TOP STORY

NAGDCA 2006 Biennial State and Local Government Defined Contribution (DC) Plan Survey

NAGDCA has released the 2006 Biennial State and Local Government Defined Contribution (DC) Plan Survey for completion by plan administrators nationwide. NAGDCA's survey has proven to be an exceptional source of information for the entire NAGDCA membership (government and industry members), as well as everyone involved in the broader spectrum of the defined contribution community. The information collected by the survey is consistently used to aid in structuring plan design, networking among plan members, and informing legislators and policymakers of the trends in the industry. We highly encourage all administrators of 457, 401(a), 401(k) and 403(b) plans to participate in this extremely important survey.

The deadline for survey submissions is June 30, 2006. As a result to providing this tremendously needed information, all participants of the survey will receive a free copy of the results on CD-ROM with survey information broken down by individual plan, as well as national averages.

"NAGDCA is an organization which prides itself on providing the most current and up-to-date information on issues and trends that are facing the defined contribution community," says Della Williamson, NAGDCA President. "The Biennial DC Plan Survey is a tool that is utilized by a vast variety of individuals, ranging from administrators of local municipalities to entire state governments and congressional staff in Washington DC."

This survey is not only for NAGDCA members. To receive a comprehensive view of defined contribution plans nationwide, NAGDCA invites all public administrators to fill out the survey. The survey can be accessed by visiting http://www.amrinc.net/Infopoll/surveys/s162.htm.

MARK YOUR CALENDAR

2006 Annual Conference
September 23-27, 2006
Kansas City, Missouri
Hyatt Regency Crown Center
http://www.nagdca.org/meetings/2006annual.cfm

PRESIDENT'S CORNER

Hello NAGDCA Friends,

Your Board of Directors has been working diligently to bring NAGDCA the best year ever. Some of the items you will be hearing more about include:

- Arthur N. Caple Foundation – NAGDCA is in the process of setting up a foundation to receive funds and offer scholarships to further careers in retirement education. Look for more information and a fund raising campaign soon.
- Another year with the student mentor program and scholarship.
- A new Website review task force to work on www.nagdca.org.
- Accreditation – NAGDCA will be offering educational credits for members attending sessions at the annual conference for CPA, CFP and CFA designations.
- A new NAGDCA Ethics Policy has been developed for members to vote on at the annual meeting in September.

I want to stress the importance of completing the 2006 survey. It is a great value to our members and to the defined contribution industry. **Please help us reach our goal of 100% participation!** The survey was sent electronically on May 22, 2006 and is due back by June 30, 2006.

I am looking forward to seeing everyone at the annual conference in Kansas City. It is going to be GREAT!

As this HOT Summer approaches – here are some HOT investments to think about.

Target date retirement funds make planning easy

Determine the year you want to retire and find the "target date" mutual fund that matches your retirement date. Target date funds can eliminate the confusion some employees feel when faced with too many mutual fund choices in the typical deferred compensation account. Each fund is a mix of cash, bonds and stocks, including some foreign stocks. The fund's name includes the retirement year, and the funds are usually spaced five years apart (2010, 2015, 2020, etc.).

As the years go by, your fund will be rebalanced and become more conservative. The changing asset mix will provide for stability and growth as you pour your retirement dollars into that one fund

Plan Sponsors have to make sure that employees are given enough information regarding the philosophy behind target date funds and how they invest their contributions into these funds. The concept of one-stop shopping is becoming very popular with public plans. Communication is the key to making these funds successful. By educating employees who consider these funds, you can eliminate the confusion for many first time investors.

The asset allocation in a specific target date fund can vary from one firm to another. If you look at the 2015 target date funds from Fidelity, T. Rowe Price and Vanguard, you'll see quite a bit of difference among them in asset allocation.

