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DEPARTMENT OF LABOR ISSUES RELIEF GUIDANCE FOR VICTIMS OF CALIFORNIA WILDFIRES

The U.S. Department of Labor (DOL) recently issued benefit plan guidance and relief for plans and participants affected by the 2018 California Wildfires. The DOL recognizes that plan sponsors and participants may be affected in their ability to achieve compliance with various regulatory requirements. The guidance generally applies to all parties involved in employee benefit plans located in areas identified by FEMA as disaster areas, listed here: www.fema.gov/disasters.

The guidance provides relief from procedures related to plan loans and loan repayment, distributions, contributions and blackout notices. In general, the DOL will not take enforcement actions if plans follow the guiding principle to act reasonably, prudently and in the best interests of workers and families who rely on the plans for their economic well-being.

Specific guidance is offered in certain areas:

- Loans and Distributions: Plan sponsors must make a good faith effort to follow procedural requirements under the plan, but the DOL will not assist with requirements and if unable, make a reasonable attempt to assemble any missing documentation as soon as practicable.
- Participant Contributions and Loan Repayments: The DOL recognizes that some employers in these disaster areas may not be able to forward amounts withheld from employee wages within prescribed timeframes. Employers are required to act reasonably, prudently and in the interest of employees and comply with the regulations as soon as practicable. The DOL will not take enforcement action if timelines were not met solely due to the 2018 California Wildfires, in the FEMA-identified areas.
- Blackout Notices: Generally, 30 days' advance notice is required when a participant's rights under a plan will be temporarily suspended, limited or restricted due to a blackout period. The DOL regulations provide an exception to this requirement when the inability to provide notice within the required timeframe is due to events beyond the plan sponsor's or fiduciary's control.

The full DOL fact sheet can be found here. Your NFP advisor is available to answer any questions you may have or help you determine practical approaches to meeting fiduciary duties and requirements.

COLLECTIVE INVESTMENT TRUSTS: ARE THEY RIGHT FOR YOUR PLAN?

Collective investment trusts (CITs) have been the fastest growing investment vehicle within 401(k) plans over the past seven years, with 62 percent of asset managers believing that their clients will shift from mutual funds to CITs. This investment vehicle has traditionally only been available to large and mega-sized plans, but now CITs may be available to plans of all sizes. This is a result of continued fee litigation and the increased fee transparency that CITs offer.

What are CITs?

CITs are similar to mutual funds and are often run by mutual fund companies, yet there are significant differences. Both types of investments are pooled and follow specific investment strategies. Mutual funds may be offered to the general public or within a plan; CITs are designed to be part of a retirement plan and can be custom designed. CIT assets are typically made up of stocks, bonds, and other types of investments. Finally, neither CIT nor mutual fund assets are insured by the FDIC.

One important difference between mutual funds and CITs is that mutual funds are regulated by the SEC and CITs are regulated by the state and by the Office of the Comptroller of the Currency (OCC). CITs are not subject to the Investment Company Act of 1940, which includes mutual fund regulations and extensive disclosure requirement. Unlike mutual funds, CITs do not have to be registered with the SEC. CITs are commingled accounts offered through banks or trust companies; therefore, they are regulated by the OCC.

How have CITs evolved?

CITs were first introduced in 1927, and allowed banks to combine funds from pensions, profit-sharing and stock bonus plans. From the 1950s through the 1980s, CITs were the main investment vehicle in large retirement plans. In the 1980s, defined contribution plans started using mutual funds as the primary investment vehicle due to their daily valuation and ease for participants to follow. In the 2000s, CITs gained significant traction in DC plans due to increases in their ease of use, daily valuation and availability. The Pension Protection Act of 2006 named CITs as a type of investment that qualifies as a default investment alternative.

What are the pros and cons of CITs when compared with mutual funds?

Pro: CITs often have lower administrative expenses because they are not subject to the many regulations that apply to mutual funds. They typically do not have marketing expenses, because they are offered within group plans and do not have marketing targeted at individual investors. Finally, CITs are not required to register with the SEC, allowing them to avoid costly registration fees. These fee savings can be passed along to investors.

Con: Because CITs do not have the same disclosure requirements as mutual funds, information may not be as readily available. However, plan participants can usually utilize their recordkeeper's website to find all or most of the information they would typically find on a financial reporting site, including price and performance history, information about the fund manager, holdings and investment strategy.

