

§ 1.403(b)-9

(ii) The requirements of § 1.403(b)-6(c) (imposing restrictions on distributions with respect to a custodial account) are satisfied with respect to the amounts held in the account;

(iii) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries (for which purpose, assets are treated as diverted to the employer if the employer borrows assets from the account); and

(iv) The account is not part of a retirement income account.

(3) *Effect of definition.* The requirement in paragraph (d)(2)(i) of this section is not satisfied if the account includes any assets other than stock of a regulated investment company.

(4) *Treatment of custodial account.* A custodial account is treated as a section 401 qualified plan solely for purposes of subchapter F of subtitle A and subtitle F of the Internal Revenue Code with respect to amounts received by it (and income from investment thereof). This treatment only applies to a custodial account that constitutes a section 403(b) contract under §§ 1.403(b)-1 through 1.403(b)-7, this section and §§ 1.403(b)-9 through 1.403(b)-11 or that would constitute a section 403(b) contract under §§ 1.403(b)-1 through 1.403(b)-7, this section and §§ 1.403(b)-9 through 1.403(b)-11 if the amounts held in the account were to satisfy the non-forfeitability requirement of § 1.403(b)-3(a)(2).

(e) *Retirement income accounts.* See § 1.403(b)-9 for special rules under which a retirement income account for employees of a church-related organization is treated as a section 403(b) contract for purposes of §§ 1.403(b)-1 through 1.403(b)-7, this section and §§ 1.403(b)-9 through 1.403(b)-11.

(f) *Combining assets.* To the extent permitted by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), trust assets held under a custodial account and trust assets held under a retirement income account, as described in § 1.403(b)-9(a)(6), may be invested in a group trust with trust assets held under a qualified plan or individual retirement plan. For this pur-

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pose, a trust includes a custodial account that is treated as a trust under section 401(f).

[T.D. 9340, 72 FR 41144, July 26, 2007]

§ 1.403(b)-9 Special rules for church plans.

(a) *Retirement income accounts—(1) Treatment as a section 403(b) contract.* Under section 403(b)(9), a retirement income account for employees of a church-related organization (as defined in § 1.403(b)-2) is treated as an annuity contract for purposes of §§ 1.403(b)-1 through 1.403(b)-8, this section, § 1.403(b)-10 and § 1.403(b)-11.

(2) *Retirement income account defined—*
(i) *In general.* A retirement income account means a defined contribution program established or maintained by a church-related organization under which—

(A) There is separate accounting for the retirement income account's interest in the underlying assets (namely, there must be sufficient separate accounting in order for it to be possible at all times to determine the retirement income account's interest in the underlying assets and to distinguish that interest from any interest that is not part of the retirement income account);

(B) Investment performance is based on gains and losses on those assets; and

(C) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries (and for this purpose, assets are treated as diverted to the employer if there is a loan or other extension of credit from assets in the account to the employer).

(ii) *Plan required.* A retirement income account must be maintained pursuant to a program which is a plan (as defined in § 1.403(b)-3(b)(3)) and the plan document must state (or otherwise evidence in a similarly clear manner) the intent to constitute a retirement income account.

(3) *Ownership or use constitutes distribution.* Any asset of a retirement income account that is owned or used by a participant or beneficiary is treated as having been distributed to that participant or beneficiary. See §§ 1.403(b)-6

and 1.403(b)-7 for rules relating to distributions.

(4) *Coordination of retirement income account with custodial account rules.* A retirement income account that is treated as an annuity contract is not a custodial account (as defined in § 1.403(b)-8(d)(2)), even if it is invested solely in stock of a regulated investment company.

(5) *Life annuities.* A retirement income account may distribute benefits in a form that includes a life annuity only if—

(i) The amount of the distribution form has an actuarial present value, at the annuity starting date, equal to the participant's or beneficiary's accumulated benefit, based on reasonable actuarial assumptions, including regarding interest and mortality; and

(ii) The plan sponsor guarantees benefits in the event that a payment is due that exceeds the participant's or beneficiary's accumulated benefit.

(6) *Combining retirement income account assets with other assets.* For purposes of § 1.403(b)-8(f) relating to combining assets, retirement income account assets held in trust (including a custodial account that is treated as a trust under section 401(f)) are subject to the same rules regarding combining of assets as custodial account assets. In addition, retirement income account assets are permitted to be commingled in a common fund with amounts devoted exclusively to church purposes (such as a fund from which unfunded pension payments are made to former employees of the church). However, unless otherwise permitted by the Commissioner, no assets of the plan sponsor, other than retirement income account assets, may be combined with custodial account assets or any other assets permitted to be combined under § 1.403(b)-8(f). This paragraph (a)(6) is subject to any additional rules issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(7) *Trust treated as tax exempt.* A trust (including a custodial account that is treated as a trust under section 401(f)) that includes no assets other than assets of a retirement income account is treated as an organization that is ex-

empt from taxation under section 501(a).

(b) *No compensation limitation up to \$10,000.* See section 415(c)(7) for special rules regarding certain annual additions not exceeding \$10,000.

(c) *Special deduction rule for self-employed ministers.* See section 404(a)(10) for a special rule regarding the deductibility of a contribution made by a self-employed minister.

[T.D. 9340, 72 FR 41144, July 26, 2007]

§ 1.403(b)-10 Miscellaneous provisions.

(a) *Plan terminations and frozen plans—(1) In general.* An employer is permitted to amend its section 403(b) plan to eliminate future contributions for existing participants or to limit participation to existing participants and employees (to the extent consistent with § 1.403(b)-5). A section 403(b) plan is permitted to contain provisions that provide for plan termination and that allow accumulated benefits to be distributed on termination. However, in the case of a section 403(b) contract that is subject to the distribution restrictions in § 1.403(b)-6(c) or (d) (relating to custodial accounts and section 403(b) elective deferrals), termination of the plan and the distribution of accumulated benefits is permitted only if the employer (taking into account all entities that are treated as the same employer under section 414(b), (c), (m), or (o) on the date of the termination) does not make contributions to any 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 distribution of all assets from the terminated plan. However, if at all times during the period beginning 12 months before the termination and ending 12 months after distribution of all assets from the terminated plan, fewer than 2 percent of the employees who were eligible under the section 403(b) plan as of the date of plan termination are eligible under the alternative section 403(b) contract, the alternative section 403(b) contract is disregarded. To the extent a contract fails to satisfy the nonforfeitability requirement of § 1.403(b)-3(a)(2) at the date of plan termination, the contract is not, and cannot later become, a section