

January 2007

**IMPORTANT INFORMATION FOR CONTRIBUTORY
403(b) RETIREMENT PLANS FOR 2006**

**Materials For Plans Subject to
IRC Section 401(m) Matching Test**

Part 1 -- CALCULATING EXCESS AGGREGATE
CONTRIBUTIONS..... Pages 1 to 6

Part 2 -- CORRECTING A FAILURE..... Pages 7 to 9

Part 3 -- CALCULATING REFUNDS Pages 10 to 15

Part 4 -- THE REFUND PROCESS..... Pages 16 to 19

Part 5 -- SAMPLE LETTER Page 20



FINANCIAL SERVICES
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PART 1

CALCULATING EXCESS AGGREGATE CONTRIBUTIONS

The Matching Test

Contributory retirement plans with any period of voluntary participation or plans permitting after-tax employee contributions generally must satisfy the Matching Test. Contributory plans are not subject to the Matching Test if:

- they are government plans;
- participation is required as a condition of employment;
- all employee contributions are made under one-time irrevocable salary reduction agreements and the plan permits no after-tax employee contributions;
- the plan meets the requirements of one of the design-based safe harbor alternatives; or
- no highly compensated employee are eligible for the plan (for 2006 plan years, employees are considered highly compensated if their 2005 compensation exceeded \$95,000).

This booklet provides a step-by-step explanation of how to perform the Matching Test. Further information on the Matching Test, one-time irrevocable salary reduction agreements, and the alternative safe harbors can also be obtained from the TIAA-CREF Administrator Telephone Center at 1 888 842-7782.

The Matching Test is designed to ensure that employee after-tax ("salary deduction") contributions and employer matching contributions for highly compensated employees (HCEs) are not disproportionately high when compared to these types of contributions for non-highly compensated employees (NHCEs). (Unlike salary deduction contributions, after-tax Roth 403(b) contributions are not subject to the Matching Test.) For more information on Roth contributions, you can download an article from the TIAA-CREF Institute website at: <http://www.tiaa-crefinstitute.org/research/trends/tr030106.html>

When a retirement plan fails the Matching Test, the amounts by which employer matching contributions and any employee salary deduction contributions for HCEs exceed the limits of IRC Section 401(m) are considered to be "Excess Aggregate Contributions." A Matching Test failure for a plan year must be corrected before the end of the next plan year or the plan risks being disqualified. Disqualification would mean that all contributions to the plan made in that year and all subsequent years until the defect is corrected, will be fully taxable to all participants. The options to correct a failure of this test are discussed on page 7

In general, all of an institution's contributory 403(b) retirement plans should be treated as a single plan for all nondiscrimination testing purposes including the Matching Test. Section 401(a), 401(k) and 403(a) qualified plans, and noncontributory 403(b) plans must be tested separately from the contributory 403(b) plans. Union and non-union employees should also

generally be tested separately, even if covered by the same plan.¹ If a contributory 403(b) plan is divided into multiple separate plans with separate plan documents before the beginning of the plan year, they can generally be treated as separate plans for all nondiscrimination testing purposes, including the Matching Test. If, however, a HCE is benefiting under more than one contributory 403(b) plan, contributions to all of these plans must be aggregated for the Matching Test.

If you have only one contributory 403(b) plan, or you are treating multiple plans as a single plan for testing purposes, you may want to use TIAA-CREF's Matching Test System software to conduct the Matching Test. This easy-to-use software will conduct the test for you and provide a printout that will document the results. If you fail the test, it will give you an employee-by-employee breakdown of the additional contributions for NHCEs or refunds of excess aggregate contributions for HCEs that will enable your plan to pass the test. You can download a copy of version 3.0 of the software from our download center at www.tiaa-cref.org/go/mts. If you need assistance in downloading the software, call the TIA-CREF Administrator Telephone Center at 1 888 842-7782.

This booklet is not intended for 401(k) plans which, unlike 403(b) plans, are subject to the Actual Deferral Percentage (ADP) test on elective deferrals in addition to the Matching Test.

¹ Union employees get an automatic pass for all nondiscrimination requirements unless 2% or more of the union employees are highly compensated professionals.

