FOURTH AMENDMENT

TO

MISSISSIPPI STATE UNIVERSITY 403(b) PLAN

The Mississippi State University 403(b) Plan is amended, effective as of January 1, 2018, as follows:

1. Section 1.10 and Section 2.02 of the Plan Document are hereby amended as follows to permit Roth after-tax contributions.

1.01 Elective Deferral

The term "Elective Deferral" shall be amended to include after-tax Roth contributions:

"Elective Deferrals are limited to either pre-tax salary reduction contributions or Roth after-tax salary reduction contributions."

2.02 Compensation Reduction Election

The terms of the compensation reduction election shall be amended by permitting after-tax Roth contributions in addition to pre-tax contributions:

"A participant may elect to make Roth after-tax deferrals and Pre-tax deferrals concurrently, or establish either after-tax deferrals or pre-tax deferrals separately. The designated vendor will maintain a separate account for Roth after-tax deferrals, and a separate account for Pre-tax elective deferrals. A participant's combined amount of Roth after-tax deferrals and Pre-tax deferrals cannot exceed the applicable annual contribution limits established under IRS Code 402(g)."

IN WITNESS WHEREOF, Mississippi State University has caused this Fourth Amendment to the Mississippi State University 403(b) Plan to be executed by its duly authorized representative this 25 of SEPT, 2017.

MISSISSIPPI STATE UNIVERSITY

By: _____

Title: Don Buffum
Director of Procurement & Contracts

#-001319

ROTH 403(b) AMENDMENT

ARTICLE I
PREAMBLE

2.07 **Adoption and effective date of amendment.** This amendment of the Plan is adopted to reflect Code Section 402A and is in good faith compliance with the requirements and guidance issued in Code Section 402A. This amendment shall be interpreted in a manner consistent with such guidance. This amendment shall be effective on January 1, 2018.

2.08 **Supersession of inconsistent provisions.** This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

ARTICLE II
ADOPTION AGREEMENT ELECTIONS

2.09 **Effective Date.** Roth Elective Deferrals are permitted under the Plan as of January 1, 2018.

2.10 **Hardship Distributions.** Roth Elective Deferrals may be withdrawn for a hardship subject to the same conditions and procedures that apply to Pre-tax Elective Deferrals as provided in the Plan Document, Section 5.05 "Hardship Withdrawals."

2.11 **In-Service Distributions.** In-service distributions are not permitted for Roth Elective Deferrals. After-tax Roth Elective Deferrals are subject to the same conditions and procedures that apply to Pre-tax Elective Deferrals and does not permit in-service distributions, other than hardship distributions as provided in Article II Section 2.10. Distributions from a Participant's account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59 ½.

ARTICLE III
ROTH ELECTIVE DEFERRALS

2.12 **Roth Elective Deferrals are permitted.** The Plan's definitions and terms shall be amended as follows to allow for Roth Elective Deferrals. The Employer may, in operations, implement deferral election procedures provided such procedures are communicated to Participants and permit Participants to modify their elections consistent with Code Section 402A.

2.13 **Elective Deferrals.** For years beginning after 2017, the term "Elective Deferrals" includes Pre-tax Elective Deferrals and Roth Elective Deferrals.

2.14 **Pre-Tax Elective Deferrals.** Pre-tax elective deferrals means a Participant's Elective Deferrals which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the participant in his or her deferral election. A Participant's Pre-Tax Elective deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

2.15 **Roth Elective Deferrals.** "Roth Elective Deferrals" means a Participant's Elective Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her deferral election. A Participant's Roth Elective Deferrals will be separately accounted for by the vendor, as will gains and losses attributable to those Roth Elective Deferrals, in a Roth Elective Deferral account. However, forfeitures may not be allocated to such account. The Plan must maintain a record of a Participant's Elective Deferral through the signed salary reduction agreement, and the vendor will maintain a separate Roth account for the Participant.

2.16 **Ordering Rules for Distribution.** The Plan Administrator operationally may implement an ordering rule procedure for hardship distributions from Participant's accounts attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals. Such ordering rules may specify whether the Pre-tax Elective Deferrals or Roth Elective Deferrals are distributed first. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

2.17 **Corrective distributions attributable to Roth Elective Deferrals.** The Plan Administrator may implement an ordering rule procedure for the distribution of excess deferrals, for any pan year in which a participant may make both Roth Elective Deferrals and Pre-Tax Elective Deferrals. Such ordering rules may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first, to the extent such type of Elective Deferrals were made for the year. The procedure may permit the Participant to elect which type of Elective Deferrals shall be made first.

2.18 **Plan Loans.** The Plan does not permit plan loans for pre-tax Elective Deferrals or for Roth Elective Deferrals.

2.19 **Rollovers.** A direct rollover of a distribution from a Participant's Roth Elective Deferral account of the Plan shall only be made to another Roth Elective Deferral Account of an applicable retirement plan as described in Code Section 402A(e)(1), or to a Roth IRA as described in Code Section 408A, and only to the extent the rollover is permitted under the Rules of Code Section 403(b)(8).

2.19.1 The Plan shall accept a rollover contribution to a Participant's Roth Elective Deferral account only if it is a direct rollover from another Roth Elective Deferral Account of an applicable retirement plan as described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 403(b)(8). The Employer, operationally and on a uniform and on a nondiscriminatory basis, may decide whether to accept any such rollovers.

2.20 **Qualified Domestic Relations Orders.** If a judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to a domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Roth Elective Deferral account shall be paid in the manner and to the person or persons so directed in the qualified domestic relations order. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

2.21 **Plan Conversions.** A Participant's Pre-Tax Elective Deferral Account may not be converted to a Roth Elective Deferral Account. In-plan Roth conversions are not permitted.

2.22 **Operational Compliance.** The Plan Administrator will administer Roth Elective Deferrals in accordance with applicable regulations or other binding authority not reflected in this amendment. Any applicable regulations or other binding authority shall supersede any contrary provisions of this amendment.

RESOLUTION

WHEREAS, Mississippi State University (hereinafter, "The Employer"), previously established the 403(b) Retirement Savings Plan (hereinafter, "the Plan") for the exclusive benefit of its employees and their beneficiaries; and

WHEREAS, the Employer retained the right, from time to time, to amend, modify or discontinue all or any portion of the 403(b) Plan without the consent of the employees participating in the Plan or their beneficiaries; and

WHEREAS, the Employer now desires to amend the 403(b) Plan to provide for Roth contributions in accordance with Section 402A of the Internal Revenue Code of 1986, as amended ("Code"); and

NOW, THEREFORE, BE IT RESOLVED that the 403(b) Plan is hereby amended, effective January 1, 2018, to provide for Roth after-tax contributions, the provisions of which shall be set forth in a subsequent document memorializing this amendment; and

RESOLVED FURTHER, that the appropriate representatives of the Employer be, and the same hereby are, authorized and directed to: (i) execute a document memorializing the specific terms of this 403(b) Plan amendment, and (ii) execute all other documents and to do all other things as may be necessary or appropriate to make the amendment effective, including the execution of any additional 403(b) Plan amendments required by the Internal Revenue Code in order to continue and maintain the tax-qualified and exempt status of the plan.

