Public Sector 401, 403 and 457 Plans— Day 1

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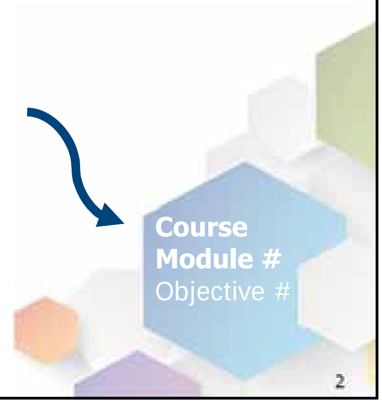
The CEBS Program

The International Foundation's highest educational achievement is its Certified Employee Benefits Specialist (CEBS) designation.

The program is highly regarded by the industry and comprises five self-study courses (each with an exam) that provide deep technical knowledge of employee benefits. Most people complete the designation in about three years.

Many people are intimidated by the program, but we would like to take some of that fear away. The CEBS icon that you will see in the corner of some slides indicates that the following topics overlap with CEBS content.

While participation in employee benefits courses does not count towards getting the CEBS designation, this course may make the material feel more approachable if you decide to pursue the CEBS program in the future.



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Introductions

- Organization You Represent—Your Role
- Types of Retirement Benefits
- Number of Providers
  - Service Providers
  - Contractors
  - In-House
- Characteristics of Decision-Making Personnel
- What do you want to get out of this course?

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Class Participation Tool

Scan the QR Code
or
Use the URL

pollev.com/if8

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Overview

- **<u>Day 1</u>**
  - – Historical Public Sector Characteristics
  - – Defined Contribution Oversight
  - – Basic Defined Contribution Responsibilities
  - – Changing Employer Responsibilities
  - – Employer Trends in Meeting Responsibilities

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Overview

- **<u>Day 2</u>**
  - – Recap of Day One
  - – Practical Steps for Employers
  - – Options and Trends
  - – Managing Investment Oversight
  - – Developing Educational Programs
  - – Case Study
  - – Wrap-up/Questions

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Historical Public Sector Characteristics

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Historical Characteristics—Overview

- **Public Sector Pension Plan Characteristics**
  - Defined Benefit Plans
  - Defined Contribution Plan Options
    - 457(b)
    - 401(k)
    - 401(a)
    - 403(b)
  - Other Defined Contribution Plans
    - Part-time Employee Social Security Replacement
    - Public Sector Option
  - Hybrid Pension Plans

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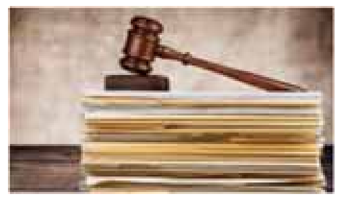
Historical Characteristics

- Importance of Benefit
  - Defined Benefit Plan—Historically Primary Benefit
  - Defined Contribution Plans—Historically Secondary Benefit
  - Introduction of DB/DC Hybrid Plans
- Organizational Oversight
  - Single Manager
  - Labor-Management Committees



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Plan Characteristics— Defined Benefit

- Defined Benefit—
  - Formula Based on Age/Length of Service/Final Salary
- State—Federal Requirements—Not ERISA
- Distribution Options
- Portability
- Maximum
- Recent Issues

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Plan Characteristics—
Defined Contribution Plans

- Benefit Design
  - Multiple Providers
  - Oversight of Number/Types of Funds
- Benefit Management
  - Management of Contracts
  - Internal Legal Counsel
  - Fund Review/Communication Responsibility

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Plan Characteristics—
Defined Contribution

- **457(b), 401(k), 401(a) and 403(b)**
  - Defined Contributions
  - Few Employer Matches (Public vs. Private)
  - Range of Participation
  - Ancillary Retirement Benefit
    - Employee Perspective
    - Employer Perspective
  - Qualified vs. Non-Qualified

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Plan Characteristics

- **Contribution limits**
  - Annual maximums
  - Catch-up options
- **In-service distributions**
  - Hardship withdrawal or unforeseen emergency withdrawal
  - Loans
  - De minimis
  - Disaster relief
  - Qualified Birth and Adoption
  - Domestic Abuse
- **Discrimination testing not required**

See Reference Material page 2 for the latest IRS announcement of pension plan contribution limits

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Social Security Alternative

- OBRA 90 [IRS Code 3121(b)] Public/Private Sector Requirements
- Permits alternate coverage options for public sector
  - All or certain categories of employees (*e.g.*, seasonal/part-time)
- Contribution and investment requirements

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Defined Contribution Oversight

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Oversight

- Role of Federal Government
  - Internal Revenue Code
  - Department of Labor
- Role of State Government
- Role of Provider/Employer
  - Plan Administrator and Trustees
  - Third Parties

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Federal Government Role

- Establish Basic Plan Parameters
- Audit for Compliance
- Modify Plan Characteristics
  - Auto Enrollment
  - Default Investments
  - Disclosure Requirements

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State Government Role

- ERISA-like adoptions
- Conflict of Interest provisions
- Sunshine Laws
- Trust Provisions
- Domestic Partnerships

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Provider Role

- Provider resource—Federal/State Requirements
- Size of employer
- Formal plan documents and contracts
- Fund review
- Plan sponsor can delegate review of in-service withdrawals or account changes (emergency withdrawals, loans, catch-up, de minimis, QDROs, disaster relief, qualified birth and adoption, domestic abuse)

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Employer Role

Evaluation and Monitoring


Transactional responsibilities


Provider(s)


Consultants


Self (Trustees)


Investment policy/funds


Education policy/services


Audits

21

Basic Defined Contribution Responsibilities

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Basic Responsibilities

- **Eligibility**
  - Employment Hours/Length of Service
  - No Minimum Salary
  - Minimum Contributions
    - Employer
    - Provider

IRS

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Basic Responsibilities

- Internal Revenue Code References
  - Pages 11 to 31: Internal Revenue Code for Deferred Compensation Plans
  - Page 15: Start of section 457
  - Pages 15 and 16: Important definitions

Amounts deferred	Eligible employer
Annual deferrals	Eligible plan
Beneficiary	Participant (includes independent contractors)
Catch Up	Plan

  - The IRC does not define eligible employee—
    This is at the employer's discretion

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Basic Responsibilities

- **Enrollment**
  - Completion of Paper Form, On-Line, etc.
  - Designation of Plan/Funds
  - Payroll Deductions
  - Timing of Participation
    - Optional requirement
  - Disclosure Obligations
  - Auto-enrollment issues