How to Perform the Matching Test

Step 1: List the Highly Compensated Employees (HCEs)² who were eligible for your contributory retirement plan in 2006. To determine who is an HCE, you will need to know employees' 2005 total compensation, including any amounts contributed to flexible spending accounts. To calculate their contribution ratios you will also need their 2006 total compensation and contributions. If you use the prior year testing method, you will also need 2004 total compensation to determine who is a NHCE.³

Step 2: List the Non-Highly Compensated Employees (NHCEs) eligible for your plan excluding everyone who is not eligible to receive employer matching contributions, as well as union employees. Record their compensation and contributions. You can use either the current or prior year testing methods. Most institutions funding their retirement plans with TIAA-CREF contracts use the current year testing method.⁴

Option 1: Using Current Year Testing Method. If you elect the current year testing method, then employees eligible for the plan in 2006 who earned \$95,000 or less⁵ in 2005 are treated as NHCEs for the 2006 plan year. Use 2006 compensation and contribution data to calculate contribution percentages for both HCEs and NHCEs.

² Generally, all employees who received total compensation over \$95,000 in the 2005 plan year are treated as HCEs when conducting the nondiscrimination tests for 2006 plan years. If, however, over 20% of the plan sponsor's employees received compensation over \$95,000 in 2005, then the employer can elect to treat only the top paid 20% as HCEs. If none of a plan sponsor's employees received compensation over \$95,000 during the 2005 plan year, then all of its plans automatically satisfy all nondiscrimination requirements, including the Matching Test, for the 2006 plan year without having to conduct any tests. If the current year testing method is used, employees with compensation of \$95,000 or less in 2005 are NHCEs for 2006 plan years. But if the prior testing method is used, only employees with compensation of \$90,000 or less in 2004 will be treated as NHCEs for testing for 2006 plan years.

³ Total compensation, for purposes of the Matching Test is generally the total gross compensation (including contributions to Section 125 cafeteria plans) or the Box 5 Medicare Wages amount from the employee's W-2 paid during the plan year. For highly paid employees, no more than the indexed 401(a)(17) compensation limit (\$210,000 in 2005 and \$220,000 in 2006), should be included. Contributions for purposes of the matching test include employer matching contributions and after-tax employee salary deduction contributions, but not pre-tax employee salary reduction contributions or Roth 403(b) contributions.

⁴ Contribution percentages for HCEs are always based on current year data but contributions for NHCEs are based on current year data only if the current year testing method is elected. Prior year data is used to calculate contribution percentages for NHCEs if the prior year testing method is selected. Plan documents should specify which method is being used. Generally, if an employer elects to use the current year testing method, its ability to switch to the prior year testing method in future years is limited.

⁵ If more than 20% of an institution's employees had compensation over \$95,000 in 2005 and it elected to treat only its top-paid 20% as HCEs, then the other 80% will be treated as NHCEs even if some of them had compensation over \$95,000 in 2005.

Option 2: Using Prior Year Testing Method. If you elect the prior year testing method, then only employees eligible for the plan in 2005 who earned \$90,000 or less in 2004 are treated as NHCEs for the 2006 plan year.⁶ Collect 2006 compensation and contribution data to calculate contribution percentages for HCEs. But you will need 2005 compensation and contribution data to calculate contribution percentages for NHCEs.

Step 3: For each HCE and NHCE eligible for the plan,⁷ calculate the actual contribution ratio (ACR) by dividing contributions⁸ by total compensation⁹ earned for the period of time the employee was eligible¹⁰ for the plan.

$$\frac{\text{CONTRIBUTIONS}}{\text{COMPENSATION}} = \text{Actual Contribution Ratio (ACR)}^{11}$$

Step 4: Calculate the average contribution percentage (ACP) for the NHCEs and HCEs based on the actual contribution ratios (ACRs) you previously calculated for each eligible NHCE and HCE. (Round to 4 decimals, such as 12.34%)

$$\text{NHCE ACP} = \frac{\text{Sum of ACRs for NHCEs}}{\text{Number of eligible NHCEs}}$$

$$\text{HCE ACP} = \frac{\text{Sum of ACRs for HCEs}}{\text{Number of eligible HCEs}}$$

⁶ If using the prior year testing method, an NHCE eligible for the plan in 2005 will be included in the test as an NHCE for the 2006 plan year, even if he or she is no longer an employee or has become an HCE in 2006.

