

Employer Sponsorship of Section 403(b) Annuity Plans

Tax-exempt employers such as schools and hospitals frequently become involved in tax deferred annuity programs for their employees. These plans are generally governed by Section 403(b) of the Internal Revenue Code. Because 403(b) plans can be funded by individual annuity contracts, there may be no employer involvement in the promotion or funding of such arrangements. However, some employers actively promote 403(b) arrangements for their employees. Doing so may trigger duties under ERISA if the employer becomes too involved in such activities.

To provide tax-exempt employers some guidance in this area, the Department of Labor has issued regulations which describe what an employer can do without causing its 403(b) plan to become an ERISA plan. The permitted activities include the following:

- (a) permitting annuity contractors to publicize their products to employees (this would include insurance companies and mutual fund brokers or companies);
- (b) requesting information concerning proposed funding media, products, or annuity contractors;
- (c) summarizing or otherwise compiling the information provided with respect to the proposed funding media or products which are made available, or the annuity contractors whose services are provided, in order to facilitate review and analysis by the employees;
- (d) collecting annuity or custodial account contributions as required by the salary reduction agreement, remitting such contributions to annuity contractors and maintaining records of the contributions;
- (e) holding in the employer's name one or more group annuity contracts covering its employees; and
- (f) limiting the funding media or products available to employees, or the annuity contractors who may approach employees, to a number and selection that is designed to afford employees a reasonable choice.

Andrew S. Williams
Aronberg Goldgehn Davis & Garmisa
One IBM Plaza, Suite 3000
Chicago, Illinois 60611
312/755-3145
awilliams@agdglaw.com