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403(b) Issues

Moderator:
Brian McCleave, Prudential Retirement

Panel:
Mike Cochran, TCG Consulting, LP
Julia Durand, CalSTRS
Jamie Ohl, The Hartford

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The 403(b) Written Plan

A Brief History and Current Developments

Mike Cochran
TCG Consulting, LP

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How Salary Deferral Retirement Savings Plans Work

401(k) Plans 457(b) Plans



403(b) Plans



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How Could 403(b) Plans be More Accountable?

- New Regulations
 - **Clear Rules** – *Eliminate “Memorialized Mythology”* (per Tom Reeder, Associate Benefits Tax Counsel, U.S. Department of the Treasury)
 - **Current Rules** – Last major and comprehensive 403(b) Regulations issued in 1960s
 - **Accountability** – Employers to have a **Written Plan** and be responsible for enforcement

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New 403(b) Regulations
Background

- 1990s – IRS Audits
 - Only auditable and enforceable item: contribution limits
- November, 2004 – Proposed Regulations
- July 26, 2007 - Final Regulations
 - Key Provision – A **“Written Plan”** to cover all Plan Rules
 - First time requirement for 403(b) plans

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Written Plan Rules

- **Written Plan**
 - Not a traditional plan document, but all plan rules must be in writing
 - Can be “collection of documents”
 - The plan must contain
 - All material terms and conditions for eligibility, benefits, applicable limitations, the time and form of distributions
 - Identification of the contracts and accounts available
 - Coverage and contribution provisions
 - Section 415 limits on annual additions
 - Optional provisions (loans, hardships and transfers)
 - Provisions coordinating and allocating compliance responsibilities

Written Plan

- **IRS Revenue Proclamation 2007-72**
 - Model Written Plan Language
 - Clarification on Transfer Rules and Grandfathered/Frozen Accounts
 - May Use All or Parts of Wording
 - To the extent the wording is used “as is” in the Written Plan, the Plan has reliance on this language
- **Industry Organization Models**
 - American School Business Officials International (ASBO)

Written Plan

- **IRS Notice 2009-3**
 - Deferred effective date for Written Plan to 12/31/2009
 - Must still comply in operation with Regulations
 - EPCRS remedy for operational violations
 - Use of EPCRS can be expensive and time consuming

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Written Plan

- IRS Announcement 2009-34 – Plan Documents
 - No extension of 12/31/2009
 - “Remedial amendment period” to generally run from January 1, 2010 through December 31, 2010

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Written Plan

- IRS Announcement 2009-34 – Plan Documents
 - Prototype Plans and LRMs
 - Standardized and Non Standardized
 - Primary difference is Employer Contributions
 - NS must demonstrate compliance with Sections 401(a)(4) and 410(b)
 - Governmental Plans and “non electing church plans” automatically Standardized
 - Will clarify that the Plan overrules the vendor contracts
 - Will apply a higher standard of delegation of duties, with the delegation of *every* plan functions clarified

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Written Plan

- IRS Announcement 2009-34
 - Clarifies that can have more than one 403(b) plan
 - Coordination of Section 415 compliance will be issue if one is prototype and one is not
 - Plan Sponsors *are not required* to adopt a Prototype Plan
 - May still rely on Model Language in Revenue Proclamation 2007-72
 - Prototype Plans probably offer greater safety as to the Form of the Plan

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Written Plan

- IRS Announcement 2009-34
 - Prototype Plan Sponsors
 - Eligible to sponsor if have an established place of business in the United States where it is accessible during every business day and
 - Expects at least 30 eligible employers to adopt its Prototype Plans
 - Prototype Sponsor vs. Mass Submitter
 - Mass Submitter : A 403(b) prototype plan of a mass submitter must include language *designating the mass submitter as agent for the prototype sponsor for purposes of making plan amendments.*

Observations of a TPA

- Having a Written Plan
 - Very positive in enforcing rules and explaining them to participants
 - Particularly loans, distributions, exchanges, transfers and rollovers

Observations of a TPA

- Prototype Program
 - Great to have reliance
 - Great to control “capricious” re-writing of documents by some Plan Sponsors
 - Will significantly improve quality of documents
 - Takeovers are often a mess
 - e.g., some Adoption Agreements have options not in Plan Document
 - Impractical for governmental executive plans
 - The majority of employer paid 403(b) plans

403(b) Compliance

A New Era with New Challenges

Jamie Ohl
Sr. Vice President and Director
Hartford Life

New Compliance Rules

- Administrative services are now the responsibility of employer / plan sponsor
 - Monitoring and compliance with contribution limits
 - Review and approval for loans, withdrawals and distributions
 - Employee self-certification no longer allowed

Compliance Avenues

- Plan sponsor options for compliance, include
 - Self administration
 - Full service providers
 - Third party administrators
- Employee certification no longer allowed