Pro: CITs are held to ERISA fiduciary standards to act only in the best interests of participants and their beneficiaries. True at the committee level, but not applicable to the investment discussion. Regarding the investment options, CITs are held to a fiduciary standard and mutual funds are not.

Con: Because CITs are available only to institutional retirement plans (like 401(k) and 457 governmental plans), portability may be limited at separation from service. Additionally, CITs may have higher minimum investment requirements, so they may be available only to large plans or plans who can have their assets combined to meet higher thresholds. However, NFP has leveraged its scale to bring a number of CITs with significantly reduced expense ratios to all of its clients, regardless of plan size.

Please consult your NFP advisor if you would like to learn more about CITs and whether they are appropriate for your plan.

WASHINGTON UPDATE

New Contribution Limits for 2019

Contribution limits have increased! The 2019 limits for 457(b) plan contributions are:

- $19,000 for pre-tax and Roth contributions, combined
- $38,000 for traditional catch-up, three years prior to normal retirement age
- $6,000 for over-50 catch-up.

Reminder, a participant can only contribute to one of the two catch-up options in a calendar year.

What's on the Legislative Horizon?

As the new Congress convenes in January, we are expecting a flurry of retirement bills to be introduced as options for tax revenue are developed. The National Association of Government Defined Contribution Administrators (NAGDCA) continues to emphasize issues important to both participants and plan sponsors. One of these issues – the exclusion from the 10 percent early withdrawal penalty – was "scored" in 2018 by the Congressional Budget Office. The CBO scores various legislative proposals in terms of their ability to raise additional tax revenue, and NAGDCA recently reported that this issue was scored LOW – meaning that it is not projected to be a significant revenue raiser, and may in fact result in a revenue loss. Therefore, the general understanding is that this issue may now become less important, since Congress is usually primarily interested in issues that will produce increases in tax revenue.

For the most recent copy of NAGDCA's legislative priorities, click here.

Changes to Emergency Withdrawal Requirements – CAUTION

Recent instructions in internal procedures at the IRS have resulted in some confusion pertaining to emergency withdrawal documentation requirements. The instructions allow for participants to summarize why they need funds withdrawn, without providing detailed documentation of the financial need. This raises several concerns that may increase a plan sponsor's risk of non-compliance with these requirements, and the concerns are the same regardless of whether the plan sponsor or the service provider is responsible for this feature in a plan.

What's a plan sponsor to do? NFP recommends reviewing emergency withdrawal application procedures to make sure the appropriate documentation is required for all cases. Remember – the plan sponsor is responsible for making sure requirements are followed, even if the service provider carries out the task of reviewing applications.

A full brief by the National Law Review can be found here. Please contact your NFP advisor if you would like additional information.

NAGDCA BENCHMARKING RESOURCES

NAGDCA's annual benchmarking report has been published for 2018 (using 2017 data). Key findings include:

- Average account balance: $53,822
- Average annual contribution: $4,504
- Two-thirds of plans surveyed use self-directed brokerage, but only 2% of participants use this option
- Three of five plans offer loans

The information contained in this report can be useful for comparing your plan to national averages. The full report can be found here.

NFP GOVERNMENTAL RETIREMENT PLAN EXPERTISE

Bill Tugaw is the governmental plan practice leader for NFP. He has assisted public sector employers in meeting the fiduciary obligations associated with operating their plans for more than 30 years. Bill is a faculty instructor for the International Foundation of Employee Benefit Plans (IFEBP) on public sector 457(b), 401(a) and 403(b) plans. Bill is frequently invited to lecture on employee benefits, post-employment health plan options, requests for disclosure and requests for proposals. Bill is co-author of two books: *Deferred Compensation / Defined Contribution: New Rules / New Game for Public and Private Plans,* and *Defined Contribution Decisions: The Education Challenge.*

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NFP has more than 3,800 employees and global capabilities. Our expansive reach gives us access to highly rated insurers, vendors and financial institutions in the industry, while our locally based employees tailor each solution to meet our clients' needs. We've become one of the largest insurance brokerage, consulting and wealth management firms by building enduring relationships with our clients and helping them realize their goals.

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The target date is the approximate date when investors plan on withdrawing their money. Generally, the asset allocation of each fund will change on an annual basis with the asset allocation becoming more conservative as the fund nears target retirement date. The principal value of the funds is not guaranteed at any time including at and after the target date.

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