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Basic Responsibilities

- **<u>Beneficiary/QDRO Administration</u>**
  - Policies and procedures
  - Required documents
  - Compliance with state laws
  - Provider coordination and oversight

IRS

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Basic Responsibilities

- Reference Material
  - Page 35
    - Sample QDRO form
    - Social Security Numbers will be required but may be provided on separate confidential form

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Basic Responsibilities

- **<u>457(b) Catch-Up Provisions</u>**
  - Three Years prior to Normal Retirement Age
  - Age 50+ Catch Up Provisions*
  - Age 60-63 Super Catch Up (optional)
  - Completion of Form
  - Calculation of Amount
  - Maximum Amount
    - Twice Annual Current Amount
    - Limited to underutilized contributions only
  - Termination/No Restart for Normal Retirement Age Catch-Up
  - Current Employer Only

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Basic Responsibilities

- Internal Revenue Code References
  - Normal Retirement Age, Page 19
    - A plan may define as the earlier of age 65 or the age at which participants have the right to unreduced benefits
    - Not later than age 70½
    - Special rules for qualified police and firefighters
      - May designate Normal Retirement Age earlier than general definition but not earlier than age 40
  - Normal Retirement Age must be defined in plan document

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Basic Responsibilities

- **403(b) Catch-Up Provisions**
  - Minimum 15 Full Years-of-Service
  - Total Cumulative Contributions do not exceed $5,000 times years of service
  - Special Catch-up Provision limited to $3,000 per year to max of $15,000 lifetime limit
  - Age 50+ and 60+ Catch-up Provisions
  - Participant must elect Catch-up
  - Calculation of Amount

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Basic Responsibilities

- **401(k) Catch-Up Provisions**
  - Age 50+ Catch Up Provisions Only

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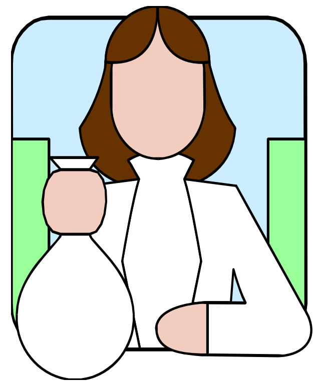
Basic Responsibilities

- **<u>Distribution Options</u>**
  - Termination of Employment
  - Retirement
  - In-service withdrawals
    - Unforeseen emergency withdrawals
    - Loans
    - De minimis
    - Disaster relief
    - Qualified birth and adoption
    - Domestic violence



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Basic Responsibilities

- Lump Sum Payments
- Systematic Withdrawal
- Annuity Payments
  - Lifetime
  - Joint Survivor
  - Minimum Distribution (Estate Conservation)
  - Time Specific
  - Amount Specific
- Required Minimum Distribution

Basic Responsibilities

- Plan "Leakage"
  - Distributions
  - Rollover to Individual Retirement Accounts (IRAs)
    - Takes on Qualified Taxation (Age 59½)
    - Loss of Economies of Scale
    - Predators
  - Rollout to Other Qualified Plans
    - Consolidation of Retirement Plans
    - Potential Loss of Economies of Scale
    - Takes on Qualified Taxation (Age 59½)

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Basic Responsibilities

- Reference material for participants considering rollovers:
  - Discussion of impact of fees on account balances, page one
  - Sample comparison checklist for participants considering rollover of funds, page 132

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Changing Employer Responsibilities

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Overview

- Small Business Job Protection Act
- IRS Interpretive Bulletin 96-1
- Economic Growth and Tax Relief Reconciliation Act (EGTRRA)
- Treasury Regulations
- Sarbanes-Oxley Act
- Pension Protection Act
- Worker, Retiree and Employer Protection Act
- Small Business Jobs Act of 2010
- DOL Regulations
- Prospective Legislation/Regulations
- DOL Regulations and Guidance
- Defense of Marriage Act
- Supreme Court Rulings
- Secure and Secure 2.0 Acts
- CARES Act
- Legislative Horizon

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Small Business Job Protection Act of 1996

- **The landscape has changed . . .**
  - Reaction to Orange County, CA financial difficulty
  - SBJPA created a structure
    - Trust
    - Custodian
    - Annuity
  - No standard of conduct

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Small Business Job Protection Act of 1996

- Fiduciary by **Title** (Trustee)
  - DC Committee
  - Board of Supervisors
- Fiduciary by **Conduct** (discretionary control)
  - Staff/Others

Summary of SBJPA and TRA '97, page 36

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Poll Everywhere

Do you consider yourself a fiduciary?

40

Who Is a Fiduciary?

- The Employees Retirement Income Security Act of 1974 (ERISA) defines a fiduciary as any person who has any power of control, management, or disposition over the funds or other property of any employee benefit plan.
- ERISA made fiduciaries personally liable for their actions and Taxpayer Relief Act of 1997 made forfeiture of personal account assets the result of fiduciary breach.
- While ERISA does not apply to public sector plans, it is widely viewed as the primary resource for best practices.

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Fiduciary Duties

Summary of Duties

- Duty of Loyalty
- Duty of Prudence
- Duty of Diversification
- Duty of Administration in Accordance with Policies

RPA 2
Module 10
Objectives
1-4

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Fiduciary Duties—Questions

- Fundamental Question of Fiduciary Duty
- When to keep it?

vs.

- When to appropriately delegate it?
- Can you delegate it?
- Delegating task, not responsibility

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Fiduciary Responsibility— Nine Practical Steps

1. Comply with Federal/State Laws
   – Current Laws
   – New Legislation
2. Develop Investment Policy
3. Procedure—Select/Remove
   – Vendors/Vendor Representatives
   – Investments

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Fiduciary Responsibility— Nine Practical Steps

4. Establish Performance Monitoring Procedure
   – Benchmark indices
5. Educate/Communicate
   – Plan restrictions
   – Investment options
6. Make Consistent Decisions

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Fiduciary Responsibility—Nine Practical Steps

7. Due Process to Resolve Disputes
8. Require Periodic Audit
   – Independent Financial Audit
   – Compliance Audit of Contractors

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Fiduciary Responsibility—Nine Practical Steps

9. Meet Minimum ERISA 404(c)—
   "Safe harbor" Requirements
   – Offer Three + Diverse Investment Options
   – Vary Risk and Return Characteristics
   – Exercise Due Diligence over Investment Decisions
   – Allow Periodic Investment Change
   – Communicate Information
   – Monitor Investment Performance

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Fiduciary Responsibility— Reference Materials

- White paper describing fiduciary responsibilities and how to address them, page 54
- NAGDCA Publication—*Fiduciary Responsibility,* page 85

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Education/Guidance/Advice

Education vs. Fiduciary Liability

Education/Guidance/Advice

What happens as you move in this direction?

