

# **HEART ACT AMENDMENT**

For use with TIAA-CREF's Non-ERISA Deferral-Only  
Specimen 403(b) Basic Plan Document



**FINANCIAL SERVICES  
FOR THE GREATER GOOD®**

# Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART)

## Basic Plan Document Amendment

This amendment of the Plan (hereinafter referred to as "the Amendment") is comprised of this Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART) Basic Plan Document Amendment (the "Basic Plan Document Amendment"). The Amendment is adopted to reflect the provisions of the Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART). The Amendment is intended to provide good faith compliance with HEART and related guidance until the Plan is formally restated to incorporate such guidance. The Amendment is effective as specified in this Basic Plan Document Amendment. The Amendment supersedes the existing provisions of the Plan to the extent that those provisions are inconsistent with the provisions of the Amendment.

### DEFINITIONS

#### DIFFERENTIAL WAGE PAYMENT

*Differential Wage Payment is added to the Plan as a new defined term with the following definition:*

Means a payment defined in Code Section 3401(h)(2) that is made by the Employer to an individual performing service in the uniformed services.

#### COMPENSATION

*The Plan's definition of Compensation is modified by adding the following, as the next alphabetically ordered paragraph, to the end:*

##### Differential Wage Payments

Notwithstanding anything in this Plan to the contrary, for years beginning on or after January 1, 2009, (or, if later, the Effective Date of the Plan) if the Employer 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 Employer making the Differential Wage Payment. Differential Wage Payment will be treated as Compensation.

#### DEEMED SEVERANCE FROM EMPLOYMENT

*Deemed Severance from Employment is added to the Plan as a new defined term with the following definition:*

Means, effective for years beginning on or after January 1, 2009, (or, if later, the Effective Date of the Plan) and notwithstanding the definition of Differential Wage Payment, an individual is deemed to cease to be an Employee 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 to the end:*

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)(314) and 414(u).

### DISTRIBUTIONS

*The Basic Plan Document section titled Miscellaneous Distribution Issues is modified by adding as the next numbered paragraph, to the end:*

Distribution Due to a Deemed Severance from Employment – Effective for years beginning on or after January 1, 2009, individuals who have a Deemed Severance from Employment under Code Section 414(u)(12)(B) during a period of uniformed services as defined in Code Section 3401(h)(2)(A) may elect to receive a distribution of Elective Deferrals and income allocable. If an individual receives a distribution due to a Deemed Severance from Employment, the individual may not make an Elective Deferral or Nondeductible Employee Contribution during the six-month period beginning on the date of the distribution.

### MISCELLANEOUS

*The Basic Plan Document section MISCELLANEOUS is modified by adding as the next numbered section to the end:*

#### MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u), including, but not limited to the following:

##### Part A. Death Benefits

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.

# Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART)

## Basic Plan Document Amendment

This amendment of the Plan (hereinafter referred to as "the Amendment") is comprised of this Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART) Basic Plan Document Amendment (the "Basic Plan Document Amendment") and the corresponding Adoption Agreement Amendment. The Amendment is adopted to reflect the provisions of the Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART). The Amendment is intended to provide good faith compliance with HEART and related guidance until the Plan is formally restated to incorporate such guidance. The Amendment is effective as specified in this Basic Plan Document Amendment except as otherwise provided in the Adoption Agreement Amendment. The Amendment supersedes the existing provisions of the Plan to the extent that those provisions are inconsistent with the provisions of the Amendment.

### DEFINITIONS

#### DIFFERENTIAL WAGE PAYMENT

*Differential Wage Payment is added to the Plan as a new defined term with the following definition:*

Means a payment defined in Code Section 3401(h)(2) that is made by the Employer to an individual performing service in the uniformed services.