	Cash	Stocks	Bonds	Other
Fidelity Freedom 2015 Fund	10.14%	58.79%	30.43%	0.64%
T. Rowe Price Retirement 2015 Fund	11.05%	66.52%	21.91%	0.52%
Vanguard Target Retirement 2015 Fund	1.45%	47.96%	50.36%	0.23%
Target Date Retirement Funds				

The T. Rowe Price fund look to be the most aggressive of the three with more than 66 percent of the portfolio in stocks, a mix the company finds appropriate for someone 10 years from retirement. Throughout the life of the investor they stay in the one fund. At 2015, they don't move into an income fund. The funds portfolio continues to move down to a more-conservative mix until they reach 20-percent equities. Although Fidelity, T. Rowe Price and Vanguard have a good reputation, participants should check the performance of any target date fund to see if it at least matches the performance of a benchmark index or category as the track records of target date funds are limited.

Target date funds can relieve participants of the need to constantly monitor investments and rebalance asset allocation. Examine the asset allocation to be sure that it fits your risk tolerance. If the fund is too conservative or too aggressive for you, it may be best to consider another option.

A survey on usage of target dated retirement funds in public funds is on the http://www.nagdca.org/users/listserv/targetdateFunds.xls website.

INDUSTRY VIEWPOINT

New Study Examines Public Sector 457 Plans

By: Mary Willett, Willett Consulting

In March 2006, Nationwide Retirement Education Institute published its second report – "America's Retirement Voice -Trends in Public Sector Retirement Plans" - that examines statistics and trends in state and local government deferred compensation plans, and provides comparisons to private sector 401(k) plans. This article discusses some of the information from this study.

Over the past two years, participants in state and local government 457 deferred compensation plans have increased average annual deferrals by 8%, improved the diversification of their account balance and increased the use of lifestyle and lifecycle investment options. These positive trends, and more, are discussed in the recent report from Nationwide Retirement Solutions[i] – "*Trends in Public Sector Retirement Plans.*"

The data and findings within the Report also point to some areas where continued educational focus should be directed to ensure state and local government employees are financially prepared for their retirement futures. For example, participation rates of eligible employees are increasing from an estimated average of 30% in 2003 to 34% in 2005. This rate continues to be considerably less than private sector 401(k) participation which averages 70% of eligible employees. Although this may be attributed to the fact that 457 plans are supplemental benefits and state and local government employees are typically covered by a primary pension plan, most employers will agree that increasing employee participation is a priority.

Over the past two years, the average annual contribution to the 457 plan has increased 8% to $3,800. This is just slightly lower than the average private sector deferral level of $3,950. However, there continues to be a significant disparity between the average 457 deferral by male and female participants, with annual contributions being $4,200 and $3,300 respectively. A positive finding is that the percentage change in deferrals by female participants during this two year period increased by 9.5% compared to a 7.6% increase for male participants.

One of the most dramatic improvements in 457 plans has been in asset diversification. In 2005, almost four in ten participants were invested in three or more asset classes, compared to one in ten in 1999. For younger participants, such as those aged 35 and under, almost half are now diversifying their 457 accounts among three or more asset classes. Although this trend is positive, there still is a ways to go before diversification in public sector plans compares favorably to private sector 401(k) plans, where almost seven in ten participants invest in three or more asset classes.

As more employers add lifecycle or lifestyle funds to their investment line-up, these new asset allocation funds appear to be providing participants with an easy choice for diversifying their account. This is particularly true for younger employees as demonstrated by statistics on participants under age 25 that show:

- Almost half are investing their 457 accounts in three or more asset classes (up from 30% in 2003)

- Almost one-third of their total 2005 deferrals were directed into an asset allocation fund (up from 16% in 2003)

- Almost three in ten use an asset allocation fund as their single investment choice (up from 10% in 2003)

Statistics show similar improvements in diversification and the use of asset allocation funds for all other age groups over the past two years, just not as significant. This suggests that education efforts are effective to help participants understand the importance of diversification, but it is easier to reach younger employees, such as at the time of enrollment, to provide this message.

The Nationwide Report, which can be accessed through their Web site (at www.nrsforu.com), includes many more participation statistics and findings as well as information on other studies that have been conducted on various topics, including employee attitudes about money, investing, and customer service preferences. It also includes information on trends in employee health and pension benefits, phased retirement, automatic enrollment, investment guidance and advice and more.