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Interpretative Bulletin 96-1

- Issued by Department of Labor
- Differentiates between Education/Guidance/Advice
- Concept of Diverse Funds (Diversification)
- Guidelines
  - Plan Information
  - Financial/Investment Characteristics
  - Asset Allocation Models
  - Interactive Investment Materials
- If information is provided above and beyond DOL guidelines, you may be entering Advice territory

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Interpretative Bulletin 96-1

- Reference Materials
  - Full copy of Interpretative Bulletin 96-1, page 116

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Economic Growth and Tax Relief Reconciliation Act

- 457 Plans looking like 401(k) and 403(b)
- Maximum Contribution changed based on CPI
- Introduces Portability to/from other plans
- Expands Catch-up Provisions
- Permits Purchase of DB Service
- Expands Distribution Options

RPA 1
Module 8
Objective 3

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Economic Growth and Tax Relief Reconciliation Act

- Maximum Contributions
  - 2002-2023—$11,000-$22,500
  - 2024—$23,000
  - 2025—$23,500
  - 2026—$24,500
- Indexed
  - $500 (CPI)
- Traditional Catch-up allowed, up to double the annual contribution limit, for underutilized contributions

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Economic Growth and Tax Relief Reconciliation Act

- Additional Amount—50+ Catch-up
  - 2002-2006—$1,000-$5,000
  - 2007-2008—$5,000
  - 2009-2014—$5,500
  - 2015-2019—$6,000
  - 2020-2022—$6,500
  - 2023-present—$7,500
- Exclusion from Traditional Catch-up

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Economic Growth and Tax Relief Reconciliation Act

- **Expanded Portability**
  - Transfer **to** Other DC Plans
    - 401(k)/403(b)/457
    - Tax Treatment **to** Other Plans
  - Transfer **from** Other Plans
    - 401(k)/403(b)/457
    - Separate Accounting

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Sarbanes—Oxley Act of 2002

- **Black-Out Periods, Provider and/or Fund Changes**
  - Reaction to Enron
  - 30 Day Advance Notice
  - Suspended, Limited, Restricted more than Three (3) Consecutive Days
    - Directing/diversifying investments
    - Obtaining plan loans
    - Obtaining plan distributions

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457 Treasury Regulations—2003

- **Key Provisions**
  - Confirmed Loans may be offered
  - Defined Includible Compensation
  - Clarified Catch-up Provision
  - Addressed Deferrals—Sick/Vacation/Back Pay
  - Modified Unforeseen Emergency (Hardship) Criteria

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457 Treasury Regulations—2003

- **Loan Provisions**
  - Treasury Ruling
  - Plan Document Must Specify Loans
  - Administrative Considerations
  - Conditions of Loan
    - Maximum amount generally 50% of account value or $50,000, whichever is less
  - Pay Back
    - General loan up to five-year repayment
    - Primary Residence Real estate up to 20-year repayment

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401(k) Regulations—2004

- Released in 2004
- Addressed various issues such as:
  - Contribution rules
  - Safe harbor plan rules
  - Nondiscrimination rules

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2006 Pension Protection Act

- Made EGTRRA Permanent
- Funding reform for private sector DB plans
- New ERISA fiduciary safe harbors for DC plans
  - Automatic enrollment
  - Default investment options
  - Investment advice

61

2006 Pension Protection Act

- Public safety employee provisions
  - Tax-free distributions for health/long-term care premium payments
  - Waiver of early withdrawal penalty at age 50
- New hardship/unforeseen emergency withdrawal flexibility for 457, 401(k), 403(b) plans
- Purchase of permissive service credits
- QDRO rules clarified

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Guidance Issued

- Notice 2007-7 provides guidance on distribution provisions
- DOL Guidance for ERISA plans
  - Field Assistance Bulletin No. 2006-03 on pension benefit statements
  - EBSA Proposed Rule on Qualified Default Investment Alternatives (QDIA)

63

403(b) Regulations

- Final regulations received in 2007
- Introduction of Plan Document Requirement
- Due Diligence and Fiduciary Responsibility
- Impact on Multiple Provider Relationships
- 2009 Implementation Delayed to 2012
- 2012 Summary of Employer Implementation

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Worker, Retiree and Employer Protection Act of 2008

- Suspends 2009 Required Minimum Distributions
- 401(a) Five Year Period for Distributions to Beneficiaries do not need to include 2009
- Distributions treated as required minimum contribution not treated as required rollover distribution in 2009
- Amendments to rules is effective after 12-31-08

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Small Business Job Act of 2010

- Creates Roth 457(b) option
- Transfer eligible rollover distributions into Roth
- DOL Definition of a Fiduciary
  - When advice becomes a fiduciary act
  - Who is a fiduciary
  - Fee disclosure requirements (ERISA)
    - Prior to contributions and annually thereafter
    - Included in quarterly statements ($/Services)

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Small Business Job Act of 2010—Roth 457(b)

- Allows participants to make after-tax contributions to a designated Roth account in the 457(b).
- Choice to make contributions on an after-tax basis under the Roth 457(b), on the current pre-tax basis, or a combination of the two.
- Contribution limits are applied to the combined pre-tax and Roth 457(b) after-tax employee contribution amount.
- Distributions from the Roth 457(b) will be tax-free for federal income tax purposes if they are Roth Qualified Distributions.

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Roth 457(b) *(continued)*

- Distributions from the Roth 457(b) will be tax-free for federal income tax purposes if they are Roth Qualified Distributions. To be "Qualified Distributions," conditions must be met:
  - Funds must be held for a five-year holding period, measured from the earlier of (A) the first year that contributions were made on behalf of the participant to any Roth 457(b) account in the employer's plan, or (B) if a direct rollover contribution was made to the Roth 457(b), the first year a Roth contribution was made to the 457(b) account from which the direct rollover contribution originated or the first year of a Roth in-plan conversion.