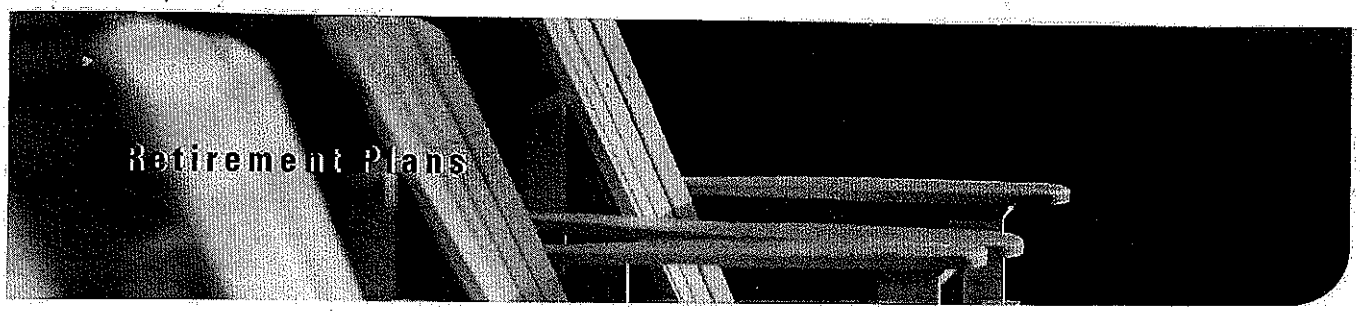
Don Buffum
Director of Procurement & Contracts

I _____, do hereby certify that the above and foregoing was adopted and approved by The Employer, on the 25 of Sept, 2017.

Signature

Don Buffum
Director of Procurement & Contracts
Title

#-001319



Roth Is on the Rise: Is Roth Right for Your Plan?

Roth is on the rise among defined contribution (DC) plans. Nearly three out of five DC plans surveyed now offer Roth contributions, and nearly one out of five offers in-plan Roth conversions. Roth contributions can offer tax advantages and permit tax-impact diversification to participants but also can add administrative complexities for the plan sponsor. There may also be confusion about Roth contributions relative to traditional after-tax contributions and Roth individual retirement accounts (IRAs). This article provides an overview of Roth contribution and in-plan conversion rules and contrasts Roth contributions with traditional after-tax contributions and Roth IRAs.

by **Daniel Schwallie, Ph.D.** | *Aon Hewitt*

Roth contributions are increasingly popular with defined contribution (DC) plan sponsors and their plan participants. Among 367 surveyed DC plans, the percentage of plans offering Roth contributions increased from 11% in 2007 to 58% in 2015.[1] And 33% of plans surveyed that offer Roth contributions also permit in-plan Roth conversions.[2] Roth contributions can offer a plan participant a tax advantage over traditional pretax elective deferrals (and traditional after-tax contributions), particularly if the participant's effective income tax rate is higher when distributions are taken from the plan than when contributions are made to the plan.

Because Roth contributions are made on an after-tax basis, this can lead to some confusion for plan sponsors and participants, especially if a plan offers both Roth contributions and traditional after-tax contributions (although there are reasons to offer both). Further, familiarity with Roth individual retirement account (IRA) rules can result in additional confusion, since the rules for Roth contributions to a plan are similar but not identical to those for a Roth IRA.

This article provides an overview of Roth contribution rules (and in-plan conversion rules) and contrasts Roth contributions with traditional after-tax contributions and Roth IRAs.

Why Roth Contributions?

Roth contributions may be attractive to plan participants because both the contributions and earnings on those contributions are not taxed when distributed, if distributed as a "qualified distribution." Pretax elective deferrals, although excluded from federal taxable income when made, are taxed when distributed, along with earnings on those deferrals, unless taxation is further delayed through an eligible rollover to an eligible retirement plan or individual

retirement annuity or IRA. Non-Roth after-tax contributions are not taxed when distributed, but the earnings on those contributions are taxed when distributed, unless taxation is further delayed through an eligible rollover to an eligible retirement plan, individual retirement annuity or IRA. If a participant's effective tax rate is expected to be higher when distribution is made from the participant's Roth account than when contributions were made to the participant's Roth account, Roth contributions will be more tax attractive than pretax elective deferrals. Offering Roth contributions allows plan participants to diversify with respect to future tax rates, whether by making both pretax elective deferrals and Roth contributions or by making Roth contributions and taking into account that employer contributions to the plan are pretax and will be taxable at distribution.

TABLE

Effect of Future vs. Current Effective Tax Rates

	Roth contribution	Pretax deferral
Years to retirement	35	35
One-time pretax deferral	Not applicable	$5,000
Current effective tax rate	25%	25%
Comparable Roth contribution ($5,000 taxed at 25%)	$3,750	Not applicable
Assumed annual growth rate over 35 years	5%	5%
Accumulation at retirement	$20,685	$27,580
Scenario 1—Tax rate the same at retirement distribution		
Effective tax rate at retirement distribution	25%	25%
Total after-tax distribution at retirement	$20,685	$20,685
Scenario 2—Tax rate lower at retirement distribution		
Effective tax rate at retirement distribution	15%	15%
Total after-tax distribution at retirement	$20,685	$23,443
Scenario 3—Tax rate higher at retirement distribution		
Effective tax rate at retirement distribution	35%	35%
Total after-tax distribution at retirement	$20,685	$17,927

The simplified example in the table shows the basic concept of the effect of future versus current effective tax rates on choosing between Roth contributions and pretax elective deferrals.

Although future tax rates generally are not known with certainty, a participant will obtain more of a tax advantage from a Roth account if a higher effective tax rate applies at the time of distribution than at the time of contribution. Even if actual tax rates remain the same, a participant might be moved to a higher actual tax rate because the participant no longer claims exemptions for dependent children or deductions such as mortgage interest, which could increase the participant's effective tax rate at retirement. The longer a participant remains invested in a Roth account, the more likely the participant will benefit from tax-free earnings on the Roth account.

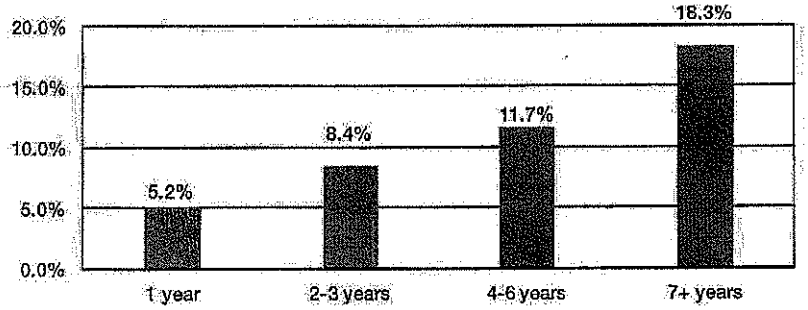
Required Minimum Distributions and Longevity Retirement Planning

A Roth account may be of particular benefit for longevity retirement planning. Although a Roth account is subject to the same required minimum distribution (aged 70½) rules as pretax elective deferrals, a Roth account can be rolled over to a Roth IRA, which is not subject to required minimum distributions beginning at the age of 70½ while the IRA owner is alive.[3] Unlike a rollover of a pretax elective deferral account (or earnings on a non-Roth after-tax account) to a Roth IRA, which is a taxable event, a rollover of a Roth account to a Roth IRA does not trigger federal income taxation.[4]

Although the annual amount that can be contributed to a plan as Roth contributions is subject to the limitations described in the next section, the amount is greater than the amount that can be contributed to a Roth IRA, due to the dollar limit on IRA contributions ($5,500 for 2017, whether to traditional or Roth IRAs, increased to $6,500 if

FIGURE 1

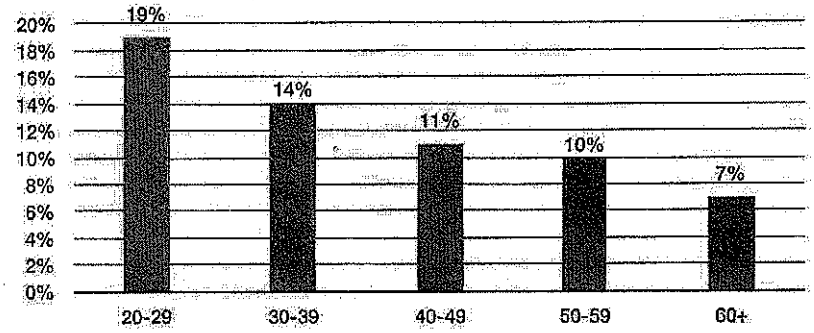
Percentage of Participants Using Roth by Time Since Adoption



Source: Aon Hewitt, *2015 Trends & Experience in Defined Contribution Plans Survey.*

FIGURE 2

Percentage of Participants Using Roth by Age



Source: Aon Hewitt, *2015 Trends & Experience in Defined Contribution Plans Survey.*

over the age of 50), and may be phased out based on a participant's modified adjusted gross income.[5] To the extent otherwise permitted, an individual can make both Roth contributions to a plan and contributions to a Roth IRA.