⁷ If an HCE participates in more than one contributory plan, all employer matching contributions and after-tax employee salary deduction contributions (but not Roth contributions) must be aggregated for purposes of the Matching Test. Any plans that are aggregated for purposes of the Minimum Coverage Tests must also be aggregated for the Matching Test.

⁸ Contributions include employer matching contributions and employee after-tax salary deduction contributions but not pre-tax (“salary reduction”) or Roth 403(b) contributions.

⁹ Total compensation, for purposes of the Matching Test is generally either the Box 5 Medicare Wages amount from the employee’s W-2 paid during the plan year or the total wages including Section 125 cafeteria plan contributions. No more than the includible compensation limit of \$220,000 should be included in compensation for 2006 plan years.

¹⁰ For purposes of determining who is an HCE, you must use compensation for the entire year. For purposes of calculating the contribution percentage of an employee who becomes eligible for the plan during the middle of the year, however, you may use only compensation for the period the employee was eligible, as long as you do so for all employees.

¹¹ If you use the current year testing method, you determine who is an NHCE using 2005 compensation and calculate contribution ratios for 2006 plan years using 2006 compensation and contribution data. If you use the prior year testing method, you determine who is an NHCE using 2004 compensation and calculate NHCE contribution ratios on the basis of 2005 compensation and contribution data. Whether current or prior year data is used to calculate NHCE contribution ratios, HCE contribution ratios for 2006 plan years are always calculated using current year data, e.g., 2006 compensation and contribution data.

Step 5: Review the average contribution percentages (ACPs) for the NHCEs and HCEs:

- If the NHCE ACP is 2% or less, the plan passes the Matching Test if the HCE ACP is not more than 2 times the NHCE ACP.
- If the NHCE ACP is more than 2% but not more than 8%, the plan passes the Matching Test if the HCE ACP is not more than 2% greater than the NHCE ACP.
- If the NHCE ACP is more than 8%, the plan passes the Matching Test if the HCE ACP is not more than 1.25 times the NHCE ACP.

Example: Institution XYZ has a contributory 403(b) retirement plan. Employees who elect to participate in the plan contribute 5% of compensation (either salary reduction or deduction) and the employer makes matching contributions equal to 10% of the employee's compensation. The plan definition of compensation excludes bonuses. (See the chart on the next page.)

Calculating ACRs for HCEs

Employees A, B, C, and D are HCEs for 2006 plan year testing since they all had compensation over \$95,000 in 2005 and all were eligible for the contributory retirement plan in 2006. Even though prior year compensation is used to determine who is an HCE, the ACRs for HCEs is calculated on the basis of current year data, whether XYZ uses the current or prior year testing method. So the HCE ACP (average contribution percentage) is 9.70% ($9.26\% + 9.52\% + 10\% + 10\% / 4$).

Calculating ACRs for NHCEs Using the Current Year Testing Method

Using the current year testing method, XYZ will treat employees E, F, G, H, I, J, K, L, N, and O as NHCEs.¹² The NHCE ACP will be 8.50% [$(10\% + 10\% + 10\% + 10\% + 10\% + 10\% + 0 + 10\% + 15\% + 0) / 10$]. Since 8.50% is more than 8%, the plan passes if the HCE ACP is not more than 10.63% (the NHCE ACP of 8.50% times 1.25). Since the HCE ACP is 9.70%, the plan passes the Matching Test.

Calculating ACRs for NHCEs Using the Prior Year Testing Method

Using the prior year testing method, XYZ will treat employees F, G, H, I, K, L, M, N, and O as NHCEs for the 2006 plan year.¹³ The NHCE ACP for XYZ's plan using the prior year testing method (2005 data) will be 6.67% [$(10\% + 10\% + 10\% + 5\% + 0 + 10\% + 0 + 15\% + 0) / 9$]. Since the NHCE ACP is 6.67%, which is between 2% and 8%, the plan passes if the HCE ACP is not more than 8.67% (the NHCE ACP of 6.67% + 2%). As indicated above, the HCE ACP for XYZ's plan is 9.70%, however, so the plan fails the Matching Test.

¹² These are the employees who were eligible for the plan in 2006 and had compensation of \$95,000 or less in 2005. Note that Employee M terminated employment during 2005 and therefore is excluded from the test in 2006.

¹³ These are the employees who were eligible for the plan in 2005 and had compensation of \$90,000 or less in 2004.