Compliance Challenges

- Monitoring contribution limits
 - Most payroll systems can be programmed for basic and age-based catch-up limits
 - 15-Year Rule catch-up requires good documentation of prior year contributions

Compliance Challenges

- Monitoring loans, withdrawals and hardships
 - Data from all accounts with all providers must be taken into consideration
 - Timing of data sharing may delay review, approval and processing
 - Compliance risks due to data aggregation and timing

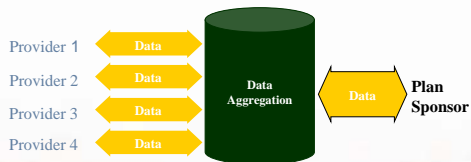
Compliance Opportunities

- Compliance solutions range from simple, manual aggregation to complex, high-tech solutions
 - Solution should fit the needs of the plan sponsor
 - Smaller plans with fewer providers, may be able to self-administer with good documentation and process
 - Larger plans may choose Third Party Administrators or Full Service providers for data aggregation and compliance solutions

A Full Service Provider's View

- Data aggregation services
 - Accept data from vendors in all standard (SPARK and DTCC) and custom data formats
 - Update feeds received from vendors on periodic basis (daily, preferred)
 - Helps plan sponsors pro-actively ensure participant compliance with loan, withdrawal and distribution requirements mandated by the IRS
 - Provides access to vendors to reduce/avoid processing delays
 - Provides reporting back to plan sponsor on activity

403(b) Data Aggregation



STEP 1:
Participant requests a loan, withdrawals or distribution

STEP 2:
Validate participant's eligibility for loan, withdrawal or hardship

STEP 3:
Review and approves request based on combined provider data

STEP 4:
Reporting on loan, withdrawal and distribution activity

Plan Sponsors Call To Action

Julia Durand
Deferred Compensation Administrator
California State Teachers Retirement System

The New 403(b) Landscape for Plan Sponsors

- Define Plan Sponsors Role
- Who is responsible?
- Don't throw the baby out with the bath water
- Lessons learned (success stories)
- Call to Action

Plan Sponsors Role

- Compliance
 - Enforcing the rules
 - Eligibility, enrollment requirements, contributions limits, transfers, loans, distributions, rollovers
 - Establishing a written plan document including optional features
 - Most hire a TPA
- Fiduciary Responsibility
 - Exercise discretionary authority relating to the plan
 - Selection of vendors

Who is Responsible?

- Ultimately... The Plan Sponsor is responsible for the plan
 - Employers need to acknowledge that despite the promises made by the TPA the responsibility rests with the Plan Sponsor
 - Fiduciary responsibility includes doing the due diligence on the TPA selected to provide compliance for the district

All or nothing approach?

- Don't throw out the baby with the bath water
- Understand what is in your written plan
 - Don't eliminate Loans out of fear
 - Not allowing anything makes participants too afraid to participate
- Social Security Numbers
 - Employees are mobile
 - SSN are still the best identifier
 - Relius not backing off use of SSN

Call To Action

- Plan Sponsors must stay involved
- Continue to communicate with your employees
- Attend conferences that address 403(b) regulations
 - Ultimately the plan is your responsibility
 - Know what your TPA should be doing
 - Know what your TPA IS doing

Things Have Changed

- New Regulations mean some things will take longer to process
- Employees may not like everything the TPA does
 - The TPA's job is to keep **you** the Plan Sponsor in Compliance
 - Support the changes made for your benefit
 - Help with the communication to employees
 - Remember, this is new for everyone

Customer Service

- Vendors and TPA's saw an increase in call volume up to 600 calls a day
- Not feasible to expect a return call the same day
- Encourage employees to use websites and email for less complex issues

Case Study

- Dallas ISD created a website with all benefit information including 403(b) and 457 plan information
 - When the Plan Sponsor directed employees to this site the TPA experienced a significant drop in call volume
- MCPS experienced the same results with their Web portal

Getting The Most From Your TPA

- Work with your TPA when they make changes or suggestions
- Work with the large vendors and encourage them to work with the TPA's
 - Your employees will benefit
- Stay involved
- Press for industry standards from your vendors and TPA
 - Insist they follow them

Submitting Forms

- Work with the TPA to properly identify the employer name on all forms
- Understand the ramifications of incomplete or incorrectly submitted forms
 - The increased workload for TPA
 - Frustration of employees
 - Lost time for processing requests

Summary

- Stay involved
 - Know what your plan offers
 - Don't delegate everything
 - Don't eliminate all optional features out of fear
- Work with your TPA – they are supporting your best interest
- Push for industry standards
- Communicate with your employees

True Story

- CalSTRS moved into its new headquarters with a new telephone system
- The dedicated line to TPA would not forward
 - We received all TPA calls for TWO DAYS!!!
 - Eye-opening experience!
- Ask your TPA if you can listen in on a few calls to gain a better appreciation for the work your TPA does on your behalf

Q & A