Roth Usage

The longer that Roth contributions are available in a plan, the more likely it is that participants will contribute on a Roth basis. (See Figure 1.) Younger participants are more likely to choose Roth contributions over pretax elective deferrals (See Figure 2.) This may be because they believe overall tax rates will be higher when they retire or that their personal effective tax rates will be higher when they retire.

Roth Contribution Basics

Roth contributions are permitted in a 401(k) plan, a 403(b) plan and a governmental 457(b) plan.[6] Even though Roth contributions are made on an after-tax basis, in most other respects they are treated the same as traditional pretax elective deferrals to any of these three types of defined contribution plans. Unlike pretax elective deferrals, neither the earnings on Roth contributions nor the Roth contributions themselves are taxable when distributed to the participant, provided the distribution satisfies the criteria to be a "qualified distribution." Both the earnings on pretax elective deferrals and the pretax elective deferrals themselves are taxable when distributed to the participant, unless the distribution is an eligible rollover distribution that is effectively rolled over to an eligible retirement plan or IRA.

Qualified Distribution

A qualified distribution from a designated Roth account is not includible in gross income. With certain exceptions,[7] a qualified distribution means a distribution from a designated Roth account that is both:

- Made after a five-taxable-year period of participation
- Either:
  - —Made on or after the date the employee attains the age of 59½
  - —Made to a beneficiary or the estate of the employee on or after the employee's death or
  - —Attributable to the employee being disabled within the meaning of Code Section 72(m)(7).[8]

The five-taxable-year period of participation is the period of five consecutive taxable years that begins with the first day of the first taxable year during which the employee makes a designated Roth contribution to the plan (i.e.,

the first taxable year in which such Roth contribution is includible in the employee's gross income) and ends when five consecutive taxable years have been completed.[9] The beginning of the five-taxable-year period is not redetermined for any portion of an employee's designated Roth account. This is true even if the entire designated Roth account is distributed during the five-taxable-year period and the employee subsequently makes additional designated Roth contributions under the plan.[10]

Generally, an employee's five-taxable-year period is determined separately for each separate plan in which the employee participates, so the employee might have multiple five-taxable-year periods. If a direct rollover contribution of a distribution from a designated Roth account under another plan is made by the employee to the plan, the five-taxable-year period of participation begins on the first day of the employee's taxable year in which the employee first had designated Roth contributions made to such other designated Roth account, if earlier than the first taxable year in which a designated Roth contribution is made to the plan. Additional rules apply to determine the start of the five-taxable-year period in the case of an indirect rollover[11] or a reemployed veteran.[12]

A Roth contribution returned as an excess deferral or excess contribution does not begin the five-taxable-year period. A Roth contribution returned as a permissible withdrawal under Code Section 414(w) also does not begin the five-taxable-year period.[13]

If the employee dies or the account is divided pursuant to a qualified domestic relations order (QDRO) such that a portion of the account is payable to the employee's beneficiary or an alternate payee, generally the age, death or disability of the employee is used to determine whether the distribution to an alternate payee or beneficiary is a qualified distribution. However, if an alternate payee or a spousal beneficiary rolls the distribution into a designated Roth account in a plan maintained by his or her own employer, such individual's age, disability or death is used to determine whether a distribution from the recipient plan is a qualified distribution. Further, if the rollover is a direct rollover contribution to the alternate payee's or spousal beneficiary's own designated Roth account, the five-taxable-year period under the recipient plan begins on the earlier of the date the employee's five-taxable-year period began under the distributing plan or the date the five-taxable-year period applicable to the alternate payee's or spousal beneficiary's designated Roth account began under the recipient plan.[14]

The plan administrator or other responsible party with respect to the plan is responsible for tax-reporting and recordkeeping requirements, including keeping track of the five-taxable-year period of participation and the participant's Code Section 72 *investment in the contract* basis.[15] A distribution from an employee's designated Roth account that is not a qualified distribution is includible in gross income pursuant to Code Section 72 in proportion to the employee's investment in the contract (basis) and earnings on the contract.[16]

Roth Contributions Treated as Elective Deferrals

Generally, Roth contributions are treated as elective deferrals for purposes of the Internal Revenue Code, except that Roth contributions are not excludible from a participant's gross income.[17] In other words, the rules that apply to pretax participant deferrals generally apply to Roth contributions, except that Roth contributions are made on an after-tax basis. However, certain additional rules (such as the qualified distribution rules described above) apply to Roth contributions that permit earnings on Roth contributions to be excludable from a participant's gross income.

Roth contributions are elective deferrals that a participant has designated as not excludable from gross income ("designated Roth contributions"), which are held in a separate "designated Roth account" along with any earnings properly allocable to those designated Roth contributions.[18] In order to provide for designated Roth contributions, a plan must also offer traditional, pretax elective contributions.[19] Separate recordkeeping of Roth accounts is required.[20] A participant's Roth contributions are limited to the amount of elective deferrals the participant could make for the year but reduced by the amount of elective deferrals the participant actually makes for the year.[21] Therefore, the following limitations apply to a participant's combined amount of elective deferrals and Roth contributions:

- **Roth contributions to a 401(k) plan.** A participant's

combined amount of elective deferrals and Roth contributions to a 401(k) plan cannot exceed the smallest of:

—The individual dollar limit ($18,000 for 2017) for the year[22]

—The lesser of (1) 100% of the participant's compensation[23] or (2) the dollar limit on annual additions ($54,000 for 2017) for the limitation year, when employer matching and nonmatching contributions on behalf of the participant are taken into account, along with the participant's combined amount of elective deferrals and Roth contributions, the participant's non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant for the limitation year[24]

—The limit imposed on the participant by the plan's actual deferral percentage (ADP) test results, if applicable.[25]

Such limits described above may be increased by age 50 catch-up contributions ($6,000 for 2017).[26]

- **Roth contributions to a 403(b) plan.** A participant's combined amount of elective deferrals and Roth contributions to a 403(b) plan cannot exceed[27] the smaller of:

  —The individual dollar limit ($18,000 for 2017) for the year, as may be increased by 15-year service catch-up contributions[28]

  —The lesser of (1) 100% of the participant's includible compensation[29] or (2) the dollar limit on annual additions ($54,000 for 2017) for the limitation year, when employer matching and nonmatching contributions on behalf of the participant are taken into account along with the participant's combined amount of elective deferrals and Roth contributions, the participant's non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant for the limitation year.[30]

Such limits described above may be increased by age 50 catch-up contributions ($6,000 for 2017).[31]

