



& Views



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

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Note from the Consultants...

This continues to be a stressful time for public sector retirement plan administrators. State and local laws are being proposed around the country that would make significant changes to primary retirement benefit plans – typically the defined benefit plan – often including reduced benefit levels and/or increased employee contributions.

As a result of these potential and enacted changes, the supplemental plan is becoming increasingly important to ensure employees have a financially secure retirement in their future. Examining how well your plan meets employees' needs both today and tomorrow should be at the top of your priority list.

There are two projects that you may want to consider to evaluate your plan and the benefits it provides employees. The first is a contract compliance audit. When was the last time you determined if your plan was in full compliance with federal and state laws and your service providers were meeting the contractual requirements for your plan? If it has been more than two or three years, this should be a high priority.

The next project that should be considered is a survey of your employees and participants to determine their satisfaction with the plan - its features and investments. How do you know if you are meeting their needs, if you don't ask?

Articles in this newsletter cover these topics and, as always, we are available to provide additional assistance, including compliance audits and surveys.

Sincerely,
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Workforce Survey

When did you last ask your employees or plan participants their opinion about the supplemental retirement benefit program that you are offering? If it wasn't within the last two to three years, it may be a good time to consider conducting a plan survey.

This exercise can provide valuable information to help you evaluate the effectiveness of your plan and how well it currently meets the needs of your workforce. Questions can be posed to evaluate the educational services you offer, the investment options that are part of your plan, as well as the forms of distributions that are made available to participants at retirement.

There are several different methods for conducting a plan survey, such as:

- **Statistical sample:** This method produces a representative sample of your universe of participants/employees to produce data that reflects your plan as a whole.
- **Random sample:** This approach identifies survey respondents through a random method (e.g., every 10th participant in your database).
- **Polling entire universe:** This approach allows any participant/employee who desires to provide an opinion, an opportunity to respond to the survey questionnaire.

The length of the survey often will have a direct impact on the response rate. Short surveys with simple questions can produce a higher level of response than long, open-ended survey documents.

Because of electronic media (e.g., e-mail, Web sites), the cost of conducting surveys can be kept to a minimum. If your plan maintains participant e-mails, this can offer an opportunity for more frequent, short, opinion polls on specific topics.

Information obtained through surveys can help fiduciaries determine if changes are needed to meet current and future needs of your workforce. It also can be an important resource for establishing short and long-term goals for the supplemental retirement benefit program.

Washington Insider

Public Employee Pension Transparency Act

The "*Public Employee Pension Transparency Act*" (H.R. 567 and S. 347) was introduced in the House by Representative Devin Nunes (R-CA) and in the Senate by Senators Richard Burr (R-NC) and John Thune (R-SD). This proposal establishes specific standards for States and municipalities to report on the status of the financing of employee-pension funds to the Department of Treasury, and it expressly bans any federal bailouts. State and local governments that fail to meet the stringent requirements within the proposal would be barred from issuing tax-exempt bonds, which are generally used to finance infrastructure and other projects. A copy of this bill can be found here: <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.567>

Medical Flexible Spending Account Improvement Act

The "*Medical Flexible Spending Account Improvement Act*" (H.R. 1004) was recently introduced by Representatives Charles Boustany (R-LA) and John Larson (D-CT). This bill would let workers withdraw and pay taxes on any funds remaining in flexible spending accounts (FSA) at the end of the calendar year, instead of forfeiting the assets to the plan. FSAs are funded with employee pre-tax contributions and the end-of-the-year forfeiture provision was originally designed to avoid these accounts being used as tax shelters. A copy of this bill can be found here: <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.1004>

IRS Expands 403(b) Compliance Project

The Internal Revenue Service (IRS) recently announced the initiation of an audit project to focus on higher education organizations sponsoring Section 403(b) plans and how they comply with the universal availability (UA) rules and new plan document requirements. The project builds upon a similarly focused 403(b) pilot project involving K-12 public schools. For purposes of this project, higher education organizations refers to academies, universities, colleges, seminaries, institutes of technology, and other collegiate level organizations, such as vocational and trade schools that award academic degrees or professional certifications. The project will give higher education organizations the chance to identify problems with their plans and to correct them on their own. Information about this project can be found here: <http://www.irs.gov/retirement/article/0,,id=238459,00.html>

