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PROS AND CONS OF 403(b) plans and 401(k) PLANS FOR NON-PROFIT PLAN SPONSORS

Upon publication of 403(b) regulations in July 2007, many non-profit plan sponsors are weighing the pros and the cons of maintaining their 403(b) plans, against terminating those plans in favor of adopting a 401(k) plan. This memo outlines some of the considerations that should be addressed.

	403(b) PLAN	401(k) PLAN
Eligibility – employee deferrals	All employees eligible to defer with limited restrictions (<20 hrs./wk., students)	Employer determines eligibility waiting period; from none to 1 year of service
Eligibility – employer contributions	Employer determines eligibility waiting period; from none to 2 years of service	Same as 403(b)
Employee deferrals	$15,500 in 2008. Catch up of $5,000 available if 50 or older.	Same as 403(b)
Employer contributions	Matching contribution and/or fixed percentage of compensation. Safe Harbor provisions available.	Same as 403(b) with additional options for employer contribution allocation (age weighted, and tiered allocations)
Compliance testing	Matching contribution subject to Actual Contribution Percentage (ACP) test. Minimum coverage required for employer contribution.	Same as 403(b) PLUS Employee deferrals subject to Actual Deferral Percentage (ADP) test.
Government reporting (5500)	Yes, for plan years that begin after 12/31/2008.	Yes.
Vesting	Available for employer contributions, but challenging to administer with individual accounts	Available for employer contributions. Maximum is 3-year cliff, or 6-year graded
Subject to ERISA	No, if employee elective deferrals only.	Yes.
Account registration	Accounts registered to each individual. Sharing agreements required	Accounts registered to the name of the plan. Individual level recordkeeping.
Investment custodians	Imposing restrictions on the custodian selected by the participants may result in the plan being subject to ERISA.	Plan sponsor selects investment custodian. Participants may be allowed to self-direct investments in his/her account.
Fiduciary responsibility	Employer has fiduciary responsibility to provide employees with education and investment information.	Employer and Plan Trustees have fiduciary responsibility.
Plan termination	Possible, but difficult to achieve the closing of all individual participant accounts.	Yes. Plan documents must be updated, and all assets paid to participants.