Understanding how employees use, or don't use, their 457 plan as well as what is new in the defined contribution industry can be extremely useful to state and local government employers as they develop new educational programs or enhance their plan design to better meet their workforce needs today and into the future.

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[1] The report "Trends in Public Sector Retirement" can be found on the Nationwide Retirement Solutions Web site at www.nrsforu.com in the Employer section under the Nationwide Retirement Education Institute tab. The first report, that was published in 2004 entitled "Public Sector Retirement: Yesterday, Today and Tomorrow" can also be found here.

About the author…

Mary Willett, Willett Consulting, CRA, CRC, has more than twenty years experience in the field of public employee retirement benefits. She currently is the project manager for the InFRE Retirement Readiness Study that is being conducted with the Federal government to create a retirement readiness index and also serves on the InFRE Board of Standards. Willett is working with Nationwide Retirement Solutions to develop educational programs and material for the public sector plan sponsor community and chairs the Panel of Advisors of the Nationwide Retirement Education Institute. Prior to her current role as a benefit plan consultant, Willett was Director of the State of Wisconsin Deferred Compensation Plan and the 2001-2002 President of the National Association of Government Defined Contribution Administrators (NAGDCA).

NC 401(k) Plan now offering the Roth 401(k) Feature

Submitted by: Prudential Retirement

On June 1, 2006, through the efforts of the North Carolina Department of State Treasurer and Prudential Retirement, the benefits of the North Carolina 401(k) Plan were expanded to include Roth 401(k) features. The Plan, with more than 196,000 members and assets of $3.5 billion, now offers a Roth 401(k) benefit to members of The Supplemental Retirement Income Plan of North Carolina allowing them to further diversify their retirement savings. The new feature combines the characteristics of a traditional retirement savings program with those of a Roth IRA. More specifically, the Roth feature allows members to make some or all 401(k) contributions with after-tax dollars. If these members meet certain requirements down the road, the Roth benefits withdrawn in retirement—including earnings—will not be taxable for federal or North Carolina state income tax purposes.

The Supplemental Retirement Income Plan of North Carolina is among the first public plans to offer the new Roth features. The Plan, with its flexible benefits, is available to educators and public employees in North Carolina, and there are no income-level restrictions. In 2006, members can contribute a maximum of $15,000 in pre-tax and Roth contributions and individuals 50 and older may contribute an additional $5,000.

For more information on the NC 401(k) Plan and the new Roth feature, call 1-919-664-7101, or visit www.nc401k.prudential.

Securities products and services are offered by Prudential Investment Management Services LLC (PIMS), Three Gateway Center, 14th Floor, Newark, NJ 07102-4077. PIMS is a Prudential Financial company. Prudential Retirement is a Prudential Financial business. Prudential Financial is a service mark of The Prudential Insurance Company of America, Newark, NJ and its affiliates.

New index helps answer: "What will I need to retire?"

Submitted by: Nationwide Retirement Solutions

Almost half of all U.S. households (43 percent) are at risk of not being able to maintain their current standard of living through retirement.

That's the stark reality revealed by *Retirements at Risk: A New National Retirement Risk Index,* a report from a Nationwide-sponsored study conducted by the prestigious Center for Retirement Research (CRR) at Boston College.

The CRR used data from its study to create the **National Retirement Risk Index**. The Index defines "at risk" to mean those households projected to fall at least 10 percent short of their income target in retirement.

> Almost half of all U.S. households at risk, yet even relatively modest adjustments can substantially improve retirement security.

As the nearby table shows, younger households are the most vulnerable as they're likely to see reductions in Social Security coverage and have no employer-sponsored pension (defined benefit) programs as retirement income resources.

Public workers may be at greater risk

The challenge may be even more daunting for public workers. In its 2005 report *America's Retirement Voice, Trends in Public Sector Retirement Plans,* released earlier this year, The Nationwide Retirement Education Institute℠ noted that:

- About 34% of public workers nationwide participate in supplemental plans, not even half of the 70% in the private sector.