New GAO Report on Regulating Stable Value Funds

A report entitled "*401(k) Plans: Certain Investment Options Practices That May Restrict Withdrawals Not Widely Understood*" was recently published by the Government Accountability Office (GAO). This study suggests that additional regulations are needed to help protect DC plan participants against the risks that result from restrictions that are imposed on distributions from stable value funds. The report notes that some participants in 401(k) plans were not allowed to withdraw their assets from the plan's stable value fund because of "employer-initiated events," such as bankruptcies, mergers and changing stable value providers. These events invalidated wrap contracts used to insure the funds against volatile interest rates, temporarily preventing participants from retrieving their money. A copy of the report can be found here: <http://www.gao.gov/products/GAO-11-291>

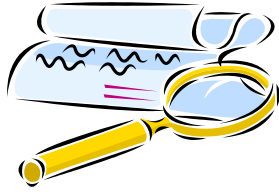
SEC Issues Request for Comment

The Securities and Exchange Commission (SEC) recently published a request for public comment on the effectiveness of existing investor education. This request, which was posted on their Web site at: <http://www.sec.gov/rules/other/2011/34-64306.pdf>, is part of a review mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Information is being sought on a variety of topics, such as: 1) what topics are covered in plan education and how is effectiveness measured; 2) what are the most important characteristics of an effective investor education program and what type of programs are most effective; 3) are there statistical evaluations that demonstrate the education program's effectiveness in changing investor behavior; and 4) are there any specific programs that could be replicated or expanded to reach a broader, national audience.

NAGDCA and EBRI Surveys

The Employee Benefit Research Institute (EBRI) recently released the results of their *2011 Retirement Confidence Survey*, which illustrated that worker confidence regarding their financial future in retirement has again decreased and attitudes about being able to maintain their current standing of living in retirement is much more pessimistic. A copy of this report can be found here: <http://www.ebri.org/surveys/rcs/2011>.

The National Association of Government Defined Contribution Administrators (NAGDCA) recently released the findings from a survey of their members' 457, 403(b) and 401(k) defined contribution programs. Based on the plans completing the survey, the average participation rate was between 20% and 25% and average account balance approximately \$41,000. The NAGDCA survey can be found here: http://www.nagdca.org/content.cfm/id/2011_survey_of_defined_contribution_plans.



Compliance Audits

State and local government employers generally require annual financial audits for their supplemental 457, 403(b) and 401(k) plans. Compliance audits, however, may not be routinely conducted, which can lead

to problems with plans failing to meet the applicable Internal Revenue Code (IRC) as well as service providers not following contractual requirements.

The Internal Revenue Service (IRS) has stepped up their audits of governmental retirement plans, making compliance audits just as important as financial audits to ensure fiduciaries are meeting their responsibilities to the plan and its participants. So what should compliance audits cover? The following discusses four specific areas that should be included in the audit scope.

- 1. Plan Documents** - This covers an examination of all documents that govern the plan and its administration. This includes the formal Plan Document, investment policy statement, provider agreements and/or contracts as well as any applicable amendments. The audit should explore the process plan sponsors use to review, update and revise documents, to ensure they comply with current legislative and regulatory requirements. This includes how frequently documents are reviewed, how they are communicated to plan participants and how they are utilized as training for trustees and administrative personnel.
- 2. Administrative Procedures** - This covers the policies and procedures that apply to operational responsibilities of the plan including: enrollment practices and procedures; unforeseen financial emergency withdrawals; contribution processing including both 50+ and regular catch-up provisions to ensure they are within annual limits; excess deferral corrections; deferral allocations and exchanges; participant statements; withdrawal processes including domestic relation orders (DRO) and participant loans (if applicable).
- 3. Fund and Plan Expense / Revenue Sharing** – This covers an examination of the process used by the plan sponsor to monitor, evaluate and act on fund performance reviews. This review includes the disclosures that are made by providers regarding any revenue sharing agreements that are in place; the providers' relationships with fund managers and how this is disclosed to the plan sponsor/participants; whether providers offer reimbursements to the plan sponsor for their administrative responsibilities; and how fees and charges are disclosed to participants.
- 4. Governance** – The audit scope should also examine the procedures in place to ensure the plan complies with federal and state legislative and regulatory requirements as well as plan documents and is following industry best practices. This includes a review of meeting minutes to determine if trustee and administrative staff actions follow internal policies and plan documents; fiduciary identification and training; plan participant training and education including frequency and content of training; the use of investment guidance and advice services to assist participants in portfolio construction and management; and general communication activities.

Roth 457

Thinking of offering a Roth 457 option in your plan, or have you recently adopted this new plan feature?

Check out a new *Issue Brief* from the National Association of Government Defined Contribution Administrators (NAGDCA) discussing the implementation and issues surrounding the Roth 457 at:

http://www.nagdca.org/documents/NAGDCA_IssueBrief_Roth_457.pdf

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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