- **Roth contributions to a governmental 457(b) plan.** A participant's combined amount of elective deferrals and Roth contributions to a governmental 457(b) plan cannot exceed[32] the smaller of:

  —The individual dollar limit ($18,000 for 2017) for the year, as may be increased by final-three-year catch-up contributions[33]

  —100% of the participant's compensation.[34]

Such limits described above may be reduced by employer nonelective contributions to the plan (whether matching contributions or not) and increased by age 50 catch-up contributions ($6,000 for 2017).[35]

Automatic Enrollment

If a plan with automatic enrollment has both pretax elective deferrals and designated Roth contributions, the plan must state how the employer will allocate automatic contributions between the pretax elective deferrals and designated Roth contributions.[36]

Matching Contributions

Matching contributions can be made on Roth contributions. Roth contributions are treated as elective deferrals for this purpose. Because matching contributions are employer contributions, matching contributions on Roth contributions continue to be on a pretax basis and taxable upon distribution, like they would be if made on pretax elective deferrals or non-Roth after-tax contributions.[37]

In the author's consulting experience, some employers initially do not want to match Roth contributions, even though their plans match pretax elective deferrals. While this may be possible, the result is asymmetric in that participants will favor pretax elective deferrals, at least up to the maximum match contribution available. This seems to be a result of some confusion of Roth contributions with non-Roth after-tax contributions and of employers not initially realizing that Roth contributions dollar for dollar reduce a participant's ability to make pretax elective deferrals under the annual individual dollar limits.

Plan Loans

Designated Roth contributions can be the basis for a plan loan. All plans within the employer's controlled group

#-001319

are treated as one plan for purposes of determining the total amount an employee is permitted to borrow from the plan, and such amount is based on the total of the designated Roth contribution amounts and the other amounts under the plan. However, the substantially level amortization requirement must be satisfied separately with respect to the portion of the loan from Roth accounts and with respect to the portion of the loan from other accounts under the plan.[38]

Universal Availability Under 403(b) Plans

All employees of an employer eligible to have a 403(b) plan must be permitted to have Section 403(b) elective deferrals contributed on their behalf if any employee of the employer may elect to make Section 403(b) elective deferrals, subject to limited exceptions.[39] The universal availability requirement for elective deferrals under a 403(b) plan has a corollary for Roth contributions under a 403(b) plan. The employee's right to make elective deferrals under this universal availability rule also includes the right to designate Section 403(b) elective deferrals as designated Roth contributions.[40] Thus, if any employee of an employer eligible to have a 403(b) plan is eligible to make Roth contributions, subject to the limited exceptions, all employees of the employer must be permitted to have Roth contributions contributed on their behalf.

Earliest Distribution Restrictions

Roth contributions are subject to the same distribution restrictions as pretax elective deferrals in a 401(k) or 403(b) plan, meaning not earlier than severance from employment, death, disability, attainment of the age of 59½, plan termination or hardship.[41] Roth contributions are subject to the same distribution restrictions as other contributions in a 457(b) plan, meaning not earlier than severance from employment, death, plan termination or unforeseeable emergency.[42]

Rollover Distributions and Contributions

An eligible rollover distribution from a designated Roth account can be rolled over only to another designated Roth account or a Roth IRA, and the amount rolled over is not includible in gross income until later distributed. To the extent that a portion of a distribution from a designated Roth account is not includible in income, determined without regard to the rollover, a rollover of that portion into a designated Roth account must be done as a direct rollover (i.e., a 60-day rollover to another designated Roth account is not permitted).[43] If a distribution from a designated Roth account is instead made to the employee, the employee is able to roll over the entire amount (or any portion) into a Roth IRA within the 60-day rollover period.[44]

If an employee receives a distribution from a designated Roth account, the portion of the distribution that would be includible in gross income is permitted to be rolled over to a designated Roth account under another plan. The employee's period of participation under the distributing plan is not carried over to the recipient plan for purposes of satisfying the five-taxable-year period of participation requirement under the recipient plan. The taxable year in which the recipient plan accepts such rollover contribution is the taxable year that starts the participant's five-taxable-year period in the recipient plan, unless the participant already has a designated Roth account in the recipient plan with a longer period of participation, in which case the starting date of the recipient account is used to measure the five-taxable-year period.[45]

For distributions after December 31, 2015 from a participant's designated Roth account to the participant and also in a direct rollover to the participant's Roth IRA or designated Roth account, pretax amounts are allocated first to the direct rollover rather than being allocated pro rata to each destination. Also, a participant can direct the allocation of pretax and after-tax amounts included in disbursements from the participant's designated Roth account that are directly rolled over to multiple destinations, applying the same allocation rules that apply to distributions from other types of accounts.[46]

In-Plan Roth Conversions

The Small Business Jobs Act of 2010 permitted plans that include Roth contributions to allow individuals to roll over eligible distribution amounts from their accounts other than designated Roth accounts to their designated Roth accounts in the plan (i.e., permitted in-plan Roth conversions).[47] A participant may convert all or any portion of

(non-Roth) vested account balances to a designated Roth account if the plan allows, although the plan can specify the frequency of such in-plan Roth conversions (subject to plan benefits, rights and features nondiscrimination requirements, if applicable to the plan). For this purpose, non-Roth vested account balances include pretax deferral, rollover and after-tax account balances and vested matching or other vested employer contribution account balances, although the plan can specify which balances are eligible for in-plan Roth conversion (subject to plan benefits, rights and features nondiscrimination requirements, if applicable to the plan).[48]

If an in-plan Roth conversion is the first contribution made to an employee's designated Roth account, the five-taxable-year period of participation required for a qualified distribution begins on the first day of the first taxable year in which the employee makes the in-plan Roth conversion.[49] The taxable amount of the in-plan Roth conversion must be included in the participant's gross income for the year in which the conversion occurs and is the amount that would be includible in a participant's gross income if the conversion amount were rolled over to a Roth IRA. This amount is equal to the fair market value of the distribution reduced by any basis the participant has in the distribution.[50]

An in-plan Roth conversion is treated as a distribution for purposes of determining eligibility for the special tax rules on net unrealized appreciation, whether the rollover is made by a direct in-plan Roth conversion or by a 60-day in-plan Roth conversion (described in the next section).[51]

For a plan to permit in-plan Roth conversions, the plan must permit Roth contributions and expressly provide for in-plan Roth conversions.[52] An employee's ability to make an in-plan Roth conversion is not a Code Section 411(d)(6) protected benefit, but the timing of a plan amendment to eliminate in-plan Roth conversions cannot have the effect of discriminating significantly in favor of highly compensated employees or former highly compensated employees.[53]

The amount of an in-plan Roth conversion continues to be taken into account in determining whether the participant's benefit exceeds $5,000 for purposes of the cash-out rules.[54] Participants, surviving spouse beneficiaries and alternate payees who are current or former spouses are eligible if a plan offers an in-plan Roth conversion. Nonspouse beneficiaries are not included as eligible for in-plan Roth conversions.[55]

Two Ways to Make an In-Plan Roth Conversion

One way to make an in-plan Roth conversion is to direct the plan to transfer a vested non-Roth amount to a Roth account in the same plan. Spousal consent is not required for this direct in-plan conversion.[56] No income tax withholding is taken on such direct in-plan Roth conversion, but increased payroll withholding or estimated tax payments may be needed to avoid underwithholding penalties, since the in-plan conversion is a taxable event.[57] Notice of the participant's right to defer receipt of a distribution is not triggered by a direct in-plan Roth conversion.[58] A participant who had a distribution right (such as a right to an immediate distribution of the amount converted) prior to the conversion cannot have this right eliminated through a direct in-plan Roth conversion.[59]

Another way to make an in-plan Roth conversion is to take an eligible rollover distribution from non-Roth amounts and then deposit all or part of the distribution to a Roth account in the same plan within 60 days.[60] Mandatory withholding of 20% is required on the taxable portion of the distribution. Spousal consent may be required for the eligible rollover distribution if the plan otherwise requires spousal consent (such as if the default form of payment is an annuity).[61] This 60-day in-plan Roth conversion requires the individual to be eligible for a distribution,[62] but it may be preferred by a participant in order to have taxes withheld from the conversion.