- The average retirement-account balance among public employees is just under $30,000, compared to about $70,000 in the private sector.

Index is a wakeup call

Nationwide and the CRR are hoping that the Index will become the leading indicator of retirement readiness in the United States and serve as a wakeup call for our nation's legislators, policymakers, employers and employees.

According to Alicia H. Munnell, Director of the CRR, the Index results suggest that "unless Americans change their ways, many will struggle in retirement. Yet, even relatively modest adjustments — working two extra years or saving 3 percent more — can substantially improve retirement security."

Two CRR documents offer a quick-read understanding of the Index:

1. *The National Retirement Risk Index in a Nutshell*
2. *Myths and Realities about Retirement Preparedness*

Both are available at www.bc.edu/centers/crr/nrri.shtml.

New tool coming from Nationwide

This Fall, using the same data and analysis, Nationwide will introduce a user-friendly, online tool so employees can easily **score their personal retirement readiness**. Similar to a credit or cholesterol score, the tool will give users a single number that will help them understand how financially equipped they are for retirement and help them formulate a strategy to improve their retirement readiness.

Watch for an announcement about Nationwide's new tool coming later this year.

[table]

Percent of Households "At Risk" at Age 65 by Age Group and Income Group

Income group	All	Early Boomers 1946-1954	Late Boomers 1955-1964	Generation Xers 1965-1972
All	43%	35%	44%	49%
Top third	36%	33%	35%	42%
Middle third	40%	28%	44%	46%
Bottom third	53%	45%	54%	60%

Sources:

Retirements at Risk: A New National Retirement Risk Index, page i, June 2006, Alicia H. Munnell, Anthony Webb and Luke F. Delorme, The Center for Retirement Research at Boston College.

Many Households Are at Risk In Their Retirement Finances, The Wall Street Journal, June 6, 2006, page D3.

Study: 43% won't have enough in retirement, CNN.com (http://money.cnn.com/2006/06/06/retirement/risk_index/?cnn=yes), June 6, 2006.

Risk index' helps figure retirement need, Atlanta Journal-Constitution (http://www.ajc.com/business/content/money/stories/0606bizretire.html), June 6, 2006.

Weighing Investment Manager Success: Attributes of successful investment management firms

Submitted By: Jayson Davidson, CFA, Consultant, Arnerich Massena & Associates, Inc.

Are you choosing investment options for your retirement plan based solely on past performance? Historical investment performance can be deceiving. Long-term average returns may be influenced by short bursts of significant over- or underperformance. While strong historical performance versus peers and benchmarks is an important piece of the puzzle, there are some additional qualities you may want to consider when selecting investment options for your plan: consistent investment strategy, retention of key employees, and alignment of interest.

Consistent Strategy

A desirable investment management team implements and maintains a clear and defined investment philosophy and process regardless of market rotations. Most asset classes and investment strategies rotate in and out of favor. A consistent investment strategy, rather than one that moves with market changes, allows investors to use the fund when building a well-diversified, long-term portfolio.
Retention of Key Employees
Active stock picking relies heavily on the talent and experience of the analysts and portfolio managers. Low turnover in the management team can help ensure that the philosophy, process, and strategy remain consistent.

Alignment of Interest

Successful investment management teams tend to be those that have a vested interest in the future performance of their fund. If team members have a stake in the outcome, it is usually a good indication that their interests are aligned with that of the shareholders. For example, many firms are keenly aware of the potentially damaging effects of rapid asset growth and/or a bloated asset base. This can lead to a divergence in the philosophy and process, and possibly to a dilution of returns. Managers who have an ownership stake in the firm are usually more likely to preserve the integrity of the strategy by managing asset growth and capping the fund size.

When choosing investment options, it is always important to revisit the old adage, "past performance is not indicative of future results." Investing in funds that have a history of strong performance is important, but you may also want to consider factors such as consistent strategy, tenure and retention of the management team, and their alignment of interest with shareholders. These qualities can help drive the future success of the fund.