  AND

  - The participant must have also died, become disabled, or attained age 59½

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DOL 408(b)(2) Regulation

- **<u>Covered Service Provider (CSP) Fee Disclosure</u>**
  - ERISA requirement—Public Sector voluntary compliance
  - Private Sector CSP fee disclosure to Plan Sponsor
  - Disclosure of all hard and soft compensation
  - Effective July 1, 2012 and annually thereafter
  - Public Sector best practice

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DOL 404(a)(5) Regulation

- **<u>October 2010 Regulation Release</u>**
  Disclosure of fees to Participants by retirement plan service providers
  - Reflects DOL's view that ERISA requires plan fiduciaries to ensure that participants be provided with "sufficient information" to make informed investment decisions.
  - Two types of information must be disclosed to participants:
    - Plan-related
    - Investment-related.
  - Must comply by August 2012 (for calendar year plans)

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DOL Legislation/Regulations 2010

- DOL Target Date Fund Rules
  - SEC requirements on definition of “glide path”
  - Disclosure of asset allocation on fund date
  - “Prominent” table/graph asset allocation over lifetime of fund
  - Risk disclosure requirement
- Wall Street Reform and Consumer Protection Act of 2010
  - Study of Stable Value Contracts
  - New Consumer Financial Protection Bureau

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DOL Legislation/Regulations 2010

- DOL proposed the SEC Eliminate of 12b-1 Fees
  - Limiting fund sales charges
  - Create better transparency of fees
  - Encourage price competition
  - Revise fund director oversight duties
- DOL proposed regulations for investment advice
  - Creation of “level fee” requirement
  - Selection by plan fiduciary
  - Certified/unbiased computer model
  - Investment fees not based on recommendations
  - Annual audit of investment advice arrangements

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DOL Legislation/Regulations 2010

- Lifetime Income Options (Treasury/Labor)
  - Safe harbor for selection of annuity providers
  - Making annuities portable
  - Illustrating distribution options for participants

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Poll Everywhere

Do you have target date funds in your plan?

74

DOL Target Date Fund 2013

- Establish a process for comparing and selecting TDFs and for the periodic review of such TDFs;
- Understand the fund's allocation of asset classes, and in particular, the fund's intended glide path over time;
- Review the fund's fees and investment expenses;
- Explore the range of TDFs that are available;
- Develop effective communications so that your participants understand the nature of investing in TDFs including fees, the fund's asset allocation, and glide path.

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DOL Fiduciary Ruling 2016

- Issued Standards to Benefit Participants
  - Retirement Plans Investment Advice
  - Higher Standards
  - Client Interest First
  - Written Best Interest Contract Exemption (BICE)
- Repealed by President, 2018
- Many requirements were already implemented and remain in place, even after repeal
- Vacated by DOL after Fifth Circuit Court ruled no jurisdiction

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DOL Cybersecurity Guidance 2021

- The U.S. Department of Labor (“DOL”) issued a cybersecurity guidance package directed to plan sponsors.
  - The U.S. Government Accountability Office (“GOA”) recently urged DOL to issue guidance presented in three separate documents:
    1. Tips for Hiring a Service Provider with Strong Cybersecurity Practices
    2. Cybersecurity Program Best Practices
    3. Online Security Tips
- Trends in retirement plan cybersecurity protocols
  - Online participant account registration
  - Multifactor authentication for both plan sponsor and plan participants
  - Monitor recordkeeper’s breach mitigation process

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30 Years of History: DOL and ESG

Department of Labor

Five DOL Guidance Documents:

- Five Different Presidents:
  - Bill Clinton—1994
  - George W. Bush—2008
  - Barack Obama—2015
  - Donald Trump—2018
  - Joe Biden—2022
  - Donald Trump–2025

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DOL Field Assistance Bulletin No. 2018-01—Effective 1/12/20

- Explains an ESG (environmental, social and governance) targeted investment broadly refers to any investment that is selected in part for its collateral benefits, apart from its investment return—(Non-pecuniary)
- Plan fiduciaries are not permitted to sacrifice investment return or take on additional investment risk as a means of using plan investments to promote collateral social policy goals.
- ESG-related investments cannot be Default Investment Option (QDIA)
- Plan Sponsor cannot vote proxies based on non-pecuniary policy issues not specifically aligned with "best interest of Participant."

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President Biden Issued the Executive Order on Climate-Related Financial Risk in May 2021

Executive Order Asks DOL to Consider Rescinding Last Rule on ESG Investing

Department of Labor

"Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights"

109 Pages

Final Regulation was issued in 2022

DOL Review Cited Concerns that Trump Rule:

- **Confused fiduciaries, chilled investment in "appropriate" ESG vehicles, and**
- **Created a false "perception that fiduciaries are at risk" selecting ESG investments**
- **DOL announced in March that it will suspend enforcement of Field Assistance Bulletin No. 2018-01**
  - **Rule still exists, but it will not be enforced**

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FINAL DOL Regulations 2022

The final rule as adopted by the DOL amends Treasury Regulation Section 2550.404a-1, under Section 404 of ERISA, to clarify the fiduciary duties of prudence and loyalty as applied to investment selection and to reverse and modify certain prior amendments.

1. **Non-Pecuniary Factors May Be Considered**.
2. **Investment Decisions to Be Based on Factors Relevant to Risk and Return Analysis**.
3. **QDIA Investment Objectives May Be Non-Pecuniary**.
4. **Fiduciaries May Consider Non-Pecuniary Factors Even if Investment Options Are Not Indistinguishable Based on Pecuniary Factors Alone**.
5. **Fiduciaries May Consider Participant Preferences for Investment Options**. The final rule adds a provision that expressly permits fiduciaries to take participants' preferences into account when constructing a menu of investment options for participant-directed individual account plans

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Proposed DOL Regulations 2025

The **U.S. Department of Labor (DOL)** has recently announced plans to **withdraw the Biden-era ESG rule** and engage in **new rulemaking**. This decision follows legal challenges from **26 Republican attorneys general**, who argued that the rule **overstepped ERISA authority** and undermined retirement savings protections.

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ESG Funds Key Takeaways

- ESG is complex and evolving—It is not an asset class, but an additional screen for asset classes
  - U.S. Large company, midsize company, small company
  - U.S. Fixed Income or Bonds
  - International stock or bond
- No single way to evaluate investments—Ratings are imperfect and backward-looking
- ESG in the fund name does not necessarily make it a better sustainable investment. Track Record, benchmarks, and expense ratios are also very important.

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Recent Supreme Court Rulings

- Tibble vs. Edison International, 2015
  - Relates to Share Class/Expenses
  - Requires Ongoing-Monitoring of Funds
  - Built on Case Law/Not ERISA
  - Best Practice for Non-Qualified Plans
- Hughes v. Northwestern University, 2022
  - Fiduciaries failed to monitor and control recordkeeping fees, resulting in plan participants paying unreasonably high fees;
  - Investment options in higher-priced retail share classes were offered, when identical investments with lower fees were available; and
  - Fiduciaries offered numerous investment options, which has been shown to confuse investors and result in poor retirement financial planning behavior.