Recharacterization Not Permitted

Unlike a rollover to a Roth IRA, no portion of an in-plan Roth conversion can be *recharacterized*.[63] In other words, an in-plan Roth conversion cannot be undone.

Plan Loans

If the plan permits, an outstanding loan balance can be transferred from a non-Roth account to a Roth account in the same plan, provided there is no

#-001319

change in the loan repayment schedule. The taxable amount upon conversion would be the balance of the loan at the time of the transfer.[64]

Tax on Early Distribution

An in-plan Roth conversion generally is not subject to the additional 10% early distribution tax. However, a special recapture rule applies if any part of the in-plan Roth conversion is distributed within the five-taxable-year period beginning January 1 of the year of the conversion. Such distribution in the five-taxable-year period makes the distribution subject to the additional 10% early distribution tax, unless an exception to the 10% tax otherwise applies or the distribution is allocable to a nontaxable portion of the in-plan Roth conversion. The special recapture rule does not apply to a distribution that is rolled over to another designated Roth account of the participant or a Roth IRA owned by the participant but does apply to a subsequent distribution from the recipient Roth account or IRA within the five-taxable-year period.[65]

In-Plan Roth Conversions of Nondistributable Amounts

The American Taxpayer Relief Act of 2012 expanded the ability of 401(k), 403(b) and governmental 457(b) plan participants to convert plan balances to Roth accounts. Under these rules, an in-plan Roth conversion is no longer limited to amounts that are distributable at the time of conversion, although the plan can limit in-plan Roth conversions only to distributable amounts.[66] A Special Tax Notice under Code Section 402(f) is not required for a participant making an in-plan Roth conversion of an otherwise nondistributable amount.[67] Because an in-plan Roth conversion of an otherwise nondistributable amount must be made by a direct rollover, no withholding is required and, further, no part of the conversion may be withheld for voluntary withholding either.[68] An in-plan Roth conversion of an otherwise nondistributable amount (plus earnings) remains subject to the distribution restrictions that were applicable to the amount before the in-plan Roth conversion.[69]

Potential Impact on ACP Test Results

A plan subject to actual contribution percentage (ACP) testing that includes non-Roth after-tax contributions as well as in-plan Roth conversions may potentially have difficulty passing the ACP test. Non-Roth after-tax contributions must be included in the plan's ACP test, and an ACP test of non-Roth after-tax contributions must be performed even if the plan is an ACP safe harbor plan design. Having the ability to make both non-Roth after-tax contributions and an in-plan Roth conversion of non-Roth after-tax contributions may induce plan participants to increase their non-Roth after-tax contributions in order to convert them to Roth contributions. Highly compensated employees may be more likely to take this approach, since they are more likely to be limited in their ability to make pretax elective deferrals or otherwise make Roth contributions under the plan due to the dollar limit on elective deferrals and other limits described earlier in this article. If, in fact, that happens, the plan's ACP test results may become less favorable, and the plan may fail. This may not happen, and it may be that highly compensated employees were already making non-Roth after-tax contributions in anticipation of rolling them over to a Roth IRA at retirement, in which case the ACP test results may not change significantly. As mentioned previously, an in-plan Roth conversion is not a protected plan feature and could be prospectively amended out of a plan, even if only with respect to converting non-Roth after-tax contributions provided the timing of the amendment does not discriminate in favor of highly compensated employees.

Conclusion

Roth contributions are an attractive and valuable option for many plan participants. A plan sponsor offering, or intending to offer, Roth contributions should clearly and effectively communicate a Roth option to distinguish it from Roth IRAs that may be available to their plan participants and, if non-Roth after-tax contributions are also permitted, to distinguish Roth contributions from those after-tax contributions. Similarly, if in-plan Roth conversions will also be offered, the rules surrounding an in-plan conversion, such as the inability to recharacterize the conversion, should be clearly communicated. This will reduce participant confusion and help participants better prepare their overall re-

tirement savings planning. Plan sponsors should review the compliance implications of offering Roth contributions with their recordkeepers and other plan advisors, particularly if in-plan Roth conversions will also be offered.

Endnotes

1. *2015 Trends & Experience in Defined Contribution Plans Survey*, Aon Hewitt. The term *defined contribution plans* for purposes of the survey includes 401(k), 403(b), 401(a) and 457(b) plans.

2. *2015 Trends & Experience in Defined Contribution Plans Survey*, Aon Hewitt.

3. See Code §§401(a)(9), 402A(a), 403(b)(10), 408A(c)(5) and 457(d)(2) and Treasury Regulation §§1.401(a)(9)-1, Q&A-1; 1.403(b)-3(c)(2); 1.403(b)-6(e); 1.408A-6, Q&A-14; 1.457-6(d). The postdeath required minimum distribution rules that apply to traditional (non-Roth) IRAs, with the exception of the at-least-as-rapidly rule, also apply to Roth IRAs. A governmental plan within the meaning of Code §414(d) and a governmental 457(b) plan described in Code §1.457-2(f) is treated as having complied with Code §401(a)(9) if the plan complies with a reasonable and good faith interpretation of Code §401(a)(9). See Treasury Regulation §1.401(a)(9)-1, Q&A-2(d).

4. See Treasury Regulation §1.402A-1, Q&A-5 and Q&A-6.

5. See Code §408A(c) and IRS Publication 590-A. Roth IRA contributions were fully phased out for 2017 if modified adjusted gross income was at least $196,000 when married and filing jointly or $133,000 when filing as single or head of household. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) eliminated the income restrictions on converting a traditional IRA to a Roth IRA, so it may be possible for those exceeding the modified adjusted gross income limits that would allow a direct contribution to a Roth IRA to instead contribute to a traditional after-tax IRA and later convert that traditional IRA to a Roth IRA. See Code §§408A(c)(B)(i) and 408A(d)(3)C) and TIPRA §512, including the Conference Committee Report.

6. See Internal Revenue Code §402A(e)(1). Roth contributions are not permitted under a 457(b) plan of a Code §501(c)(3) tax-exempt employer.

7. These exceptions include distributions of excess deferrals under Code §402(g)(2) and attributable income, excess contributions under Code §401(k)(8) and excess aggregate contributions under Code §401(m)(8). See Treasury Regulation §1.402A-1, Q&A-2(c) and Q&A-11.

8. See Treasury Regulation §1.402A-1, Q&A-2(b).

9. See Treasury Regulation §1.402A-1, Q&A-4(a).

10. See Treasury Regulation §1.402A-1, Q&A-4(c).

11. See Treasury Regulation §1.402A-1, Q&A-5(c).

12. See Treasury Regulation §1.402A-1, Q&A-4(e).

13. See Treasury Regulation §1.402A-1, Q&A-4(a).

14. See Treasury Regulation §1.402A-1, Q&A-4(d).

15. See Treasury Regulation §1.402A-2.

16. See IRS Notice 2010-84, §II.

17. See Code §402A(a)(1) and Treasury Regulation §1.401(k)-1(f)(4)(i).

18. See Code §402A(c)(1).

19. See "Retirement Plans FAQs on Designated Roth Accounts" on the IRS website at www.irs.gov/retirement-plans/retirement-plans-faqs-on-designated-roth-accounts#13.