XYZ's Contributory 403(b) Retirement Plan							
	2004	2005			2006		
Employee	Total Comp.	Total Comp.	Contribution ^a	ACR ^b	Total Comp.	Contribution ^a	ACR ^b
A	\$110,000	\$120,000	\$12,000	10%	\$135,000	\$12,500	9.26% ^c
B	95,000	100,000	10,000	10%	105,000	10,000	9.52% ^c
C	95,000	100,000	10,000	10%	105,000	10,500	10%
D	91,000	95,010	9,501	10%	96,000	9,600	10%
E ⁱ	90,100	84,000	8,400	10%	95,100	9,510	10%
F	65,000	70,000	7,000	10%	75,000	7,500	10%
G	0	60,000	6,000	10%	62,000	6,200	10%
H	45,000	50,000	5,000	10%	55,000	5,500	10%
I	0	40,000	2,000	5% ^d	45,000	4,500	10%
J	0	0	0	NA ^e	35,000	3,500	10%
K ^h	30,000	30,000	0	0	30,000	0	0
L	24,000	25,000	1,200	10% ^f	26,000	2,600	10%
M ^h	18,000	20,000	0	0	0	0	NA
N	20,000	20,000	3,000	15% ^g	20,000	3,000	15%
O ^h	0	15,000	0	0	16,000	0	0

^a Contribution includes employee salary deduction contributions and employer matching contributions, but not salary reduction or Roth 403(b) contributions.

^b ACRs for HCEs are always based on current year data.

^c Employees A and B have 2006 ACRs of less than 10% because they both received bonuses, which the plan does not take into account for purposes of calculating contributions to the plan, but which the 401(m) regulations require to be included in compensation for purposes of calculating ACRs.

^d Employee I has a 5% contribution rate in 2005 because, although he was eligible for the entire year, he became a participant in mid-year.

^e Employee J is disregarded in 2005 because he did not become eligible for the plan until 2006.

^f Employee L has a 10% ACR in 2005 in spite of having compensation of \$25,000 and contributions of \$1,200 because she only received compensation of \$12,000 for the portion of 2005 after she became eligible for the plan.

^g Employee N has a contribution rate of 15% because he made his contributions in the form of salary deduction which are counted for purposes of the Matching Test (403(b) salary reduction and Roth contributions are not).

^h Employees K and O are included in the calculation with ACRs of 0% since they were eligible but not participating. Employee M is included in the calculation for 2005, but is excluded in 2006 since he terminated employment in 2005.

ⁱ Employees E was an HCE in 2005 because his 2004 compensation exceeded \$90,000. He is an NHCE in 2006 because his 2005 compensation did not exceed \$95,000 because of an unpaid leave.

PART 2

CORRECTING A FAILURE

If your retirement plan fails the matching test, this situation must be corrected by the end of the next plan year or you risk possible disqualification of the plan. Various options to correct this problem are available including (1) refunding the Excess Aggregate Contributions, plus earnings, to HCEs, (2) making additional contributions for NHCEs, (3) discontinuing contributions for HCEs at the point during the plan year when it becomes apparent that the plan is failing, or (4) forfeiting any nonvested contributions, plus earnings. Discontinuing contributions for HCEs is not an option after the close of the plan year. If your plan uses the prior year testing method, it is possible to limit contributions for HCEs based upon the NHCE ACP for the prior year. To take advantage of these options, they must be provided for in your retirement plan document.

If your retirement plan does not provide for correction methods, it must be amended to permit whatever remedy you decide to use. Furthermore, the plan documents of all plans subject to the Matching Test need to specify whether the current or prior year testing method is being used. We strongly recommend that you provide for all of the correction methods allowed by the law (cessation of contributions during the plan year, additional contributions for the NHCEs after the end of the plan year, refunds for the HCEs after the end of the plan year, and forfeiture of nonvested contributions and earnings). Even if you know which remedy you will use this year, including all options in the plan document will give you much greater flexibility in future years.

Refunds must be made in a nondiscriminatory manner which will limit your ability to refund employee after-tax salary deduction contributions to HCEs before you refund the employer matching contributions. If your HCEs make after-tax salary deduction contributions, contact your TIAA-CREF Relationship Manager or our Administrator Telephone Center at 1 888 842-7782 for advice. Remember, even though your plan may already provide for the correction methods, it still needs to specify if the current or prior year testing method is to be used.

