



# & Views



Newsletter for public sector employers on compliance and best practices for today's defined contribution plans

Volume XX - Fall 2011

## **Note from the Consultants...**

The 2011 National Association of Government Defined Contribution Administrators (NAGDCA) conference was held in Albuquerque New Mexico in September. If you weren't able to attend, SST Benefits Consulting staff has prepared a summary of the conference sessions that can be found here: [www.sstbenefits.com](http://www.sstbenefits.com).

Staying on-top of legislative and regulatory changes can be difficult and time consuming. NAGDCA provides an on-going resource to plan sponsors through fact sheets, brochures, Web casts and quarterly newsletters.

*News & Views* is also designed to provide you with timely updates on topics and issues important to public sector plan sponsors.

For example, the article on the right talks about your fiduciary role in selecting investment options. The *Washington Insider* article on page two provides legislative and regulatory news, including an update on the status of the Department of Labor's regulations to redefine the term fiduciary. And on page three, we have provided you with information about the new 2012 contribution and benefit limits as well as some recent reports that you might find useful.

Need additional information or guidance, we're available anytime.

Sincerely,  
*Bill Tugan*, SST Benefits Consulting  
*Paul Hackleman*, SST Benefits Consulting  
*Mary Willett*, Willett Consulting (retired)

## **Investment Menu...**

### ***Are your fiduciary responsibilities being met?***

Over the past few years, there has been considerable attention in the courts regarding the type of investments that are being included in defined contribution plans. Although this focus has been on private sector plans subject to the Employee Retirement Income Security Act (ERISA), state and local government employers should be aware of this activity and how it may impact their fiduciary responsibilities for their 457, 401(k) and or 403(b) defined contribution (DC) plans.

This attention pertains to the type of mutual funds found in employer sponsored plans. Generally, a mutual fund company offers several classes of shares that have differing fees and expenses for the same or similar investments. These share classes are available to meet the needs of various audiences, with the retail class being the most widely available and typically at the highest cost.

When only retail products are being offered in DC plans, while potentially less expensive institutional shares are available of the same funds, employees are questioning if the plan's fiduciaries are breaching their duties by not selecting the lower cost options. For this reason, it is important that plan sponsors and committee members appropriately evaluate their plan's investment options – both for the original decision to offer as well as on-going – to ensure they are they most appropriate, or prudent, share class that is available.

To avoid any potential questions from participants (or the courts) about a fiduciary breach, great care should be taken to understand the various share classes and their cost structure as well as to identify if there are other alternatives that could be made available to participants that provide lower cost options. As with other fiduciary responsibilities, it is not the ultimate outcome that is the most important to demonstrate duties are being met. It is the process that is used to reach your decisions and the thoroughness and reasonableness of your approach.

Information about recent court actions regarding this topic can be found here:

<http://www.plansponsor.com/MagazineArticle.aspx?id=6442476537>

<http://www.ici.org/pdf/25383.pdf>

<http://hr.cch.com/news/pension/101011a.asp>

<http://hr.cch.com/news/pension/091611a.asp>

## Washington Insider

### **National Save for Retirement Week – October 16 to 22, 2011**

The Senate recently passed a resolution (S. Res. 266) establishing the week of October 16, 2011 as National Save for Retirement Week. The resolution was introduced by Senator Kent Conrad (D-ND) and cosponsored by Senators Mike Enzi (R-WY) and Ben Cardin (D-MD).

### **Select Committee on Deficit Reduction**

On August 2, President Obama signed the *Budget Control Act of 2011* that increased the debt ceiling to at least \$2.1 trillion through 2012 in exchange for \$2.1 to \$2.4 trillion in spending cuts over the next ten years. This Act also created a bipartisan *Select Committee on Deficit Reduction* that has been formed to recommend legislation by November 23 to further reduce the federal deficit by at least \$1.5 trillion for fiscal years 2012 to 2021. Both the House and Senate must act on the committee's proposal with a straight up or down vote by December 23. If a bill cannot be passed by this time, the Act included automatic additional spending cuts of \$1.2 trillion, divided between defense and non-defense items, which will then become effective.

On September 22, the *Select Committee* began their work with a hearing to explore revenue options and tax reform. The co-chairs of this committee are Representative Jeb Hensarling (R-TX) and Senator Patty Murray (D-WA), who both demonstrated the obstacles that need to be overcome to reach a bipartisan agreement. Representative Hensarling expressed his interest in focusing on entitlement reform and not tax increases, while considering generating additional federal revenue through pro-growth tax reform. In comparison, Senator Murray suggested that deficit reduction should address both spending and revenue, while considering options for broadening the base, lowering the tax rate, boosting the economy, and bringing in additional revenue as well as keeping the tax code progressive. There was only one witness at the hearing: Tom Barthold, Chief of Staff of the Joint Committee on Taxation (JCT). Information about the Select Committee and the September 22 hearing can be found here: <http://deficitreduction.senate.gov/public>.

