Challenge of ERISA 403(b) Plan Improvement

408(b)(2), 404(a)(5) and Fiduciary Responsibility takes center stage.

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The disclosures, guidance and enforcement from these regulations will most likely result in more changes in how ERISA 403(b) plans are governed, evaluated and judged than in any year since 1986.

Issues affecting ERISA 403(b) plans in 2012.

1) **408(b)(2) / 404(a)(5) Fee and Service Disclosures:** Full disclosure reporting for all service providers.

2) **Fiduciary governance:** Protect your organization, participants and yourself.

3) **Fiduciary status of each service provider:** Understand who is on your team.

4) **Participant Education vs. Advice**: Understand what is being provided and what is needed.

5) **Default Participants to Success:** Eliminate the barriers to entry and investment.

6) **Models matter**: Understand how your QDIA and Target Maturity strategies really work.

7) **Engage employees:** Use 2012 communication tools to engage rather than just inform.

8) **Lifetime Distribution Options:** Incorporate into plan as they improve in variety and flexibility.

Where we are in the ERISA Non-Profit Retirement Savings Industry

403(b) arrangements have been in existence for non-profit organizations for decades but were not, for many years, covered by ERISA and enjoyed little regulation. Fixed Annuities were the dominant asset class available as interest rates were attractive and few variable funds were needed for these plans. The trend for employers to replace "sole responsibility" Defined Benefit obligations with "dual responsibility" Defined Contribution plans increased during the 1980's and 1990's.

Since the mid 1980's the industry promoted more and more investment options for fund line ups to offset the declining interest rates. This worked fine in the robust 1990's. In 2000, this plan began to fail with the implosion of the technology valuation bubble. In response, some plans took a token approach to needed allocation assistance by including the "Lifestyle" and "Target Maturity" options offered from their current investment provider with little thought as to their performance, diversification, or strategy

as participants approached retirement (known as glide path). The number of Investment options continued to swell via brokerage window and other external platform utilization as employers felt "more was better" and somehow provided them more protection from the need to oversee these investments. Since 2008, employers have recognized the need to move toward reviewing and limiting investments to a more understandable number of investment options from each provider. Employers also did not want to be limited to only proprietary investments managed by the plan provider. In response, many investment providers have moved to offering more "open" investment platforms with the ability to have multiple fund managers within a single administrative solution. While this has been beneficial for many plans due to enhanced diversification and potential cost reduction, responsibility to evaluate and narrow the list of investments offered in each plan required an enhanced review process. Many employers have recognized the need for assistance with the analysis required in narrowing the list of investments in their retirement fund line-up and in the on-going documented monitoring of these investments.

The Challenge Facing ERISA 403(b) Plans

ERISA non-profit organizations face several hurdles that the for-profit counterparts do not in meeting these new regulatory requirements. First is the number of investment providers that are often found in these plans. Multiple providers are common in 403(b) plans and create an additional layer of compliance coordination. This affects areas such as loans, distribution qualification and reporting. Having more than one provider also affects the way client education is provided. In the effort to be fair to each provider, communication and access for participants is often limited. These providers often spend their available time talking about how their investments are better and not promoting general education and success tools for employees. Finally, because of historical 403(b) regulation limitations on types of investments allowed in plans, many employers continue to utilize investment options in their plans that are not as favorable as those now available. Plan fiduciaries have the responsibility to look closely and compare available investments, based on fees, performance and services, to make sure they are providing an appropriate benefit. Although Non-profit organizations are not immune from this responsibility, they often are challenged in providing staff to accomplish the needed oversight of the plan.

The Future

The regulatory disclosures and guidance being given in 2012 will most likely result in more changes in how 403(b) plans are governed, evaluated and administered in any one year since the tax reform act of 1986. Best practices will emerge which are designed to assist plan sponsors and participants in making better decisions for plan improvement. This provides the opportunity for these organization's retirement plans to take steps forward in efficiency, safety and user simplicity. For 403(b) plan sponsors, this will be a good year to take a step back and ask "Why do we do what we do?" Perhaps the responsibility for operation of the plan, investment provider and investment options have been in place for a number of years. Unfortunately the Department of Labor does not allow a comprehensive ERISA exemption of responsibility for "Having always done it this way". Fortunately, the provisions being defined and the clear definition of fees and services in 2012 can provide opportunities and incentive to

redefine success for organization's plan. The assimilation of data and implementation of the improvement process may require enlisting the help of an objective independent plan level advisor. They can provide analysis and perspective on best practices to support the investment committee and plan fiduciaries. This can reduce the plan fiduciaries personal liability risk and provide a higher quality benefit for employees.

Summary

The regulations, disclosures and guidance being implemented in 2012 can provide clarity for evaluating key aspects of your plan. But you have to commit to plan improvement. It is important to regard the disclosures which will provide this information as you would newer and more detailed diagnostic health test results. The positive effect of this new detailed information is in the intention to *understand* the results and *take action* to improve the plan based on that information. That action may involve different investments from your current provider, or a new provider, or an improved internal fiduciary process or better employee communication and account management tools. The review and improvement process may involve enlisting the services of an independent plan advisor. Ultimately regulatory authorities will evaluate the steps your organization took to improve your plan in response to the disclosures.

It is time to upgrade the 1980's model 403(b) retirement plan for the more efficient, safe and user friendly 2012 model. The ultimate result can be a stronger future for you and your employees.

More information on plan improvement can be found at www.fhdfinancial.com.

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