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RE: Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts REG-155608-02 (Proposed Regulations)

As the National Sales Director for Tax Exempt Markets for the company, Retirement Marketing Specialists (RMS), I offer these comments on my own behalf in support of the proposed regulations under Section 403(b) of the Internal Revenue Code (Code). I manage a nationwide network of retirement plan sales specialists and brokers that provide group retirement plan services and products to employer sponsors of 403(b) plans. Based on my 20 years of experience in selling and administering voluntary and ERISA 403(b) plans to over 1,000 tax exempt plan sponsors, as well as 401(k) plans to for-profit companies, I believe the regulations will improve tax compliance and bring numerous safeguards and enhancements to 403(b) participants.

I support the proposed repeal of Rev. Rul. 90-24 and limitations on in-service transfer from one 403(b) product to any other. This type of transfer is not permitted under 401(k) plans, because, correctly, the plan document and administrative system control the available investment alternatives and contract features. This means uniform and consistent plan provisions and features, and ensures that transfers occur under the guidance of the plan document and administration and to products that are *bona fide* 403b contracts. The repeal of Rev. Rul. 90-24, together with a plan document, should require the plan sponsor to select appropriate 403(b) funding vehicles within a plan administration system, just as a 401(k) plan operates. The result should be more employer involvement in the selection of quality plan providers.

Like the 401(k) market, the changes required by the regulations will lead to negotiated group contracts with better pricing and contract features for participants. The lack of a plan document and coordinated investment and administrative system for the employee group is the single major factor for the far higher expense and more adverse surrender penalties and restrictions found in the 403b market, especially the public education market. Uniform and consistent plan provisions and the specification of providers within the plan document will also enable better communications to participants.

Outside of the public education market, many 501(c)(3) organizations already operate under ERISA with a plan document and group plan administration processes, and with improved tax compliance and better benefit outcomes for the participants. All of this is evident within the 401(k) market.

Finally, further attention and clarification should be focused on the remittance of 403(b) contributions. Because participants are free to select their own individual 403b contracts (sometimes multiple plans per employee), many employers allow annuity purveyors (as distinct from providers) to act as intermediaries in the collection and disbursement of payroll contributions. These are referred to as 'common remitters'. For instance, a school forwards a single check and list to John Q. Smith Agency, which brokerage forwards individual contribution amounts to the actual annuity or investment company. Common remitters are arrangements that are peculiar to the voluntary 403(b) market. As a consequence, every year millions of dollars in employee contributions are delayed, misapplied and misappropriated through common remitter mistakes and malfeasance.

Not only should contributions be timely remitted, they should be remitted directly to the provider. A simple reading of the regulations is instructive:

Contributions to a section 403(b) plan must be transferred to the insurance company issuing the annuity contract (or the entity holding assets of any custodial or retirement income account that is treated as an annuity contract).

Organizations should eliminate from their TSA providers list any organization that is a conduit for payment and not a *bona fide* 403(b) annuity or 403(b)(7) custodial account. Sending payment to a purveyor that is not a 403(b) provider is a *prima facie* mishandling on plan assets.

Respectfully submitted,

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Mr. Shwab was previously a Senior Manager with Ernst & Young's Retirement Plan Administration Practice and a Vice President with Mutual of America. He is also an industry member of the Board of Arbitrators for the NASD and the NYSE.