20. See Code §402A(b).

21. See Code §402A(c)(2).

22. This limitation is an individual annual limit that applies to the total elective deferrals and Roth contributions an individual makes to any 401(k) and 403(b) plan in which the individual participates. See Code §§401(a)(30) and 402(g)(1).

23. A participant's compensation for purposes of the limitation on annual additions to a 401(k) plan must be one of four compensation definitions in Treasury Regulation §1.415(c)-2. A participant's compensation for purposes of elective deferrals and Roth contributions to a 401(k) is also subject to the compensation limit for qualified plans ($270,000 for 2017) under Code §401(a)(17).

24. The Code §415(c) limitations on annual additions apply to the total, for the limitation year, of employer matching and nonmatching contributions on behalf of the participant, the participant's combined amount of elective deferrals and Roth contributions, the participant's non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant under any Code §401(k) or 401(a) plan of the employer's controlled group based on more than 50% ownership or control among entities. See Code §§415(c)(2), 415(f)(1)(B), 415(g) and 415(h) and Treasury Regulation §1.415(a)-1(f)(1).

25. Roth contributions are included with elective deferrals for purposes of the ADP test. See Treasury Regulation §1.401(k)-1(f)(4)(i).

26. See Code §§402(g)(1)(C) and 414(v)(3) and Treasury Regulation §§1.401(k)-2(a)(5)(iii), 1.402(g)-2, 1.414(v)-1 and 1.415(c)-1(b)(2)(ii)(B). A 401(k) plan is not required to permit age 50 catch-up contributions.

27. See D. Schwallie, "The Sky Is Not the Limit: Coordinating the Dollar Limit, Pay Cap, and Other 403(b) Limits," 18 *Journal of Deferred Compensation* 12 (2012) for a detailed discussion of 403(b) plan contribution limits.

28. This limitation is an individual annual limit that applies to the total elective deferrals and Roth contributions an individual makes to any 401(k) and 403(b) plan in which the individual participates. For employees of a qualified organization (e.g., a university, hospital, health and welfare service agency) with at least 15 years of service, the employee deferral limit in a 403(b) plan is increased by the least of (1) $3,000, (2) $15,000 minus previous service catch-up amounts or (3) $5,000 times years of service minus all deferral amounts (including Roth contributions) for prior years with the organization, if the plan so provides. If both the 15-year service catch-up and the age 50 catch-up apply in a 403(b) plan, the 15-year service catch-up must be applied first. See Code §§401(a)(30), 402(g)(1) and 402(g)(7) and Treasury Regulation §1.403(b)-4(c)(3)(iv).

29. A participant's compensation for purposes of the limitation on annual additions to a 403(b) plan is "includible compensation" as defined in Code §403(b)(3) and Treasury Regulation §1.403(b)-2(b)(11). See Code §415(c)(3)(E) and Treasury Regulation1.415-2(g)(1). *Includible compensation* includes only compensation from an employer eligible to have a 403(b) plan that is includible in a participant's gross income for federal income tax purposes.

30. The Code §415(c) limitations on annual additions apply to the total, for the limitation year, of employer matching and nonmatching contributions on behalf of the participant, the participant's combined amount of elective deferrals and Roth contributions, the participant's non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant under any Code §403(b) plan of the employer's controlled group based on more than 50% ownership or control among entities. This limit generally applies separately to 403(b) plans. However, if an employee owns or controls more than 50% of another employer (i.e., other than the employer sponsoring the 403(b) plan) with a 401(k) or other Code §401(a) defined contribution plan, that plan and the 403(b) plan must satisfy Code §415 limits both separately and combined. When applying the Code §415 limit separately to the plans, compensation received from the two employers cannot be combined. See Code §§415(c)(2), 415(f)(1)(B), 415(g), 415(h) and 415(k)(4) and Treasury Regulation §§1.403(b)-3(a)(9), 1.403(b)-3(b)(1), 1.415(a)-1(f)(1), 1.415(c)-2(g)(3), 1.415(f)-1(f) and 1.415(g)-1(b)(3)(iv)(C).

31. See Code §§402(g)(1)(C) and 414(v)(3) and Treasury Regulation §§1.402(g)-2, 1.414(v)-1 and 1.415(c)-1(b)(2)(ii)(B). A 403(b) plan is not required to permit age 50 catch-up contributions.

32. See D. Schwallie, "The Split Personalities of 457(b) Nonqualified Plans," 18 *Journal of Deferred Compensation* 36 (2013) for a detailed discussion of 457(b) plan contribution limits.

33. A 457(b) plan may provide that, for one or more of a participant's last three taxable years ending before the participant attains normal retirement age, the annual contribution limit is increased to the lesser of (1) twice the indexed dollar limit ($36,000 for 2017) or (2) the participant's "underutilized limitation." A participant's underutilized limitation is the sum of (1)

MISSISSIPPI STATE UNIVERSITY
403(b) PLAN

Effective January 1, 2009

#-001319

11/18/08

Table of Contents

#-001319

INTRODUCTION

Mississippi State University (the "Employer") permits eligible employees to make contributions to certain annuity contracts and custodial accounts for purposes of providing retirement benefits, as permitted in accordance with section 403(b) of the Internal Revenue Code of 1986. Now, in order to comply with the final regulations issued under section 403(b), the Employer hereby adopts the Mississippi State University 403(b) Plan, effective as of January 1, 2009.

#-001319

SECTION 1
DEFINITION OF TERMS USED

The following words and terms, when used in the Plan, have the meaning set forth below.

1.01 **Account:** The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

1.02 **Account Balance:** The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant's Account under all Accounts, including the Participant's Elective Deferrals, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. Where permitted by the Individual Agreement, if a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

1.03 **Administrator:** The Employer shall be the Administrator of the Plan, unless the Employer designates in writing another person to administer the Plan.

1.04 **Annuity Contract:** A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in Mississippi and that includes payment in the form of an annuity.

1.05 **Beneficiary:** The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

1.06 **Custodial Account:** The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

1.07 **Code:** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.08 **Compensation:** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferrals under the Plan).

1.09 **Disabled**: The definition of disability provided in the applicable Individual Agreement.

1.10 **Elective Deferral:** The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

1.11 **Employee:** Each individual, whether appointed or elected, who is a common law employee of the Employer performing services as an employee of the Employer. This definition is not applicable unless the employee's compensation for performing services for a public education institution is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public education institution unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

1.12 **Employer:** Mississippi State University.

1.13 **Funding Vehicles:** The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by Employer for use under the Plan.

1.14 **Includible Compensation:** An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of $200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws.

1.15 **Individual Agreement:** The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

1.16 **Participant:** An individual for whom Elective Deferrals are currently being made, or for whom Elective Deferrals have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

1.17 **Plan:** Mississippi State University 403(b) Plan

1.18 **Plan Year:** The calendar year.

1.19 **Related Employer:** The Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code. For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

1.20 **Severance from Employment:** For purpose of the Plan, Severance from Employment means Severance from Employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public education institution, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public education institution or in a capacity that is not employment with a public education institution (e.g., ceasing to be an employee performing services for a public education institution but continuing to work for the same State or local government employer).

