit compliance as to form at a later date (*i.e.,* December 31, 2008). However, we submit that it would be far preferable to establish a single effective date, sufficiently deferred into the future, to permit operational and form compliance all at the same time. Again, our concern is that requiring operational compliance as early as January 2008 would make it virtually impossible for many sponsors to do so and could lead to widespread non-compliance or the suspension of many of the arrangements. Obviously, the latter would not be in the best interest of participants in these arrangements.

Consequently, ***ASPPA recommends*** that the IRS consider the new effective date for compliance with the final 403(b) regulations to be no sooner than the beginning of the second year after their release (e.g., January 1, 2009 if the regulations are issued during 2007).

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These comments were prepared by ASPPA's TE/GE Subcommittee of the Government Affairs Committee, and were primarily authored by Bruce Ashton, APM. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Sincerely,

/s/
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Executive Director/CEO

/s/
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/s/
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