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SECURE Act 2019

- Setting Every Community Up for Retirement Enhancement (SECURE)
- Mandatory
  - Required Minimum Distribution (RMD) from age 70½ to age 72*
- Permissive
  - Inservice Distribution at age 59½
  - Allow a birth-or-adoption distribution up to $5,000
  - Allow a disaster distribution up to $100,000
- Communication Issue/Plan Leakage

*The SECURE 2.0 Act has scheduled an increase in the RMD age to 75, but that chance won't take effect until 2033

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CARES Act of 2020

- Coronavirus Aid, Relief and Economic Security (CARES) Act
  - Allowing withdrawals up to $100,000 for qualified individuals, with the option for the participant to pay the withdrawal back or to pay tax over a three-year period
  - Increasing plan loan limits to $100,000 or 100% of their account, whichever is less
  - Allowing qualified individuals with existing loans to delay loan repayment for up to one year
  - Waiving required minimum distributions (RMD) for 2020
- Plans must be amended by 12/31/26

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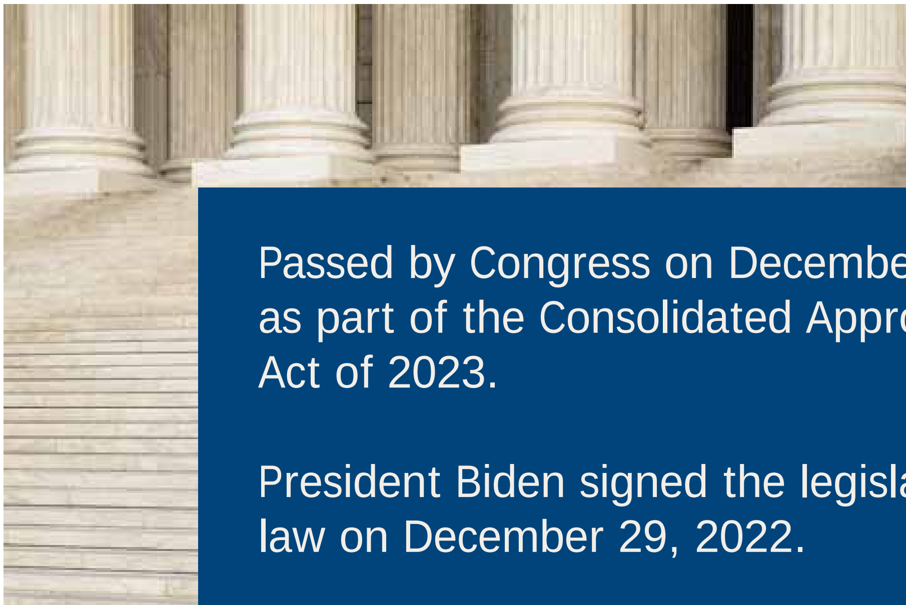
SECURE Act 2.0



Passed by Congress on December 23, 2022, as part of the Consolidated Appropriations Act of 2023.

President Biden signed the legislation into law on December 29, 2022.

SECURE Act 2.0

Provisions already in place

Provision (Bill Section Number)	Description	Effective Date	Optional or Mandatory
Required minimum distribution age increase (§107)	Increases the RMD age from 72 to: 73 starting in 2023 75 starting in 2033	12/29/2022	**Mandatory**
Qualified birth and adoption distributions (QBADs) repayment (§311)	Amends the QBAD provision to limit the recontribution period to three years from the date the distribution was received.	12/29/2022	**Mandatory**
Distributions for individuals with terminal illness (§326)	An exception to the 10% early withdrawal tax for qualified distributions to individuals who have a terminal illness. (Does not create new distribution right—EE must qualify under an existing rule.)	12/29/2022	**Mandatory**

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SECURE Act 2.0

Provisions enacted effective upon passage 12/29/2022

Provision (Bill Section Number)	Description	Effective Date	Optional or Mandatory
Special rules for federally declared disasters (§331)	Participants affected by a federally declared disaster are permitted to take a penalty-free qualified disaster recovery distribution of up to $22,000. Amounts can be recontributed within three years.	12/29/2022	**Mandatory**
Eliminate the "first day of the month" requirement for governmental 457(b) plans (§306)	Eliminates the "first day of the month" rule for 457(b) plans allowing participants to start/change contribution amount at any time prior to the compensation being paid.	12/29/2022	**Optional**
Employer may rely on employee certifying that hardship distribution conditions are met (§312)	Allows a plan administrator to rely on an employee's self-certification that they have had a safe harbor event for purposes of taking a hardship withdrawal from a 403(b) plan. A similar rule applies for purposes of unforeseeable emergency distributions from Section 457(b) plans.	12/29/2022	**Optional**

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SECURE Act 2.0

Provisions enacted effective upon passage 12/29/2022

Provision (Bill Section Number)	Description	Effective Date	Optional or Mandatory
Treatment of ER matching or nonelective contributions as Roth contributions (§604)	Permits 403(b) and 457(b) plan participants to designate Employer contributions as Roth (post-tax) contributions.	12/29/2022	**Optional**

91

SECURE Act 2.0

Provisions enacted effective 1/1/2024

Provision (Bill Section Number)	Description	Effective Date	Optional or Mandatory
Student loan payments eligible for matching contributions (§110)	Permits a plan sponsor to make matching contributions based on an employee's student loan payments.	1/1/2024	**Optional**
Early withdrawal penalty exception for certain emergency expenses (§115)	Permits employees to withdraw up to $1,000 per year for personal or family emergency expenses with no early withdrawal penalty. Withdrawal may be repaid. (Only one withdrawal per 3-year repayment period is permitted if the first withdrawal has not been repaid.)	1/1/2024	**Mandatory**

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SECURE Act 2.0

Provisions enacted effective 1/1/2024

Provision (Bill Section Number)	Description	Effective Date	Optional or Mandatory
Domestic abuse victim distributions (§314)	Permits employees to take a penalty-free withdrawal of the lesser of $10,000 or 50% of the employee's vested account balance.	1/1/2024	**Optional**
Roth plan distribution rules (§325)	Eliminates required minimum distributions (RMDs) for Roth accounts in 403(b) and 457(b) plans.	1/1/2024	**Mandatory**
403(b) hardship withdrawal rules aligned with 401(k) (§602)	403(b) hardship distributions may now be taken from non-elective employer contributions, employer matching contributions and earnings on these contributions (including elective deferrals).	1/1/2024	**Mandatory**