1.21 **Vendor**: The provider of an Annuity Contract or Custodial Account. The Vendors selected to receive ongoing payroll contributions, hereinafter referred to as "Authorized Vendors", shall be specified on Appendix A. Former approved vendors who are no longer authorized to receive contributions, transfer or exchanges shall be listed in Appendix B. Such appendices shall be construed as part of the Plan. However, the Employer may modify Appendix A and Appendix B from time to time without the need for a Plan amendment.

1.22 **Valuation Date:** The last business day of each calendar year. A Vendor may establish more frequent valuation dates (including daily valuations) with respect to such Vendor's Annuity Contracts or Custodial Accounts.

SECTION 2
PARTICIPATION AND CONTRIBUTIONS

2.01 Eligibility

Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer.

Notwithstanding the above, the following classes of Employees shall be considered as excluded classes for purposes of the Plan and Employees who are members of such classes shall not be eligible to participate in the Plan:

(a) Employees who are students performing services described in Code section 3121(b)(10); and

(b) Employees who are nonresident aliens who receive no earned income from the Employer which constitutes United States source income.

2.02 Compensation Reduction Election

An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing it with the Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than $200, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the Employee's election.

2.03 Information Provided by the Employee

Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

2.04 Change in Elective Deferrals Election

Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, his or her investment direction, and his or her designated Beneficiary. A change to an Employee's Elective Deferrals or investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

- 001319

2.05 Contributions Made Promptly

Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.06 Leave of Absence

Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

#-001319

SECTION 3
LIMITATIONS ON AMOUNTS DEFERRED

3.01 Basic Annual Limitation

Except as provided in Sections 3.02 and 3.03, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under section 402(g)(1)(B) of the Code, which is $15,500 for 2007, and is adjusted for cost-of-living after 2007 to the extent provided under section 415(d) of the Code.

3.02 Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service

Because the Employer is a qualified organization (within the meaning of § 1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), the applicable dollar amount under Section 3.01(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

(a) $3,000;

(b) The excess of:

(1) $15,000, over

(2) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or

(c) The excess of:

(1) $5,000 multiplied by the number of years of service of the employee with the qualified organization, over

(2) The total Elective Deferrals made for the employee by the qualified organization for prior years.

For purposes of this Section 3.02, a "qualified employee" means an employee who has completed at least 15 years of service taking into account only employment with the Employer.

3.03 Age 50 Catch-up Elective Deferral Contributions

An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is $5,000 for 2007, and is adjusted for cost-of-living after 2007 to the extent provided under the Code.

3.04 Coordination of Catch-up Contributions Limitations

Amounts in excess of the limitation set forth in Section 3.01 shall be allocated first to the special 403(b) catch-up under Section 3.02 and next as an age 50 catch-up contribution under Section 3.03. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant's Compensation for the year.

3.05 Special Rule for a Participant Covered by Another Section 403(b) Plan

For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 3.02 only if the other plan is a § 403(b) plan.

3.06 Correction of Excess Elective Deferrals

If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the Employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

3.07 Protection of Persons Who Serve in a Uniformed Service

An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

SECTION 4
LOANS

4.01 Elimination of Loans

Notwithstanding the terms of the Individual Agreements, effective January 1, 2009 loans shall not be permitted under the Plan; provided, however, that loan requests submitted on or before December 31, 2008 shall be accepted and processed to the extent permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured. The following provisions of this Section 4 apply to loans made prior to this restriction on loans.

4.02 Information Coordination Concerning Loans

Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 4.03, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

4.03 Maximum Loan Amount

No loan to a Participant under the Plan may exceed the lesser of:

(a) $50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or

(b) one half of the value of the Participant's vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 4.03, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

SECTION 5
BENEFIT DISTRIBUTIONS

5.01 Benefit Distributions At Severance from Employment or Other Distribution Event

Except as permitted under Section 3.06 (relating to excess Elective Deferrals), Section 5.04 (relating to withdrawals of amounts rolled over into the Plan), Section 5.05 (relating to hardship), or Section 8.03 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participation has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

5.02 Small Account Balances

The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed $5,000 (determined without regard to any separate account that holds rollover contributions under Section 6.01) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of $1,000).

5.03 Minimum Distributions

Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of section 1.408-8 of the Income Tax Regulations, except as provided in section 1.403(b)-6(e) of the Income Tax Regulations.

5.04 In-Service Distributions From Rollover Account

If a Participant has a separate account attributable to rollover contributions to the Plan, to the extent permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

5.05 Hardship Withdrawals

(a) While a Participant is in the Service of the Employer, he shall be permitted to make hardship withdrawals under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. A request for a hardship withdrawal shall be granted by the Administrator only if the Participant has an immediate and heavy financial need and lacks other available resources, as provided in this Section 5.05.

(b) The determination as to whether a Participant has an immediate and heavy financial need and no other resources available to satisfy such need shall be made in accordance with the following conditions:

(1) **Immediate and Heavy Financial Need.** The immediate and heavy financial need for which a hardship withdrawal request may be granted shall be limited to the following:

(i) Expenses for medical care described in Code section 213(d) previously incurred by the Participant, Participant's spouse, or any dependents of the Participant (as defined in Code section 152) or necessary for these persons to obtain medical care described in Code section 213(d);

(ii) Costs directly related to purchase of a principal residence for the Participant (excluding mortgage payments);

(iii) Payment of tuition related educational fees for the next twelve (12) months of post-secondary education for the Participant, or the Participant's spouse, children, or dependents (as defined in Code section 152);

(iv) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence;

(v) Payments for funeral or burial expenses for a Participant's deceased parent, spouse, child or dependent;

(vi) Expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income);

(vii) Other expenses which the Commissioner of the Internal Revenue Service indicates will be deemed to be made on account of such need.

(2) **Restrictions.** To qualify for a hardship withdrawal pursuant to this section 5.05, the Participant must satisfy all of the following requirements:

(i) The participant must have obtained all distributions, other than hardship distributions, and nontaxable loans available under all plans maintained by the Employer;

(ii) The Participant's Elective Deferrals under the Plan, and all other plan's maintained by the Employer, must be suspended for six (6) months after receipt of the hardship distribution; and

(iii) The Participant must be in the service of the Employer at the time the request for the withdrawal is made.

(c) Hardship withdrawals shall be limited to the lesser of:

(1) the amount of the Participant's Elective Deferrals made to his account, including gross income through December 31, 1988, but excluding income credited thereafter, less any such amounts previously withdrawn; and

(2) the amount required to relieve the financial need plus amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the hardship distribution.

(d) A Participant whose Elective Deferrals are suspended pursuant to this Section 5.05, may elect to resume contributions as of the first day of any payroll period following the six (6) month suspension period.

(f) The Individual Agreements shall provide for the exchange of information among the Employer and the Vendors to the extent necessary to implement hardship withdrawal provisions of this Section 5.05, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need, the Vendor notifying the Employer of the withdrawal in order for the Employer to implement the resulting 6 (six) month suspension of the Participant's right to make Elective Deferrals under the Plan. In addition, the Vendor shall obtain information from the Employer or other Vendors to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need.

5.06 Rollover Distributions

(a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the Participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

SECTION 6
ROLLOVERS TO THE PLAN, TRANSFERS AND EXCHANGES

6.01 Eligible Rollover Contributions to the Plan

(a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code or a Roth IRA described in section 408A of the Code.

(b) **Eligible Rollover Distribution.** For purposes of Section 6.01(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

6.02 Plan-to-Plan Transfers to the Plan.

(a) At the direction of the Employer, for a class of Employees who are participants or beneficiaries in another plan under section 403(b) of the Code, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.02. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the Participant is an Employee or former Employee of the Employer. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that:

(1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan; and

(2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

6.03 Plan-to-Plan Transfers from the Plan

(a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with section 1.403(b)-10(b)(3) of the Income Tax Regulations. A transfer is permitted under this Section 6.03(a) only if the Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

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

(c) Upon the transfer of assets under this Section 6.03, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.03 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to § 1.403(b)-10(b)(3) of the Income Tax Regulations.