The Problem with Multiple Retirement Plan Vendors

Submitted by: Wendy J. Dominguez, MBA, Innovest Portfolio Solutions

403(b) Plans, retirement plans that can be sponsored by state and local governments for public school and other government employees and by organizations exempt from income taxation under Code Section 501(c)(3), seem to be the final frontier in which multiple retirement plan vendors are prevalent. Many entities sponsoring 403(b) Plans have taken a hands off approach, allowing almost any vendor that offers 403(b) plans to offer their products to their employees. As a result of this lack of control and coordination, plan participants have received sub-standard services and high cost products, and the entity is left coordinating payroll deductions to 15, 20, 30, or even 60 different 403(b) vendors. In addition, most employers would have difficulty in arguing that they are fulfilling their fiduciary duty.

This environment is certainly not good for the employee. In a multiple vendor environment, participants lose all economies of scale that come with a consolidated plan level account. Retirement plans with several millions of dollars are more visible to the institutional marketplace. With this visibility comes increased services and much lower costs. Participants can easily save 1% per year in fees by moving from a high cost “retail” solution to an institutional solution. For a participant saving $5,000 per year for 25 years, a 1% fee savings equals nearly $60,000 - and that is just for one participant.

Services to employees can also be improved in a single vendor environment. Meetings with employees become less focused on which company is better (or has a better salesperson or has the better food at their meetings), and becomes more focused on educating employees which investment vehicles will meet their goals. This change in focus is significant. Gone are the rumors and the water-cooler conversations of who is the cheapest vendor, who has the best investment products, and who has the best information. Replaced is an environment where the employee feels comfortable that they are getting great service and great pricing, and can instead focus on achieving their retirement goals.

The benefits of a single provider for the employer are also significant. The most important is increased fiduciary protection. Many entities mistakenly believe that by having a hands-off approach they don’t have any fiduciary liability. Fred Reish, of Reish, Luftman Reicher & Cohen, one of the most visible benefits attorneys in the country, disagrees. “Exempt 403(b) plans and government 457(b) and 403(b) plans are also subject to legal requirements, just not ERISA’s. Instead, they are subject to the laws of the states in which the plans are established. Many of the state fiduciary laws are based on principles similar to those underlying ERISA – such as modern portfolio theory, the prudent man rule, and the use of generally accepted investment principals – and a number of state statues use language that is virtually identical to the provisions of ERISA”.1

Spelled out in the Uniform Prudent Investor Act, enacted in the vast majority of states across the nation, is the fiduciary duty to select, monitor and prudently review the performance of plan vendors and service providers. That means the entity must act prudently with expertise in fulfilling the duty to monitor the plan's investments, the duty to monitor the plan's costs and fees, and its service providers. Multiple vendors makes this duty nearly impossible to fulfill.

Case Study

Innovest was recently hired to assist in the consolidation of the 403(b) Plan providers for Jefferson County Public Schools, the 26th largest school district in the country. The district was sending $13 million per year in payroll contributions to 55 vendors. They knew that 55 was extremely cumbersome, but they did not think it would be possible to consolidate down to just one. In the request for proposal process, we asked for pricing and service levels for different scenarios (i.e, one of five vendors, one of three vendors, and the only vendor).

However, the proposals for a single vendor were extremely compelling and in the end, they did select one vendor. As a result, the school district received a single governing plan document, a full time educator that was dedicated to their school district (this was their only client and only job), better investments with transparent fees (no annuities with surrender charges, high costs, and hidden expenses), and lower fees. It is estimated that this action by the school district will save each of their employees between $10,000 and $100,000 by the time each participant retires. In addition, participants now can easily determine the fees they are paying.

The school district is now better able to oversee and monitor the services and activities of the vendors, to ensure their employees are getting cutting edge solutions, and hold the vendors accountable. We are confident that through this process, the participants have a higher probability to meet their retirement savings goals.

