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January 29, 2007

00022-000(07)

John J. Canary, Division Chief
U.S. Department of Labor
Employee Benefits Security Administration
Room N-5669
200 Constitution Avenue, NW
Washington, DC 20210-0001

Re: **Proposed Changes to Schedule A of 2008 Form 5500**

Dear Joe:

In reviewing the comments filed on the Department's proposed changes for the 2008 Form 5500, I saw that the Department received several comments to the effect that a Schedule A should not be required for 403(b) arrangements that are governed by Title I of ERISA. One or more of those comments suggested that 403(b) plans would not benefit from the disclosures required by the Schedule A. I respectfully disagree.

Based on my experience in representing sponsors of Title I 403(b) plans, I believe that they would benefit greatly from those disclosures. In addition, I believe that the information would benefit the Department in its role as an investigator and, in the long run, would significantly reduce the fees and expenses for 403(b) plans.

More specifically, we have found that 403(b) plans are among the most expensive of the participant-directed retirement arrangements and are often excessively expensive. (However, that is not to say that all 403(b) providers and advisers engage in those practices. To the contrary, there are a number of providers in that arena who have excellent product and services at a reasonable cost and there are numerous advisers who provide excellent service at a reasonable cost.) However, on average, our experience is that the costs for 403(b) plans are significantly higher than the costs for comparable 401(k) and 457(b) plans.

We believe that is true for two reasons. The first is that the finder's fees and commissions charged by some brokers are excessive. Because of the nature of most 403(b) products, those finder's fees and commissions can often be concealed from the plan sponsor--particularly if the plan sponsor is unsophisticated and the adviser is not forthcoming. In turn, some insurance companies will, in effect, cooperate with the broker/adviser by paying the commission and recouping their expenses through a charge that is often labeled as a "mortality and expense" (or M&E) charge. Because of a lack of meaningful disclosure, the plan sponsor typically is not aware of how much the compensation of the broker is receiving and/or how much the charges to the plan have been increased to cover the cost of the broker. Since the free market system is not operating in an open and transparent fashion, there is a need for additional disclosure. Schedule A reporting would serve that purpose.

As an example, we recently reviewed a 403(b) plan for a tax-exempt entity. Over a period of seven years, the plan grew from $10M in assets to $20M in assets. During that same period of time, the broker receive approximately $1M in commissions. For the first few years of that arrangement, the commissions were reported on Schedule A under the old rules. However, during the later years, there was no reporting because of the change in the Schedule A requirement. Between the early years and the later years, there was a complete management turnover at the tax-exempt entity, such that the new management had no idea of the compensation being paid to the broker.

The second reason that the expenses for 403(b) plans are often very expensive is simply because they can be. There is very little required in the way of reporting and disclosure. As a result, costs and compensation are not transparent. In turn, that leads to less competition--at least partially because the information needed for competition is not readily available. To compound matters, the officers and directors of tax-exempt entities are often well intentioned, but not sophisticated about financial matters. In that regard, 403(b) sponsors and fiduciaries need greater protection than commercial plan sponsors because of the common lack of financial sophistication.

I hope these comments are helpful. Please let me know if you have any questions.

Very truly yours,

Fred

C. FREDERICK REISH

CFR:shm

P.S. We understand that the proposed Schedule C filing requirements will apply to "large" 403(b) plans as well. That is needed because of the use of non-insurance, custodial accounts by larger 403(b) plans.