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Governmental 403(b) Plans: Opportunities and Challenges

David N. Levine

GROOM LAW GROUP

Key Topics

- Basics and Unique Features
- Current Regulatory Landscape
- Action Item: Key Challenges
- Action Item: Key Opportunities

Basics and Unique Features

- Not A 401(k) Plan – But Close!
- Basic Key Distinctions
 - Eligible Employer: Who Can Maintain A 403(b) Plan
 - Eligible Employee: Who Can Participate In A 403(b) Plan
 - Permissible Investments
 - Annuity Contracts
 - Registered Investment Funds
 - Other?
 - Potential Change: Retirement Security and Savings Act

Basics and Unique Features

- Governmental Versus Tax-Exempt Organization 403(b) Plans
 - Governmental – Almost Always Not Subject To ERISA
 - How ERISA Could Apply
 - What Law Applies Instead?
 - Tax-Exempt Organization – ERISA?
 - The Department of Labor Safe Harbor
 - The Practical Landscape – What To Look For With Clients
 - Impacts on Key Documents
 - Impacts on Operations

Basics and Unique Features

- Common Service Providers
 - The Basics: Potentially More Than In A 401(k) Plan
 - TPAs And Recordkeepers – One Or Multiple
 - Investment Providers
 - Sometimes Same As TPA And Recordkeepers . . . Sometimes Not
 - Role Of Multiple “Funding Agents”
 - Sorting Through The Terms

Basics and Unique Features

- Some Unique 403(b) Compliance Features
 - Universal Availability – How It Works
 - Recent IRS Guidance
 - Definition Of “Compensation” – Especially For Testing Purposes
 - Former Employees And Post-Termination Compensation
 - Definition Of “Severance From Employment”
 - Calculation Of “Years of Service”
 - 403(b) Catch-Up Contributions
 - The “Code” Versus “ERISA” Rules

Current Regulatory Landscape

- Where We Stand
 - More Compliance Requirements Than Ever
 - The Modern Era – 2007 – Present
- Key Pieces Of Guidance
 - 2007 IRS Regulations
 - Department Of Labor Field Assistance Bulletins
 - Supplemental IRS Guidance – And Plan “Qualification” Process

Current Regulatory Landscape

- Areas Of Focus
 - “Safe Harbor” Non-ERISA 403(b) Plans
 - Annual Reporting And Form 5500s (ERISA 403(b)s Only)
 - Choice of Investments
 - “Paired Plans” And Non-ERISA Status

Action Item: Key Challenges

- Administrative Compliance
 - Multi-Vendor Coordination For Key Events
 - Enrollment
 - Contribution
 - Distribution
 - Oversight And Monitoring
 - Overall Plan Information Gathering
 - Applicable Standards – Fiduciary Or Not?
 - Documenting The Process

Action Item: Key Challenges

- Reporting And Disclosure
 - Full Form 5500 Annual Report For ERISA Plans
 - Dealing With Legacy Funding Vehicles
 - The Client-Auditor Relationship
 - Participant And Required Disclosures – Tying It Together
- Facing A DOL Investigation Or IRS Audit
 - Balancing ERISA/Non-ERISA Status
 - Key Focus Items: Defining “Compensation”, Universal Availability, Missing Participants, Fees And Expenses

Action Item: Key Challenges

- Litigation Landscape
 - The Rise Of 403(b) Litigation
 - Efforts To Apply A 401(k) Landscape to 403(b) Plans
 - Lawsuits Against Non-ERISA Plans?
 - Recent Key Outcomes/Decisions
 - A Side Note On "Plan Data" And 403(b) Lawsuits
 - How To Be Ready?
- A Closing Challenge: Resource Constraints

Action Item: Key Opportunities

- Supporting And Scaffolding Plan Sponsor Compliance
 - Applying A Lot Of The Support From The 401(k) Market . . .
 - Vendor Coordination And Management
 - Understanding The Uniqueness Of Local/State Laws For Governmental Plans
 - Understanding Tax-Exempt Organizations And Their Culture
 - Highlighting Distinctions Between The 401(k) And 403(b) Compliance Landscape

Action Item: Key Opportunities

- Preparation For And Support Of Enforcement And Litigation Activities
 - Framing The Unique Nature Of 403(b) Plans For Documenting Compliance Practices
 - Document Retention And Access
 - Statutes Of Limitations – ERISA And State Laws
 - The Impact Of *Tibble v. Edison*
 - How To Manage Operational Compliance



QUESTIONS?

Contact

David N. Levine

Groom Law Group, Chartered

dlevine@groom.com

O: (202) 861-5436

M: (202) 306-1867

GROOM LAW GROUP