If your plan has been failing the Matching Test year after year, you may want to consider the design-based safe harbor alternatives to the Matching Test for future years. Plans that meet the requirements of the safe harbors are generally exempt from the Matching Test. In order to take advantage of the safe harbors, however, you must take certain steps before the beginning of the plan year. If you are using a TIAA-CREF sample plan document, contact your Relationship Manager or the TIAA-CREF Administrator Telephone Center for sample language.

PART 3

CALCULATING REFUNDS

This calculation assumes that you have identified your highly compensated employees, you have run the 401(m) matching test and failed it, you have chosen to refund Excess Aggregate Contributions instead of using one of the other remedies available, and you have available for each highly compensated employee his or her "Actual Contribution Ratio (ACR)."

The dollar amount that must be reported to TIAA-CREF for refund to each highly compensated employee is called the "Excess Aggregate Contribution (EAC)." The following calculations show how to determine each affected employee's EAC for 2006 plan years.

PLEASE NOTE: (1) Unless you indicate otherwise, we will assume that all refunds of EACs should consist solely of employer contributions. If you indicate that refunds should include ordinary after-tax employee contributions, we will refund employer contributions first and then satisfy additional refund requirements, if any, with employee after-tax contributions. (2) If your plan has terminated contracts,* which complicate your EAC calculation, you should contact the TIAA-CREF Administrator Telephone Center before calculating EACs.

* If any of your employees, who are highly compensated based on compensation earned in the year prior to the plan year being tested, have begun annuity benefits, had their contracts repurchased, or died by the time you perform the EAC calculation, this will affect the EAC calculation.

Calculating Excess Aggregate Contributions

The following worksheet will allow you to calculate Excess Aggregate Contributions to produce the results required by Section 401(m).

1. _____ (Group A) Enter the number of eligible HCEs whose Actual Contribution Ratios (ACRs) are equal to or less than the maximum Average Contribution Percentage (ACP) allowed for your HCEs under 401(m).¹⁴
2. _____ (Group B) Enter the number of eligible HCEs whose ACRs are greater than the maximum ACP allowed for your HCEs.
3. _____ Add Item 1 and Item 2 and enter the total here.
4. _____% Enter the maximum ACP allowed for your HCEs under 401(m).
5. _____% Multiply Item 3 by Item 4 and enter here.
6. _____% Add together the individual ACRs of all employees in Group A and enter here.
7. _____% Subtract Item 6 from Item 5.
8. _____% Divide Item 7 by Item 2 and enter here.
9. Compare Item 8 with the ACR of each HCE. If any employee in Group A has an ACR greater than Item 8, move those employees to Group B and recalculate Steps 1 through 8 before proceeding to Step 10.

THE FOLLOWING MUST BE DONE FOR EACH GROUP B EMPLOYEE SEPARATELY

10. _____% For each employee in Group B, subtract Item 8 from that employee's ACR.
11. _____ Multiply Item 10 by that employee's total compensation during the period of eligibility.

Item 11 is the Excess Aggregate Contribution (EAC) for each HCE in Group B.

12. _____ Add together the Item 11 amounts for all of the HCEs in Group B.

Item 12 is the total amount of EACs that must be refunded to the HCEs.

Example: Based on the data for XYZ's plan on page 6 and assuming that the prior year testing method is used, the NHCE Average Contribution Percentage (ACP) is calculated using 2005 data, the

¹⁴ If any of your eligible HCEs has settled his or her TIAA-CREF contract (e.g., because of retirement, death, or repurchase), these steps may need to be modified. Contact TIAA-CREF for further assistance.

maximum allowable HCE ACP in 2006 is 8.67%, and the Actual Contribution Ratios (ACRs) for XYZ's HCEs are as follows:

Employee A - 9.26%, Employee B - 9.52%, Employee C - 10%, and Employee D - 10%. Since none of the HCEs made salary deduction contributions nor have they retired, died, or otherwise settled their contracts, the Excess Aggregate Contributions would be calculated as follows:

1. 0 Group A: None of XYZ's HCEs have ACRs equal to or less than the maximum HCE ACP of 8.67%.
2. 4 Group B: All 4 of XYZ's HCEs have ACRs greater than 8.67%
3. 4 Item 2 + Item 3 (0 + 4)
4. 8.67% Maximum HCE ACP
5. 34.68% Item 3 times Item 4 (4 x 8.67%)
6. 0% Sum of ACRs of employees in Item 1
7. 34.68% Item 5 minus Item 6 (34.68% - 0)
8. 8.67% Item 7 divided by Item 2 (34.68% / 4)
9. Since there are no employees in Group A, it is not necessary to move any employees from Group A to Group B and recalculate Steps 1 through 8 before proceeding to Step 10.