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SECURE Act 2.0

Provisions enacted effective 2025 and 2026

Provision (Bill Section Number)	Description	Effective Date	Optional or Mandatory
Higher catch-up contribution limits at ages 60, 61, 62, and 63 (§109)	Increases the limit on catch-up contributions for individuals age 60-63 to the greater of: i.$10,000 or ii.150% of the regular catch-up amount for 2025 (indexed for inflation). $11,250 in 2025	1/1/2025	**Optional**
Elective deferrals generally limited to regular contribution limit (§603)	Catch-up contributions made to a 403(b) or 457(b) plan must be made as Roth (post-tax) contributions for participants who earned $145,000 or more in the previous tax year (indexed for inflation).	1/1/2026	**Mandatory**

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SECURE Act 2.0

Provisions requiring extra attention

Roth Catch-up Contributions

- *Roth must be permitted to accommodate catch-up contributions.*
- *Will need salary YTD in Demographic file to verify income over/under $145,000.*
- *Effective 1/1/2026*

Roth Employer Contributions

- *How will withholding be handled?*

Emergency Expenses Distribution

- *Will require YTD contribution tracking. (Only one withdrawal per three-year repayment period is permitted if the first withdrawal has not been repaid.)*

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Key Takeaways

- Primary/Secondary Retirement
- Important Recent Changes
  - Impact on Employer Strategies
  - Impact on Responsibility/Liability
  - Impact on Participants/Portfolio Design
- IRS/Employer Requirements
- Breadth/Complexity of Requirements
- Frequency/Complexity of Changes
- Impact on Individuals/Plan

96

Employer Trends in Meeting New Responsibilities

97

Small Group Exercise

In what area(s) of this benefit would you like to make the most improvements in your plan?

98

Poll Everywhere

Who manages these responsibilities in your organization?

99

Overview

- Functional Organization
- Managing your Responsibilities
  - Finance/Human Resources
  - Financial Resources
- Using Marketplace Competition

101

Functional Organization

- Discretionary Areas
- Impact on Participants
- Compliance with Requirements
- Cost Efficiency/Effectiveness

102

Functional Organization

- <u>Composition of Committee</u>
  - Committee Size
  - Skill/Knowledge
  - Representation
    - Employees/Retirees
    - Labor/Management
    - Departments
  - Commitment
  - Support Staff

103

Functional Organization

- **<u>Committee Operation/Conduct</u>**
  - Frequency of Meetings/Attendance
    - Meeting Minutes—IRS Audit
  - Familiarity (Plan Documents/Investments)
  - Knowledge
    - General Investments
    - Investment Strategies
    - Plan Documents
    - Optional Plan Provisions
  - Awareness—Conflict of Interest

104

Functional Organization

- **Committee Operation/Conduct**
  - Contractors and Provider(s) Interaction/Coordination
  - Agent/Representative Authority
  - Establishing/Monitoring Performance Standards

Fund Performance Review	Reporting Requirements
Legislative Developments	Surveys and Feedback
Educational Requirements	Transition Responsibilities
Participant Services	Financial Guarantees

Performance Standards and Guarantees Reference Material pages 129-131

105

Functional Organization

- **Training**
  - Internal Training
  - External Training
  - IFEBP/InFRE/NAGDCA
  - Other Associations

106

Managing Your Responsibilities—Conflict of Interest

- External (Financial)
- Statement of Economic Interest
  - Annual Filing
  - Public Document
- Internal
  - Union Affiliation/Plan Responsibility
  - Management-Employer/Plan Responsibility

107

Conflict of Interest Checklist

- Are state or local conflict of interest provisions applicable to decision-makers?
- Are decision-makers notified of their adherence to conflict of interest provisions, both initially and ongoing?
- Are decision-makers required to attest to potential conflict of interest?

108

Managing Your Responsibilities—Liability Protection

- Defense of public employees by the public employer
- Indemnification of public employees by the public employer
- Potentially no punitive damages

109

Liability Protection Checklist

- How does the employer define decision-maker responsibility (part of employment)?
- How will employer respond to participant actions (complaints/suits)?
- How are individual punitive damages addressed?
- How are new/current decision makers notified of employer stance?

110

Management of Responsibilities—Liability Protection

- Fiduciary Liability Insurance
- Waiver of Recourse
- Organizational Options/Considerations

111

Managing Your Responsibilities—Sunshine Laws

- Definition
- Structure of Decision Making
  - Must ensure compliance with Sunshine Laws
- Internal Counsel Recommendations
- Impact on Decision Making
  - Applicability to Committee
  - Strategic Issues

112

Sunshine Law Checklist

- Are decision-makers subject to state/local sunshine provisions?
- Are sunshine provisions communicated to new/current decision-makers?
- Are notices provided to the public regarding meeting times/actions?
- Are mechanisms in place to assure compliance with sunshine provisions?

113

Sunshine Laws—Reference

- Summary of California's Brown Act

114

Managing Your Responsibilities—Financial Resources

- New Responsibilities—Additional Cost
- Financial Status of Public Sector
- Utilizing Plan Assets
- Identifying Employer Costs
  - Education/Training
  - External/Neutral Experts
  - Internal Administration
- Sample Budget Worksheet

115

Managing Your Responsibilities—Financial Resources

- Reference Materials
  - Excerpt from "Defined Contribution Decisions: The Education Challenge"—*Funding Employer Costs*
    - Page 119
  - Sample Administrative Budget Worksheet
    - Includes all allowable costs of administering the program
    - Page 123

116

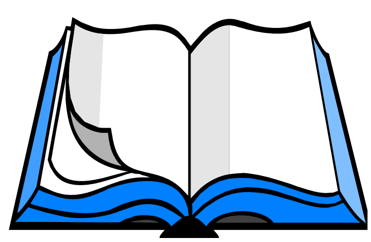
Financial Resources Checklist

- Have annual expenses been identified which are appropriate for plan compliance?
- Are annual expenses reviewed regularly to assure sufficient/not excessive?
- Has the employer established a policy regarding plan expenses?
- Has employer explored paying all plan expenses from the plan?

117

Managing Your Responsibilities—Key Areas

- **<u>Plan Document</u>**
  - Plan Obligations/Permissive Options
  - Participant Access
  - Coordination with Provider
    - Provider Model Documents
    - Customized Employer Documents
  - Maintaining Compliance



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Plan Document Checklist

- Is the plan document regularly reviewed?
- Is the plan document review coordinated with the provider(s)?
- Is responsibility for plan document compliance established?
- Is plan document information available to participants?
- Are decision-makers trained on plan document requirements?

