

COPY

**Amendment to the
University of Toledo
403(b) Plan (the "Plan")**

Pursuant to the authority of Section 8.2 of the Plan, University of Toledo (the "Employer") hereby amends the Plan as follows with respect to: (1) the Heroes Earnings Assistance and Relief Tax Act of 2008; (2) the Pension Protection Act of 2006; (3) the Worker, Retiree, and Employer Recovery Act of 2008, effective as stated herein:

Part I: Amendments with respect to the Heroes Earnings Assistance and Relief Tax Act of 2008:

1. The Plan shall be amended, effective as stated herein, by the addition of the following paragraph to the end of Section 3.7:

"In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

If the Employer elects, then for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

If the Employer elects, the Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

If the Employer elects, for years beginning after December 31, 2008: (i) an individual receiving a differential wage payment as defined by Code Section 3401(h)(2), is treated as an employee of the Employer making the payment, (ii) the differential wage payment is treated as compensation for purposes of Code

- (c) **Qualified Optional Survivor Annuity.** Effective with respect to Plan Years beginning after December 31, 2007, a Participant who elects to waive the qualified joint and survivor annuity form of benefit is entitled to elect the “qualified optional survivor annuity” at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity shall explain the terms and conditions of the “qualified optional survivor annuity.”

For purposes of Section 5.1(c), the term “qualified optional survivor annuity” means an annuity:

- (i) For the life of the Participant with a survivor annuity for the life of the spouse which is equal to the “applicable percentage” of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and
- (ii) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

For purposes of this Section 5.1(c), the “applicable percentage” is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan’s qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse). If the survivor annuity percentage is less than 75 percent, then the “applicable percentage” is 75 percent; otherwise, the “applicable percentage” is 50 percent.”

2. Section 6.1(d) shall be added to the Plan, effective as stated herein, as follows:

“(d) **Direct Rollover of Non-Spousal Distribution.** For distributions after December 31, 2009, a non-spouse Beneficiary who is a “designated beneficiary” under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer (“direct rollover”), may roll over all or any portion of his or her distribution to an individual retirement account the Beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

Although a non-spouse Beneficiary may roll over directly a distribution as provided in Section 7.4(b), any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B), the notice requirements of Code Section 402(f) or the mandatory withholding requirements of Code Section 3405(c)). If a non-

Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.”

The remainder of the Plan remains unchanged.

IN WITNESS WHEREOF, the Employer hereby adopts this Amendment to the Plan, this 8th day of December, 2011.

University of Toledo

By: 

Name Printed: Chuck Lehnert

Its: Vice President of Administration