Proceed to Steps 10 and 11 for each Group B employee:

For employee A,

10. 0.59% Employee's ACR minus maximum ACP (9.26% minus 8.67%)
11. \$ 797 Item 10 times the employee's total compensation (0.59% of \$135,000)

For employee B,

10. 0.85% (9.52% minus 8.67%)
11. \$ 893 (0.85% of \$105,000)

For employee C,

10. 1.33% (10% minus 8.67%)
11. \$1,397 (1.33% of \$105,000)

For employee D,

10. 1.33% (10% minus 8.67%)
11. \$1,264 (1.33% of \$95,000)

The sum of the Item 11 amounts for all of the HCEs in Group B,

12. \$4,351

The Item 12 amount is the total amount of Excess Aggregate Contributions (EACs) which must be refunded to HCEs for the 2006 plan year. (Item 11 is not the amount that must be refunded to each of the HCEs.)

Allocating Excess Aggregate Contributions

Once you have calculated the total amount of Excess Aggregate Contributions (EACs) which must be refunded to HCEs, the next step is to allocate the refunds.

The EACs are distributed to the HCEs with the highest contribution *amounts* regardless of their contribution percentages.

- Step 1: Calculate how much the contribution of the HCE (or HCEs) with the highest contribution(s) amount exceeds the contribution of the HCE (or HCEs) with the next highest amount(s).
- Step 2: (a) If the amount of the reduction (or reductions) required in Step 1 exceeds the total amount of EACs, then refund only the amount required to eliminate the EACs and then go to Step 4.
(b) If (after taking into account the reductions required by Step 1) all the HCEs have the same contribution amounts, go to Step 3.
(c) If neither (a) nor (b) is true, then apply Step 1 again.
- Step 3: Subtract the total amount of refunds required by all applications of Steps 1 and 2 from the total amount of EACs to be refunded. Allocate the remainder equally among all of the HCEs.
- Step 4: For each HCE, add up the reductions required by all applications of the previous steps. These are the amounts that must be refunded to each HCE. The sum of these refund amounts should exactly equal the amount of EACs. Don't worry if it is off by a few cents due to rounding differences.

Example: As indicated in Item 12 on the preceding page, XYZ must refund Excess Aggregate Contributions of \$4,351 to its HCEs. The 2006 contribution amounts (from highest to lowest by dollar amount) before refunds were as follows:

Employee	2006 Contribution Amount
A	\$12,500
C	10,500
B	10,000
D	9,500
TOTAL	\$42,500

First Round

Step 1. Refunding \$2,000 to Employee A (the HCE with the highest contribution amount) will reduce his contribution amount to \$10,500, the same level as Employee C (the HCE with the second highest contribution amount).

Step 2. Since the amount of the refund in Step 1 (\$2,000) is less than the total amount of EACs which must be refunded (\$4,351), XYZ must repeat Step 1 after taking into account the refund required by the first round.

Employee	Contribution Amount After Adjustment
A	\$10,500
C	10,500
B	10,000
D	9,500
TOTAL	\$40,500

Second Round

Step 1. Refunding \$500 each to Employees A and C (the HCEs with the highest contribution amounts after taking into account previous adjustments) will reduce their contribution amount to \$10,000, the same level as Employee B (the HCE with the next highest contribution amount).

Step 2. Since the amount of the refund in Step 1 ($2 \times \$500 = \$1,000$) plus the amount from the First Round (\$2,000) is \$3,000, an amount that is still less than the total amount of EACs which must be refunded (\$4,351), XYZ must repeat Step 1, after taking into account the refunds required by the prior rounds.

Employee	Contribution Amount After Adjustment
A	\$10,000
C	10,000
B	10,000
D	9,500
TOTAL	\$39,500

Third Round

Step 1. Refunding \$500 each to Employees A, C, and B (the HCEs with the highest contribution amounts after taking into account previous adjustments) will reduce their contribution amount to \$9,500, the same level as Employee D (the HCE with the next highest contribution amount).