119

Managing Your Responsibilities—Key Areas

- **<u>Investment Policy</u>**
  - Investment Options
  - Policy Standards
  - Evaluative Procedures
  - Basis for Ongoing Employer Scrutiny
  - Participant Accessibility/Education

GBA/RPA 3
Module 3
Objective 2

120

Investment Policy Checklist

- Is the policy regularly reviewed? By whom?
- Are the policy provisions coordinated with the provider(s)/investment reviews?
- Is responsibility for investment policy compliance established?
- Is the investment policy available to participants?
- Are decision-makers trained on policy provisions/characteristics?

121

Managing Your Responsibilities—Key Areas

- **Participant Education**
  - Informational Meetings
  - Individual Meeting Protocols
  - Disclosure Statements
  - Internet Informational Sources
  - Communication Standards
  - Communication Content

122

Managing Your Responsibilities—Key Areas

- **<u>Education/Communication</u>**
  - – Creation of Education Policy Statement
  - – Goals and Objectives
  - – Plan Participation
  - – Investment Options/Participation
  - – Percentage of Equity/Fixed
  - – Deferrals Relative to Salary

Resource: *Sample Education Policy, page 157*

123

Participant Education Checklist

- Has an Education Policy been adopted?
- Has an education plan been developed?
- Have various media been considered for communication?
- Has education frequency been determined?
- Have education goals been established?
- Has employer preference for guidance/advice been addressed?
- Are education reviews conducted?

124

Managing Your Responsibilities—Key Areas

- **Legislative Monitoring**
  - Vendors/Providers
  - IFEBP/NAGDCA
  - Internal/External Counsel
  - Consultants
- Variances between Federal and State Laws
- Modification of Plan Documents
- Notification
  - Committee Members
  - Participants

125

Legislative Monitoring Checklist

- Are decision-makers kept apprised of pending/enacted legislation?
- Are legislative changes part of routine decision-maker education?
- Are legislative changes communicated to plan participants?

126

Managing Your Responsibilities—Key Areas

- **457 Unforeseen Emergency Withdrawals**

  Secure Act 2.0—Employee can self certify

  – Unforeseen/beyond participant's control

  – Resulting from illness, loss of property or similar situation

  – Situation related to spouse, dependent and/or beneficiary can be considered

  – 457 must be only available alternative

127

Managing Your Responsibilities—Key Areas

- **457 Unforeseen Emergency Withdrawals**

(continued)

  – Imminent foreclosure or eviction are automatic qualifiers for withdrawal

    - However, allowable to "gross-up" withdrawal amount

  – Imminent foreclosure or eviction are automatic qualifiers for withdrawal

Reference Materials for Unforeseen Emergency Withdrawals
IRS White Paper—*Hardships vs. Unforeseeable Emergency,* page 125

128

Managing Your Responsibilities—Key Areas

- **457 Unforeseen Emergency Withdrawals**

  (continued)
- Under Secure 2.0, Plan Sponsor may allow employees to self-certify that they meet the IRC criteria for emergency withdrawals
  – Not all record keepers are equipped to accommodate this change

129

Managing Your Responsibilities—Key Areas

- **403(b)/401(k) Hardship Withdrawals**
  – Non-Reimbursed Medical Expenses
  – Purchase of Principal Residence
  – Funeral Expenses for Immediate Family
  – Post-Secondary Education Tuition
  – Prevention of Eviction or Foreclosure
  – Situation relating to beneficiary can be considered
  – No Unforeseeable Emergency test—Easier to get money than 457

130

Poll Everywhere

Does your plan allow hardship or unforeseeable emergency withdrawals?

131

Poll Everywhere

Who reviews participant applications?

133

Managing Your Responsibilities—Key Areas

- Key Elements of Unforeseen Emergency Application
- Application Requirements
- Application Attachments/Documentation
- Sample Checklist

135

Managing Your Responsibilities—Key Areas

- **Unforeseen Emergency Objectives**
  - Core Responsibility
  - Consistent Actions
  - Appropriate Notification
  - IRS Audit

136

UE Withdrawal Application Checklist

- Are unforeseen emergency applications in compliance with current provisions?
- Has primary responsibility for unforeseen emergency processing been established?
- Are decision-makers provided education on unforeseen emergency criteria/consistency?
- Are participants provided education and information on criteria for withdrawal?

NAGDCA Best Practices

- September 2013 Guidelines
  – Plan Administration
  – Plan Governance
  – Plan Design
  – Communications/Participants Education
  – Plan Sponsor Education
  – Transition

Reference Material, page 167 *NAGDCA Best Practices Guides*

Using Marketplace Competition—Overview

- Bundled vs. Unbundled
- Single vs. Multiple Providers
- Performance Criteria
- Employer Impact on Selection
- Request for Proposal Process
- Contract Renewals
- Participant Impact

139

Provider Selection—Bundled vs. Unbundled

- Size
- Administrative Considerations
- Fee/Financial Considerations
- Fund Selection
- Performance Evaluation
- Educational Responsibility

140

Provider Selection—Single vs. Multiple Providers

- Choice/Diversity of Options
- Dilution of Economies of Scale
- Administration/Communication
- Competition
- "Most Favored Nation" Clauses

141

Provider Selection—Performance Criteria

- Fund Performance
- Administrative Requirements
- Education Requirements
- Financial Requirements
- Reporting Requirements
- Customer Service Requirements

Reference Material, page 129 *Performance Standards & Guarantees*

142

Provider Selection—
Employer Impact on Selection

- Employer and Plan Size
- Economies of Scale
- Reduced Fees
- Improved Participant Returns

143

Provider Selection—
Request for Disclosure (RFD)

- Employer Familiarity with Current:
  - Contract Specifics
  - Investment Options/Fees
  - Ancillary Products
- Benefit of Using RFD
  - Accurate Snapshot of Current Offerings
  - Baseline—Current/Prospective Offerings
  - Highlights Issues/Possible Changes
  - Substitute for RFP (Retaining Incumbents)

144

Provider Selection—
Request for Disclosure (RFD)

- Education
  - On Site/Internet/Print
- Information Reporting
  - Demographics/Balances
- Provider Evaluation
  - Education Services/Performance

145

Provider Selection—
Contract Renewals/Renegotiations

- Expectations
- Multi-Year Guarantees
- Performance Standards
- Solicitation of RFPs
- Deferred Sales Charges

146

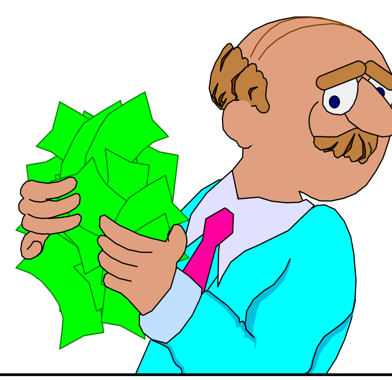
City of “A” Actual Renegotiations

- Reduction of 25 bps Administration Fee to zero
- Addition of investment information and advice program
- Customized City of “A” website
- Increase Stable Value fund by 5 bps

