

***Qualified Retirement Plans
Practice Alert***
November 2008

Choosing Between 401(k) and 403(b)

	<u>Entity</u>	<u>401(k)</u>	<u>403(b)</u>
Eligibility:	Taxable	Yes	No
	State or local government	No	Yes if educational
	Tax exempt	Yes after 1996	Yes if 501(c)(3)
	Federal government	Yes	No
IRS Approval:		Yes-letter of determination	Private letter ruling
Funding Vehicle:		Trust required	Annuity, custodial acct
Catchup Contribution:		\$5,000 for 2008	Special 403(b) catchup or traditional 401(k)
Excludable Employees:		Minimum age, service Union Non resident aliens	Min deferral \$200 Non resident aliens Work/study students Work < 20 hours/week
Non Discrimination Test:		ADP, ACP, IRC §410(b) IRC §401(a)(4)	Universal availability
Top Heavy Rules:		Yes	No
Distributions:		<u>Deferrals:</u> Age 59½ Termination of employment Death Disability Hardship <u>Employer:</u> In service if in document	Same
Life Insurance:		Yes if incidental	Prohibited after 9/24/07

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