§ 1.403(b)–9

§ 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—
§ 1.403(b)–10

(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 contact is not, and cannot later become, a section 403(b) contract. In order for a section 403(b) plan to be considered terminated, all accumulated benefits under the plan must be distributed to all participants and beneficiaries as soon as administratively practicable after termination of the plan. For this purpose, delivery of a fully paid individual insurance annuity contract is treated as a distribution. The mere provision for, and making of, distributions to participants or beneficiaries upon plan termination does not cause a contract to