Step 2. Since the amount of the refund in Step 1 ($3 \times \$500 = \$1,500$) plus the amount from the previous adjustments ($\$2,000 + \$1,000$) is \$4,500, an amount that is more than the total amount of EACs which must be refunded (\$4,351), we go to Step 3.

Step 3. Since, after taking into account all previous adjustments, only \$3,000 of the required \$4,351 of EACs have been allocated, the remaining EACs (\$1,351) must be allocated equally among employees A, B and C (\$450 each).

Step 4. Adding up all of the refunds required by all the previous steps results in the EACs being allocated to XYZ's HCEs as follows:

Employee	Original Contribution	Refunds of Excess Aggregate Contributions					Adjusted Contributions
		Round 1 Refund	Round 2 Refund	Round 3 Refund	Step 3 Allocation	Total Refunds	
A	\$12,500	\$2,000	\$500	0	\$450	\$2,950	\$9,550
B	10,000	0	0	0	450	450	9,550
C	10,500	0	500	0	450	950	9,550
D	9,500	0	0	0	0	0	9,500
TOTAL	\$42,500	\$2,000	\$1,000	0	\$1,350	\$4,350	\$38,150

PART 4

THE REFUND PROCESS

If Excess Aggregate Contributions are to be refunded, IRS Regulations require that these amounts, plus earnings, be distributed to the highly compensated employees affected within 2½ months following the end of the plan year to avoid the 10% employer excise tax. For 2006 calendar year plans, this deadline is March 15, 2007. If distributed after the deadline, an excise tax of 10% of the excess contributions distributed (but not the earnings on the contributions) will be imposed on the employer under IRC Section 4979. However, if one of the other methods for correcting the failure is used (e.g., making additional contributions for NHCEs), no excise tax is imposed even if done after the close of the 2½ month period. But, if the failure is not corrected by refunds or other acceptable method by the end of the plan year following the year in which excess contributions were made (December 31, 2006 for 2005 calendar year plans), the plan could lose its tax-favored status.

TIAA-CREF will help institutions comply with the refund Regulations by making these refunds upon institutional request. Although Excess Aggregate Contribution amounts can be determined only by the employing institution, we will use the information you provide to process the refund amounts, including any earnings. We will need the following information for each affected highly compensated employee:

- o Premium Payment Group (PPG)
- o Name
- o Social Security Number
- o Contract Number
- o Amount of Excess Aggregate Contributions
- o Source of the refund (i.e., employer matching contributions and/or employee salary deduction contributions).

If the source of the refund is not indicated, we will assume that it is employer retirement plan contributions. If you indicate that the refund should include both employer and employee salary deduction contributions, we will satisfy the request by first refunding the employer contributions and then making any additional refunds required from employee contributions.

If you would like to submit this information to us electronically through file exchange, please provide this data to us based on the enclosed format (See Exhibit A) in the order shown. If refunds are required for more than fifty individuals, and your institution has the ability, it would be preferable to provide the data electronically. The file should be formatted as shown in Exhibit A and should also indicate the total number of individuals affected and the total dollar amount of the excess contributions to be refunded. Please include the name and telephone number of a contact person in case we experience a problem with the file. Also, please indicate the name of your institution along with the word "REAC" in the comments field.

Since the data that you send us will be used to process the refunds, its format, accuracy and completeness are critical for proper processing. Due to the possible large number of requests, we must receive this data no later than February 15, 2007 in order to comply with the March 15 deadline. The earlier you return the information, the sooner we can process the refunds. The information should be sent to:

TIAA-CREF
8500 Andrew Carnegie Boulevard
Charlotte, NC 28262
Attn: Imaging Services -- TAPEA

We hope this procedure is helpful to you if Section 401(m) requires refunds from your plan. If you have any questions or need assistance in gathering the data, please contact the TIAA-CREF Administrator Telephone Center at 1 888 842-7782.

Refunds will be made by TIAA-CREF directly to the employees concerned, followed by Form 1099-R which will provide the necessary tax reporting information. In most cases, refunds will represent excess employer contributions, and will generally be taxable to employees in the year in which the contributions were made (2006). However, if the excess plan contribution is less than \$100 for an employee, he or she will not need to report the refund as income until filing a 2007 tax return. TIAA-CREF will send Form 1099-R to these employees in 2008 for their 2007 tax return. Any refunds that represent employee after-tax contributions will be reported but only the earnings will be taxable.