"Reducing the number of providers was very challenging and employees expressed concerns about the reduction in choice of 403(b) providers. However, it was difficult for anyone to dispute the decision because of the work and thinking that went into the process. Once employees were given information on the selected vendor (good detailed communication), the concerns declined substantially. Now that we are two months into the implementation, employees are enjoying the benefits of a highly skilled, on site 403(b) provider representative and much-improved retirement education opportunities." Lorie Gillis, Chief Financial Officer, Jefferson County Public Schools.

While huge strides were made, not everyone was happy – namely 54 plan vendors that were displaced. Time and time again during this project Innovest was reminded by some of the vendors that we were trying to force the 403(b) plan into a 401(k) solution and 403(b) plans shouldn't be treated the same. Our answer was "Why not"? Pricing in the entire retirement plan arena has come down significantly over the past few years and services have vastly improved. The market has changed and evolved. Millions of participants in 401(k) plans are enjoying better services and lower fees, thanks to disclosure, transparency, and a single retirement plan vendor. We, unlike some of the displaced vendors, believe our nation's teachers and not-for-profit employees investing in 403(b) Plans deserve the same.

1 "Fiduciary Rules Applicable to "(b)" Plans" by Fred Reish and Bruce Ashton. January 2005. Journal of Pension Benefits.

WASHINGTON REPORT

By Susan J. White, Legislative Counsel

As voters prepare for another election cycle, Congress will begin to slow down and so that members can return to their states and districts to campaign. This year's election year politics have already begun with the Democrats feeling that they have a legitimate chance to take over at least one, if not both, chambers of Congress. This has led to a general slowdown in Congress as many members are fighting for there jobs and are concerned about being held accountable for anything that may or may not pass in this session of Congress.

HR 2830

The pension bill has been in conference since March 8 with no end in site. Last week Majority Leader John Boehner set a final deadline of the July 4 recess for finishing the conference. However he declined to say what the penalty might be for missing this self-imposed deadline. Previous self-imposed deadlines, including April 15 and Memorial Day, did not carry any threats with them; there was just hope that a bill would pass by those dates. In the Senate, Majority Leader Frist has set an even tighter schedule and has called for the conference report to be passed by June 30. This would require that the Conference end by June 20 to allow the staffers to draft the final conference report. In order to achieve this goal Senator Frist is having daily meetings with the Republican leadership in both the House and the Senate to encourage the conferees to meet the deadline.

Other members of the Conference have made their displeasure known as well. Members and staffers have complained about how often meetings are rescheduled and about the general lack of organization. Senator Enzi (R-WY), Chair of the Senate Committee on Health, Education, Labor and Pension stated that the reason the Conference has been moving at such a slow pace; is due to the complexity of the bill. As long as people keep talking, Enzi claims, the bill is moving forward.

Both the Senate and House versions of the bill contain provisions that would force companies to better fund pension plans, change the way plan liabilities are measured by their sponsors, and give the Pension Benefit Guaranty Corporation (PBGC) more stability. Key sticking points have included whether to force "at-risk" companies to increase funding to their plans, the treatment of cash-balance plans, and rules for multi-employer pension plans. An unrelated package of tax break extensions that is expected to be attached to the legislation has further complicated matters.

National Retirement Savings Week

NAGDCA has proposed a Senate Resolution to endorse a National Retirement Savings Week focusing nationwide on all workers saving for retirement and is working with key Senators' offices to ensure passage of such a resolution before the August congressional recess. (See NAGDCA website for copies of NAGDCA letter on a National Retirement Savings Week.).

NAGDCA, in conjunction with its industry members is making the case that, while people are saving less for retirement, individual responsibility for retirement is taking on a growing importance. Participation rates in state and local government defined contribution plans, which are available in all fifty states, average between 30 and 40 percent of eligible employees. At the same time that employees are not taking part in these plans, they are playing a larger role than they have in the past.

The goal is to increase awareness and ensure events throughout the country aimed at workers and retirees, that are sponsored by both the public and private sector; including, public relations spots; classes focusing on specific populations, such as women and sessions on retirement and budgeting—with all of the events taking place in a single week.