6.04 Contract and Custodial Account Exchanges

(a) A Participant or Beneficiary is permitted, subject to the terms of the Individual Agreements, to change the investment of his or her Account Balance among the Vendors who, at the time of such transfer, are authorized to receive ongoing contributions under the Plan ("Authorized Vendors"). Investment transfers from Vendors who are no longer eligible to receive payroll contributions under the Plan to Authorized Vendors are also permitted. However, investment changes to any Vendor who is not authorized to receive ongoing payroll contributions (referred to as "exchanges") are not permitted.

(b) Investment transfers under Section 6.04(a) shall only be permitted if the following conditions are satisfied:

(1) The Participant or Beneficiary must have an Account Balance immediately after the transfer that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the transfer (taking into account the Account Balance of that Participant or Beneficiary under both section 403(b) contracts or custodial accounts immediately before the transfer); and

(2) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on by the Individual Agreement from which the transfer is made.

(c) If any Vendor ceases to be eligible to receive Elective Deferrals under the Plan, the Employer will, to the extent the Employer's contract with the Vendor does not provide for the exchange of the information described below, enter into an information sharing agreement under which the Employer and the Vendor will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy section 403(b) of the Code, including the following:

(i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.01);

(ii) the Vendor notifying the Employer of any hardship withdrawal under Section 5.05 if the withdrawal results in a 6-month suspension of a Participant's right to make elective deferrals under the Plan;

(iii) the Vendor providing information to the Employer or other Vendors concerning the Participant's or Beneficiary's section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 5.05);

(2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following:

(i) the amount of any plan loan that is outstanding to the Participant in order for a Vendor (subject to the restrictions of Section 4.01 regarding new loans) to determine whether an additional plan loan satisfies the loan limitations of Section 4.03, so that any such additional loan is not a deemed distribution under section 72(p)(1); and

(ii) information concerning the Participant's or Beneficiary's after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.

6.05 Permissive Service Credit Transfers

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.05(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 6.05(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

SECTION 7
INVESTMENT OF CONTRIBUTIONS

7.01 Manner of Investment

All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

7.02 Investment of Contributions

Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations.

7.03 Current and Former Vendors

The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.02 or 6.04), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

SECTION 8
AMENDMENT AND PLAN TERMINATION

8.01 Termination of Contributions

The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

8.02 Amendment and Termination

The Employer reserves the authority to amend or terminate this Plan at any time.

8.03 Distribution Upon Termination of the Plan

The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

SECTION 9
CERTAIN PROVISIONS AFFECTING THE EMPLOYER

9.01 Duties of the Employer

The Employer shall keep accurate books and records with respect to its Employees and their compensation. The Employer shall deliver to the Administrator such information as is necessary for the Administrator to fulfill its obligations under the Plan. The Administrator will supply to the Vendors the information necessary for the administration of their Funding Vehicles and for the overall coordination of the Plan.

9.02 No Responsibility for Others

The Employer has no responsibility or obligation under the Plan to Employees, Participants or Beneficiaries for any act required of the Administrator, a Vendor or any other service provider of the Plan(unless the Employer also serves in such capacities).

9.03 Right of Employer to Discharge Employees

The adoption and maintenance of the Plan shall not be deemed to constitute a contract between the Employer and any Employee, or be consideration for, or an inducement or condition of, the employment of any person.

9.04 Expenses of Administration

All costs and expenses of administering this Plan shall be paid either directly by the Employer or, where applicable or otherwise at the discretion of the Employer, may be charged against the Accounts of Participants.

9.05 Indemnification by Employer

If the Employer appoints an Employee or committee of Employees to serve as Administrator or to assist the Administrator with the day to day operations of the Plan, the Employer shall, to the extent permitted by the law, indemnify any such Employee in connection with the good faith discharge or such duties under the Plan.

SECTION 10
CERTAIN PROVISIONS AFFECTING THE ADMINISTRATOR

10.01 Appointment of Administrator

The Employer shall serve as Administrator of the Plan, unless the Employer designates in writing another person to administer the Plan on behalf of the Employer. The Employer may appoint an Employee or a committee of Employees to assist the Administrator with the day to day administrative functions of the Plan. Any person so appointed may be removed by the Employer at any time, with or without cause, and a successor appointed by the Employer. Any vacancy caused by death, resignation or other reason, shall be filled by a successor appointed by the Employer.

10.02 Powers and Duties of the Administrator

The Administrator shall administer the Plan in accordance with its terms and for the exclusive benefit of the Participants, former Participants and the Beneficiaries

The Administrator shall have all power and authority (including discretion with respect to the exercise of that power and authority) necessary, properly advisable, desirable or convenient for the performance of its duties, which shall include, but are not limited to, the following:

(a) to construe the plan in good faith;
(b) to determine the eligibility of Employees to participate in the Plan;
(c) to adopt such rules as it deems necessary, desirable or appropriate for the administration of the Plan, provided such rules are consistent with the terms of the Plan; and
(d) to appoint such agents as it may need in the performance of its duties.

All rules and decisions of the Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. Any determination made by the Administrator shall be conclusive and binding upon all persons.

10.03 Resignation and Removal of Administrator

The Administrator may resign at any time by providing six (6) months prior written notice to the Employer; provided, however that the Employer reserves the right to waive such notice. The Employer may remove the Administrator and appoint a successor at any time by giving written notice to the Administrator, which removal shall be effective as of the date specified in such notice.

SECTION 11
MISCELLANEOUS

11.01 Non-Assignability

Except as provided in Section 11.02 and 11.03, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

11.02 Domestic Relation Orders

Notwithstanding Section 11.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

11.03 IRS Levy

Notwithstanding Section 11.01, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

11.04 Tax Withholding

Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

11.05 Payments to Minors and Incompetents

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

11.06 Mistaken Contributions

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

11.07 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six (6) months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

11.08 Incorporation of Individual Agreements

The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code.

11.09 Governing Law

The Plan will be construed, administered and enforced according to the Code and the laws of the State in which the Employer has its principal place of business.

11.10 Headings

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

11.11 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed by its duly authorized representative this _____ day of _____, _____.

MISSISSIPPI STATE UNIVERSITY

By: _____

Title: _____

APPENDIX A
LIST OF AUTHORIZED VENDORS

The following Vendors are authorized to receive ongoing contributions, exchanges and transfers under the Plan:

The Variable Annuity Life Insurance Company (AIG-VALIC)

Equitable Life Insurance Company (AXA- Equitable)

Fidelity Investments

ING Life Insurance and Annuity Company

Teachers Insurance and Annuity Association (TIAA-CREF)

This listing is effective January 1, 2009.

The Employer may add or delete Vendors from this listing without the need for a Plan amendment.

#-001319

APPENDIX B
LIST OF FORMER VENDORS

The following is a listing of former Vendors who are no longer authorized to receive ongoing contributions, transfers or exchanges under the Plan. Investment transfers from such former Vendors may only be directed to the Funding Vehicles of Authorized Vendors.

Ameriprise Financial

The Hartford Life Insurance Company

Hilliard Lyons

Merrill Lynch

Metropolitan Life Insurance Company (MetLife)

Modern Woodmen of America

MONY

Nationwide

PFS Investments

State Farm Insurance

USAA Life Insurance Company

USG Annuity & Life

This listing is effective January 1, 2009.