Public Sector Retirement News & Views | Q2 2019

FIDUCIARIES AND FIDUCIARY RESPONSIBILITIES

NFP education continuously emphasizes fiduciary responsibility. Fiduciaries are responsible for the management of employee retirement plans in many regards, including plan investments and plan administration. As such, fiduciaries have responsibilities to both their participants as well as their employers, to hold to the fiduciary standards in all aspects of their work.

What are fiduciary responsibilities?

Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants in a retirement plan and their beneficiaries. These responsibilities include:

- Acting solely in the interest of plan participants and their beneficiaries with the exclusive purpose of providing benefits to them and paying plan expenses.
- Carrying out their duties prudently. If you lack the expertise that a prudent person familiar with the administration of employee benefit plans would exercise, then ERISA requires that you hire experts to help.
- Following all plan documents (unless inconsistent with ERISA).
- Diversifying plan investments to minimize the risk of large losses.
- Paying only reasonable plan expenses.
- Monitoring investments.
- Avoiding transactions that are a conflict of interest.

Who is a fiduciary?

ERISA, while not applicable to public sector plans, is the primary resource for guidance for fiduciary responsibilities. State laws, on the other hand, do apply to public sector plans, and language about fiduciary responsibilities and requirements can be found in trust provisions. Under ERISA, there are two types of fiduciaries: named and functional. Named fiduciaries are just that: identified by position, title or name as a fiduciary to the plan. Functional fiduciaries are those who have discretion over plan administration and investments;

who provide advice to the trustees or administrators, or who have decision-making authority over the plan investments.

Individuals become fiduciaries by title or by actions. ERISA broadly defines a retirement plan fiduciary as a person or entity that does any of the following with respect to a retirement plan, such as:

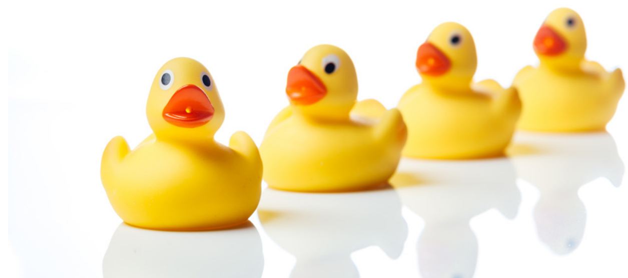
- Exercising discretionary control or authority over the management of the plan or its assets.
- Providing investment advice or managing the plan assets for a fee.
- Having discretionary responsibility in the administration of the plan.
- Being specifically identified in the written plan documents as a fiduciary.

A plan's fiduciaries will ordinarily include the trustees, investment advisors, plan administrators, plan sponsor, members of the plan sponsor's board of directors, corporate officers, and those who select committee members. The key to determining whether a person or entity is a fiduciary is to determine whether they are exercising discretion over the plan.

Under ERISA, there are three types of functional fiduciaries:

- 3(16) Plan Administrator - one who has discretionary responsibility for plan administration. In this arrangement, trustees are liable for investment decisions.
- 3(21) Investment Consultant - one who provides investment advice to plan trustees for a fee or other compensation, to aid the trustees in their decision-making process.
- 3(38) Investment Manager - one who has complete discretion over plan management and investment options. In this arrangement, the 3(38) advisor is wholly responsible for fiduciary duties.

NFP advisors are typically either 3(21) or 3(38) advisors. Please consult with your NFP advisor to further discuss fiduciary roles, responsibilities and duties for your plan.



Helping Participants Determine Retirement Readiness

Many plan sponsors struggle with providing resources for participants to help them determine their retirement readiness. Participants will have many questions and need many answers, including deciding when they *want* to retire, when they *can* retire, how much money they will need, how much they have yet to save, and how they are going to spend their money when they retire. Plan sponsors can provide education and a number of tools to participants to help them find these answers.

One useful tool a plan sponsor can offer participants is a checklist to prepare for meeting with their financial advisor. Providing the following information can help the advisor understand the employee's current financial picture as well as their goals for their financial future:

- Salary (e.g., recent check stub)
- Mortgage statements
- Pension plan information
- Social Security estimates
- All household savings and investments
- Any other information regarding financial events or situations (e.g., major purchases, remodeling, college savings/funding, travel plans, elder care)
- Health and/or long-term care insurance information
- Estimated living expenses in retirement
- Other retirement income expectations
- Risk Tolerance Questionnaire/Assessment

As you can see, there are many aspects to helping participants determine their retirement readiness. Those who come prepared with the above information to a meeting with their advisor will be in a better position to determine their retirement readiness and get on the path to saving for their financial future.

