

To: Mr. Jim Jones
From: Robert J. Simandl, Esq.
Andrew Frost, Esq.
Date: December 28, 2012
RE: Summary of 403(b) Retirement Plan Changes

As requested, the below is a summary of the changes being made to the Plan of the District. These changes, as well as update changes, are provided to you for informational purposes only. The Plan document will control in Plan operation but this summary will give you a working document to summarize the changes for the District leadership team.

2012 HEART Act 403(b) Plan Amendments

Differential Wage Payment

“Differential Wage Payment” is added to Subsection 2.1 of the Plan as a new defined term with the following definition:

“Differential Wage Payment” means a payment defined in Code Section 3401(h)(2) that is made by the Employer to an individual performing services in the uniformed services.

Compensation

The Plan’s definition of “Compensation” is modified by adding the following paragraph to the end of the definition:

For years beginning on or after January 1, 2009, if the District chooses to provide Differential Wage Payments to individuals who are active duty members of the uniformed services, such individuals will be treated as Employees of the District and the Differential Wage Payment will be treated as Compensation for purposes of applying the Code.

Accordingly, Differential Wage Payments must be treated as Compensation under Code Section 415(c)(3) and Treasury Regulation 1.415-2(d). However, Differential Wage Payments will not be treated as Compensation for contribution, allocation and other general Plan purposes.

Deemed Severance from Employment

“Deemed Severance from Employment” is added to Subsection 2.1 of the Plan as a new defined term with the following definition:

“Deemed Severance from Employment” means, effective for Plan years beginning on or after January 1, 2009, and notwithstanding the definition of Differential Wage Payment, an individual shall be treated as having been severed from employment for purposes of Code Section 414(u)(12)(B) during any period the individual is performing service in the uniformed services as defined in Code Section 3401(h)(2)(A).

Employee

The Plan’s definition of “Employee” is modified by adding the following paragraph to the end of the definition:

The term Employee will also include individuals providing qualified military service who are treated as reemployed for purposes of applying the rules under Code Sections 403(b)(14) and 414(u).

Qualified Reservist Distribution

Subsection 6.6 of the Plan is modified by adding the following paragraph:

(c) **Qualified Reservist Distribution.** Notwithstanding (a) and (b) above, an employee who is a member of the reserves and has been ordered or called to active duty for a period exceeding 179 days or for an indefinite period beginning on or after September 11, 2001, may make in-service distributions attributable to elective deferrals without being subject to any early withdrawal penalties.

Benefit Accrual in the Case of Death or Disability Resulting From Active Military Service

Section 6 of the Plan is modified by adding the following subsection:

6.9 Benefit Accrual in the Case of Death or Disability Resulting From Active Military Service

In the case of an individual Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code Section 414(u)), the Participant’s survivors are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment with the Employer and then terminated employment on account of death.

Following your review of this information, please call me at 262-717-3171 with any questions or comments you may have.