147

City of “A” Renegotiations

- First year net savings from combined providers=$217,600
- Administration Reduction=$329,500
  - Split pro-rata annually
  - Increased annually by CPI growth
  - Payable quarterly



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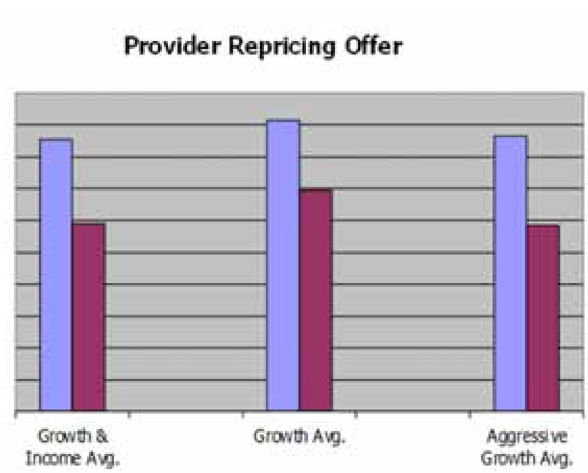
City of "A" Renegotiations

- Estimated savings over contract period=$3.7 million
- 9,449 Provider "A" participant accounts
- 2,934 Provider "B" participant accounts

149

County of "B" Renegotiations

- Investment Portfolio Remains the Same
- Next Tier Pricing
- Eliminate Deferred Sales Charge with Five Year Contract
- Significant Fee Reductions—Average 24%



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County of "B" Renegotiations

- Average Reduction in Fees, Charges and Expenses of 20%
- Elimination of Deferred Sales Charges of $330,000
- Savings of $28,300 Annually
- Estimated $210,000 over five Year Contract Period

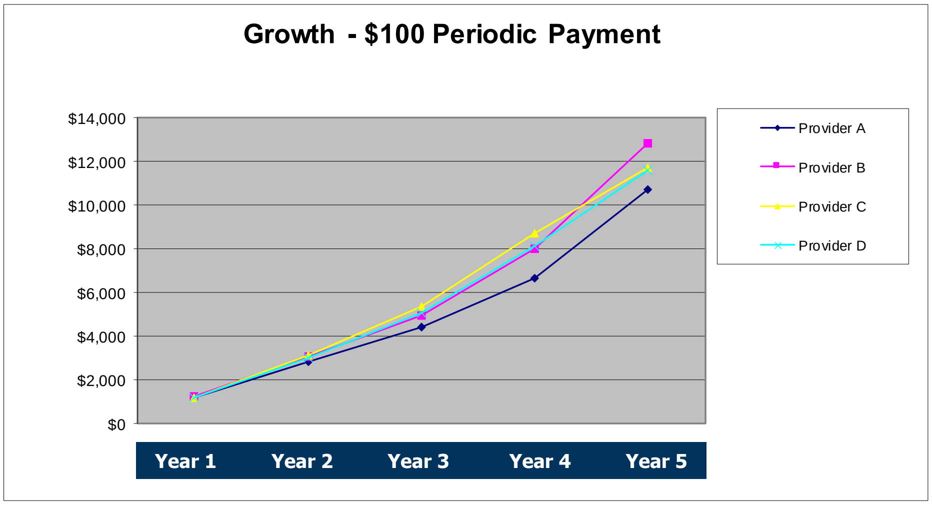
151

Provider Selection—Request for Proposal (RFP) Process

- Net Return to Participant
- Provision of Broad Investment Options
- Asset Class Variations
- Self-Directed Brokerage Option
- Broad Participant Access
- Summary Reports (Participant/Employer)
- Transactional Options
- Customer Service

152

Net Return to Participant



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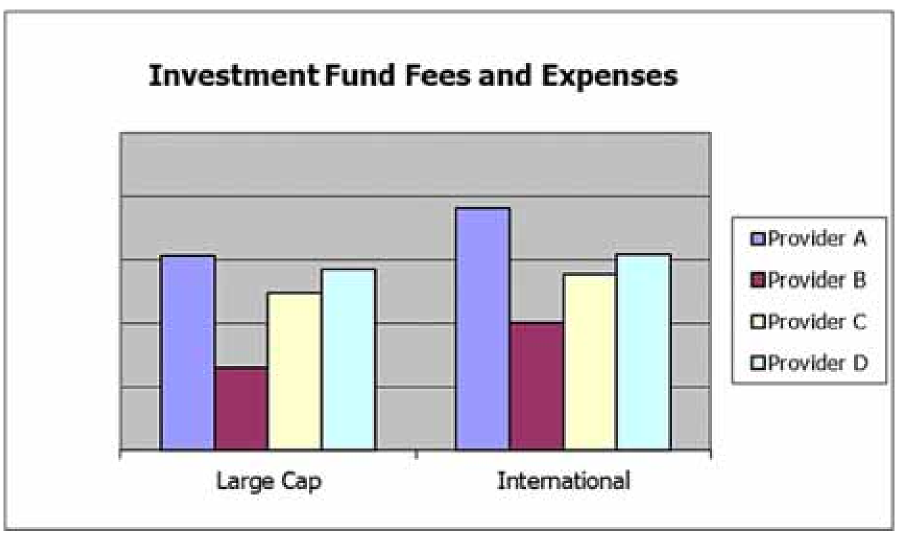
Net Return to Participant



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Provider Selection—
Request for Proposal (RFP) Process

- Net Return to Participant
- Provision of Broad Investment Options
- Asset Class Variations
- Self-Directed Brokerage and Roth Options
- Broad Participant Access
- Summary Reports (Participant/Employer)
- Transactional Options
- Customer Service

155

Provider Selection—Participant Impact

- Opportunities
  - Improved Investment Options
  - Improved Net Return
  - Enhanced Service
- Challenges
  - Disruption of Investments
  - Transition Disruption
  - Educational Needs

156

Key Takeaways

- Employers—Different Stages
  - Understanding New Responsibilities
  - Establishing Employer Strategies
- Increasing Attention on Changes
  - External Information
  - Internal Pressures
- Employer Transitional Phases

Your Feedback Is Important. Please Scan This QR Code.

Day One Evaluation

157

Day One Wrap-Up

- Questions
- Case Study Preparation

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