### **Tax Reform Options: Promoting Retirement Security**

The *Senate Committee on Finance* held a hearing on September 15 entitled "Tax Reform: Promoting Retirement Security. This hearing examined a number of issues surrounding retirement savings that included employer-sponsored plans, individual retirement accounts (IRAs), Thrift Savings Accounts, and Social Security. There were differing approaches discussed regarding how to encourage and increase retirement savings. However, all appeared to recognize that Social Security alone was insufficient to meet the income needs of retirees. The hearing explored proposals that would reduce 401(k) and IRA contribution limits and replace existing deductions for contributions to defined contribution plans with a refundable tax credit. Information about the hearing can be found here: <http://finance.senate.gov/hearings/hearing/?id=ba387157-5056-a032-5252-c7bf71fc6c90>

### **Automatic IRA Act of 2011**

Senators Jeff Bingaman (D-NM) and John Kerry (D-MA) reintroduced the "Automatic IRA Act of 2011" (S. 1557) on September 15, 2011. This bill would amend the Internal Revenue Code (IRC) of 1986 to expand retirement savings opportunities by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs. This bill appears to only apply to private sector employers that do not provide a retirement program to their employees (except certain small employers) and would require them to offer an automatic payroll deduction IRA. Information about this bill can be found here: <http://www.govtrack.us/congress/bill.xpd?bill=s112-1557>

### **DOL to Re-Propose Fiduciary Definition**

The Employee Benefits Security Administration of the Department of Labor (DOL) announced that it intends to re-propose its definition of fiduciary regulations next year, rather than issue interim final or final regulations. This will delay release of the proposed rule into early 2012. The DOL will be seeking additional public input and research to strengthen the final rule.

The DOL has received more than 200 comment letters from legislators, industry organizations, advisers and others expressing concern about the potential unintended consequences resulting from the new definition. Information about the proposed rule, including copies of the comment letters, can be found here: <http://www.dol.gov/ebsa/reg/cmt-1210-AB32.html>.

In addition to the comment letters, the House Committee on Education and the Workforce, Subcommittee on Health, Employment, Labor and Pensions (HELP) held a hearing on July 26<sup>th</sup> entitled *Redefining 'Fiduciary': Assessing the Impact of the Labor Department's Proposal on Workers and Retirees.* The purpose of this hearing was to examine the new proposed fiduciary rule and concerns with both the policy and process surrounding the proposal. Information about the hearing can be found here: <http://edworkforce.house.gov/Calendar/EventSingle.aspx?EventID=252576>.

## IRS Publishes Plan Limits for 2012

The Internal Revenue Service (IRS) recently released the cost-of-living adjustments (COLAs) for contribution and benefit limits for 2012. For the past three years, there have been no changes to these limits so these adjustments may be welcome by participants.

For 457, 403(b) and 401(k) plans, the deferral limits have increased from \$16,500 to \$17,000 in 2012; however the age 50 plus catch-up contribution remains at \$5,500. (*See table on right.*)

Low and moderate income workers may benefit from the adjustment that was again made to the adjusted gross income (AGI) limit for the saver's credit. In 2012, the AGI limit to be eligible for this credit is \$57,500 for married couples filing jointly, up from \$56,500 in 2011; \$43,125 for heads of household, up from \$42,375; and \$28,750 for both married individuals filing separately and for singles, up from \$28,250.

IRS Contribution Limits		
	2012	2011
457(b) Deferral [457(e)(15)]	\$17,000	\$16,500
401(k) & 403(b) Elective Deferral [402(g)(1)]	\$17,000	\$16,500
Age 50 Plus Catch-up Contributions [414(v)(2)(B)(i)]	\$5,500	\$5,500
Defined Contribution Plan [415(c)(1)(A)]	\$50,000	\$49,000
Defined Benefit Plan [415(b)(1)(A)]	\$200,000	\$195,000
Annual Compensation [401(a)(17)/404(l)]	\$250,000	\$245,000
Social Security Taxable Wage Base	\$110,100	\$106,800

Information about the 2012 benefit and contribution limits can be found here:

<http://www.irs.gov/newsroom/article/0,,id=248482,00.html>

<http://www.irs.gov/retirement/article/0,,id=96461,00.html>

## Recent Reports

*One of the many responsibilities of plan sponsors is to remain current on industry trends as well as legislative and regulatory activities. The following are a few reports that may be of interest.*

- Two recent reports from the Employee Benefit Research Institute (EBRI)
  - “The Importance of Defined Benefit Plans for Retirement Income Adequacy” – This article provides an analysis of the relative value of defined benefit accruals and their impact on retirement income adequacy. It was published in *EBRI Notes*, August 2011: [http://www.ebri.org/publications/notes/index.cfm?fa=notesDisp&content\\_id=4872](http://www.ebri.org/publications/notes/index.cfm?fa=notesDisp&content_id=4872)
  - “Target Date Fund Use in 401(k) Plans and the Persistence of Their Use, 2007-2009” – This study examines the use of target-date funds by a group of 401(k) participants in 2007 through 2009. It was published in EBRI Issue Brief, 2011: [http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content\\_id=4871](http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=4871)
- “How Prepared Are State and Local Workers for Retirement?” prepared by the Center for Retirement Research at Boston College (CRR) by Alicia H. Munnell, Jean-Pierre Aubry, Josh Hurwitz, and Laura Quinby; October 2011. This report includes data to test the hypothesis that state-local workers have more than enough money for retirement: [http://crr.bc.edu/briefs/how\\_prepared\\_are\\_state\\_and\\_local\\_workers\\_for\\_retirement.html](http://crr.bc.edu/briefs/how_prepared_are_state_and_local_workers_for_retirement.html)
- “Decisions, Decisions: Retirement Plan Choices for Public Employees and Employers” prepared by the National Institute on Retirement Security (NIRS) and Milliman. It offers a study of the retirement plan choice in the public sector and finds that defined benefit (DB) pensions are strongly preferred over 401(k)-type defined contribution (DC) individual accounts: <http://www.nirsonline.org/index.php?option=content&task=view&id=642>

**This newsletter is not intended to provide legal guidance or advice. Questions about this newsletter and information on consulting services can be directed to:**

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