#### COMPENSATION

*The Plan's definition of Compensation is modified by adding the following, as the next alphabetically ordered paragraph, to the end:*

##### Differential Wage Payments

Notwithstanding anything in this Plan to the contrary, for years beginning on or after January 1, 2009, (or, if later, the Effective Date of the Plan) if the Employer 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 Employer making the Differential Wage Payment, 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). Differential Wage Payments will also be treated as Compensation for contribution, allocation and other general Plan purposes unless excluded from the Plan's definition of Compensation on the Adoption Agreement Amendment. In addition, the Plan will not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit that is based on Differential Wage Payments only if all Employees of the Employer (as determined under Code Sections 414(b), (c), (m), and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive Differential Wage Payments on reasonably equivalent terms and, if eligible to participate in the Plan, to make contributions based on the payments on reasonably equivalent terms.

#### DEEMED SEVERANCE FROM EMPLOYMENT

*Deemed Severance from Employment is added to the Plan as a new defined term with the following definition:*

Means, effective for years beginning on or after January 1, 2009, (or, if later, the Effective Date of the Plan) and notwithstanding the definition of Differential Wage Payment, an individual is deemed to cease to be an Employee 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 to the end:*

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)(314) and 414(u).

### DISTRIBUTIONS

*The Basic Plan Document section titled Miscellaneous Distribution Issues is modified by adding as the next numbered paragraph, to the end:*

Distribution Due to a Deemed Severance from Employment – Except as otherwise elected in the Adoption Agreement Amendment, effective for years beginning on or after January 1, 2009, (or such later date as specified in the Adoption Agreement Amendment), individuals who have a Deemed Severance from Employment under Code Section 414(u)(12)(B) during a period of uniformed services as defined in Code Section 3401(h)(2)(A) may elect to receive a distribution of Elective Deferrals and income allocable. If an individual receives a distribution due to a Deemed Severance from Employment, the individual may not make an Elective Deferral or Nondeductible Employee Contribution during the six-month period beginning on the date of the distribution.

### MISCELLANEOUS

*The Basic Plan Document section MISCELLANEOUS is modified by adding as the next numbered section to the end:*

#### MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u), including, but not limited to the following:

##### Part A. Benefit Accrual in the Case of Death or Disability Resulting From Active Military Service.

1. Benefit Accrual – If elected in the Adoption Agreement Amendment, for benefit accrual purposes, an individual who dies or becomes disabled on or after January 1, 2007, (or such later date as specified in the Adoption Agreement Amendment), while performing qualified military service (as defined in Code Section 414(u)) will be treated as if the individual resumed employment in accordance with the individual's reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), on the day preceding death or Disability (as applicable) and terminated employment on the actual date of death or Disability. If the Employer elects to treat an individual as having resumed employment as described above, subject to items (2) and (3) below, any full or partial compliance by the Plan with respect to the benefit accrual requirements will be treated for purposes of Code Section 414(u)(1) as if such compliance were required under USERRA.

2. **Determination of Benefits** – The amount of Nondeductible Employee Contributions and the amount of Elective Deferrals of an Employee treated as reemployed under Part A, item (1) for purposes of applying Code Section 414(u)(8)(C) will be determined on the basis of the individual's average actual Nondeductible Employee Contributions or Elective Deferrals for the lesser of:
  - a. the 12-month period of service with the Employer immediately prior to qualified military service (as defined in Code Section 414(u)), or
  - b. if service with the Employer is less than such 12 month period, the actual length of continuous service with the Employer.

**Part B. Vesting in the Case of Disability Resulting From Active Military Service**

Years of Vesting Service – If elected in the Adoption Agreement Amendment, for vesting purposes, an individual who becomes disabled on or after January 1, 2007, (or such later date as specified in the Adoption Agreement Amendment), while performing qualified military service (as defined in Code Section 414(u)) will be treated as if the individual resumed employment in accordance with the individual's reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), on the day preceding Disability and terminated employment on the actual date of Disability. If the Employer elects to treat an individual as having resumed employment as described above, subject to item (2) below, compliance by the Plan with respect to the vesting requirements will be treated for purposes of Code Section 414(u)(1) as if such compliance were required under USERRA.

**Part C. Death Benefits**

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.