If refunds are processed after the close of the 2½ month period, employees due refunds will be sent a Withholding Option Form to determine how much taxes are withheld from their refunds. If TIAA-CREF does not get a completed form back within 15 days, 10% will automatically be withheld from the employee's refund. The 1099-R will of course indicate the amount of taxes withheld, if any. Any refunds processed more than 2½ months after the end of the plan year will be taxable in the year distributed regardless of the amount.

EXHIBIT A
PRINT REPORT
FORMAT REQUIREMENTS

If it is not possible to submit a file electronically of the requested data as indicated below, a printed report must be submitted in the exact format as the sample shown below.

Column -----	Glossary of Terms -----
(1)	Premium Payment Group (PPG) - Must be four digits
(2)	Social Security Number - Must be nine digits
(3)	TIAA Contract Number - must be eight digits
(4)	Total amount of excess premium contributions - Must be numeric and use two digits after the decimal
(5)	Type of Premium Contributions to be refunded - Please use one of the following codes: I = Employer Contributions only or B = Both Employer Contributions and Employee Salary Deduction Contributions
(6)	Participant name - Please provide the information in the following order: Last name, First name, Middle initial

Report Format Requirements

(1)	(2)	(3)	(4)	(5)	(6)
PPG	SS NBR	CONT NBR	EXCESS PREM AMT	T P	PARTICIPANT NAME
-----	-----	-----	-----	-	-----
A123	123-45-6789	B1234567	\$ 1,234.00	B	SMITH JOHN D
TOTALS	(Number of Records)		(Excess Premium Amount)		

All reports should be directed to:

TIAA-CREF
8500 Andrew Carnegie Boulevard
Charlotte, NC 28262
Attn: Imaging Services -- TAPEA

Please direct all questions to the Administrator Telephone Center at (888) 842-7782 between the hours of 8:00 A.M and 8:00 P.M, ET, Monday through Friday.

Please mark the envelope or package **PERSONAL AND CONFIDENTIAL**. A contact name at your institution should be included in case we have a problem with the data received.

NOTE: DUE TO THE POSSIBLE LARGE NUMBER OF REQUESTS, THE EARLIER THE INFORMATION IS SENT TO US, THE SOONER WE CAN PROCESS THE EMPLOYEE REFUNDS AND 1099-R FORMS. THE DEADLINE FOR ALL INFORMATION TO BE RECEIVED BY TIAA-CREF FOR REFUNDS TO BE COMPLETED BY MARCH 15, 2006 IS FEBRUARY 15, 2007.

PART 5

SAMPLE LETTER

This letter, or one similar to it, should be sent by you to each employee who will receive an Excess Aggregate Contribution refund. If your plan year is not a calendar year, the letter should be modified accordingly.

Dear Staff Member:

To bring our retirement plan into compliance with the requirements of the Internal Revenue Code, TIAA-CREF will return to you the "excess" plan contributions that we made on your behalf in 2006. The law determines "excess" contributions by a complex formula that compares contributions made for groups of employees. The refund will be for the last contribution(s), and earnings, made during the 2006 plan year.

After you receive your refund, TIAA-CREF will send you Form 1099-R. The 1099-R will show the refund amount that you must declare as income on your 2006 tax return. You should use both your W-2 and your 1099-R to file your 2006 taxes. If you file before receiving a 1099-R, you will have to file an amended return.

Your circumstances are different, however, if your "excess" plan contributions are less than \$100 or if your refund is processed after March 15. You will still receive a refund for the excess contributions and earnings, but you will not receive a 1099-R for 2006. Instead, you will receive a 1099-R in 2008 for your 2007 tax return.

For general questions, please call _____ at our Human Resources Department. For specific information about the tax implications of your refund, you should contact your personal tax advisor.

In the meantime, please accept our apologies for any inconvenience.

Sincerely,

The tax information contained herein is not intended to be used, and cannot be used by any taxpayer, for the purposes of avoiding tax penalties that may be imposed on the taxpayer. It was written to support the promotion of the products and services addressed herein. Taxpayers should seek advice based on their own particular circumstances from an independent tax advisor.

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