The Annual NAGDCA Conference is Right Around the Corner!

NAGDCA, the premier association for public sector retirement plans, is holding its annual conference from September 8-11, in New Orleans. Registration will be open in late spring and the agenda includes a wide array of educational topics for plans of all sizes and structure.

More information about this year's conference can be found here. Please let your NFP advisor know if you will be attending this year's conference!

National Retirement Security Week

National Retirement Security Week (NRSW) is a week in October, recognized by Congress to help raise awareness of the importance of taking personal responsibility for saving for retirement. Plan sponsors can take advantage of many tools to create a focused campaign emphasizing the benefits of saving for retirement by investing in an employer-sponsored plan. Whether a plan sponsor wants to increase participation, attract certain demographic groups to the plan, or educate against common investing pitfalls, NRSW is a dedicated time to focus on improving employee retirement outcomes. NRSW is traditionally held the third week of October, so it's time to start planning!

Your Whole Story

To help spur ideas, NAGDCA created ***Your Whole Story***, an age-based campaign designed to appeal to employees at different stages of the retirement journey. Use this link to learn more about Your Whole Story and how you can use this powerful tool to create customized participant engagement communications.

Please contact your NFP advisor for assistance in developing your NRSW campaign.

WASHINGTON UPDATE

A number of bills are moving rapidly through the House and the Senate that would (if passed and signed) enhance the retirement plans of many Americans. While these bills continue to morph, below is a general description of provisions as of early April 2019.

Retirement Security and Savings Act

Senators Rob Portman (R-Ohio) and Ben Cardin (D-Maryland) introduced the Retirement Security and Savings Act in December 2018 and have reintroduced it in 2019. The Act is considered to be as sweeping as prior legislation, specifically the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, and Pension Protection Act (PPA) of 2006. Proposals that would impact governmental plans include:

- Eliminate the 457(b) "first day of the month" rule.
- Permit 457(b) plans to allow in-service distributions at age 59 ½ rather than 70 ½.
- Eliminate the Required Minimum Distributions (RMD) from Roth 457(b).
- Allow rollovers from Roth IRAs to Roth 457 plans.
- Allowing non-spousal beneficiaries to roll assets into their employer-based plans.
- Updating the mortality tables used when calculating RMD at age 70 ½.
- Exempting small accounts (less than $100,000) from the RMD calculation.
- Creating an additional catch-up option for participants over age 60.
- Simplifying auto-enrollment participant notices.
- Allowing employer matching to retirement plans for student loan payments.

Retirement Enhancement and Savings Act

Representatives Ron Kind (D-WI) and Mike Kelly (R-PA) introduced the Retirement Enhancement and Savings Act (RESA) in February. While RESA is primarily aimed at private sector plans, it does include a provision that would allow more time for terminating participants to repay outstanding plan loans.

Secure Act

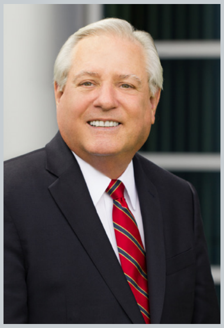
The Setting Every Community Up for Retirement Enhancement Act of 2019 sponsored by Richard Neal (D-MA) and Kevin Brady (R-TX) has passed unanimously out of the House Ways and Means Committee as of early April and will go to the full House. This bill includes the core provisions of RESA making smaller employers able to join multiple employer plans and includes a safe harbor for selecting lifetime income providers in defined contribution plans. The latest provision of Lifetime Income Disclosure Act (LIDA) has been challenged by plan sponsors as being inflexible. More on both RESA and Secure Act as they move through the House and Senate, but they appear to be supported by both parties and will likely go to Conference Committee and head to the White House.

NAGDCA Legislative Priorities

Each spring, the NAGDCA Executive Board visits congressional representatives in Washington DC to advocate for governmental retirement savings plans and participants. In addition to some of the above proposals, the Board is advocating for:

- Eliminating the "First Day of the Month" rule for 457(b) plans
- Allowing participants to roll Roth IRAs into their plan accounts
- Exempting Roth contributions from the RMD calculation
- Preserving important unique plan features, including allowing both pre-tax and Roth options; maintaining the 10% early withdrawal penalty exclusion in 457(b) plans; and maintaining both traditional and over-50 catch-up provisions.

Please consult with your NFP advisor for more information on the status of pension proposals and how they may affect your plan.



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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