Summary

Although the pension legislation appears to be bottled up at this point in the congressional session, there is still time for the bill to get completed before the end of the year. There is talk in Washington that Congress will come back in a "Lame Duck Session"—after the election and that the legislation could be finalized at that point.

If Congress does decide to take up a resolution to authorize a Savings for Retirement, it could pass this summer, as it would not be required to go through the complicated legislative process that the pension bill has been subjected to.

AROUND THE COUNTRY

Fiduciary Responsibility for Government Plan Sponsors

Submitted by: Della Williamson, NAGDCA President

Are you a “fiduciary” for your government plan? You may be surprised to learn that the scope of fiduciary responsibility is not limited to qualified plans that must comply with ERISA requirements. Although Government employers are exempt from ERISA, you must look at state law to set out some of these duties. ERISA can be used by governmental plan fiduciaries as a guide toward a sound well-maintained plan. Fiduciary responsibility for government plans is nothing new. Heightened fiduciary scrutiny for all retirement plans resulting from issues such as mutual fund trading scandals, misrepresentation of earnings by a handful of executives, class action lawsuits alleging fiduciary misfeasance, and pension reform legislation is drawing attention to fiduciary responsibility for government plans.

As a government plan sponsor, you need to be aware of your responsibilities as a fiduciary in order to minimize your exposure to risk and reduce your potential liability. NAGDCA membership can assist you and your staff in better understanding these responsibilities and their implications. Failure to proactively understand and act upon your fiduciary responsibility is a recipe for disaster. On the other hand, you can easily manage your fiduciary responsibility by following the right process.

Who is a Fiduciary?

ERISA defines a fiduciary as a person who:

- Exercises discretionary authority or control over the management of the plan or disposition of plan assets
- Renders investment advice to the plan for compensation (or has the authority to do so)
- Possesses any discretionary authority over the administration of the plan

In government plans, fiduciary responsibilities rest with:

- **The governing body of the plan**. Examples of governing bodies with fiduciary responsibility include a city council, board of directors, supervisors, or board of trustees. However, it also may include other employees of the government that possess discretionary authority over the administration of the plan or exercise discretionary authority or control over the management of the plan or disposition of plan assets.
- **Plan administrator**. A designated person, such as an executive director, state administrative personnel, board, or third party administrator, who exercises discretionary authority in administration of the plan. The key to determining the plan administrator is to base it on *function and conduct* and not simply on title. Internal support personnel are often overlooked as potential fiduciaries.
- **Investment advisors**. Individuals who exercise control over the disposition of plan assets such as a defined contribution board or product review committee. An investment advisor can be a fiduciary designated by another fiduciary as an expert to run the selection process (beyond just

monitoring investments). Investment advisors may have a limited fiduciary scope.

- **Vendors/providers/TPAs**. The fiduciary status of any of these organizations depends on whether there is a delegated duty of monitoring, evaluating, or advising on investment options.
- **Outside professionals**. Professionals such as attorneys, actuaries, advisors, and consultants could be designated as fiduciaries because they often provide advice and recommendations to plan decision makers. Their status should be determined up front and reflected in the service contract.
- **Anyone named in the plan document as a fiduciary, even if they do not exercise discretion**.

Fiduciary Duties

General fiduciary duties are derived from the common law of trusts.

First, fiduciaries have a duty to ensure that all investments (including brokerage options) remain prudent investments in your plan. Assets once placed in the plan no longer belong to the employer, but rather are owned by the trust for the exclusive benefit of the participants and their beneficiaries. A formal investment policy statement should exist that includes long-term strategies and policies. Due diligence must be demonstrated in the selection and evaluation of investment advisors and other operators based on established measures and monitoring procedures. Plan expenses should be managed and reviewed regularly.

Second, a fiduciary must ensure that assets are diversified appropriately to minimize the risk of large losses. Investment advisors should monitor, evaluate and advise the plan on investment decisions. This should be done based on the investment policy established under the plan. There should be full disclosure of any conflicts of interest and all sources of compensation. In addition, defined contribution plans with participant-directed investments must provide the opportunity to exercise control over the investment of assets. Participants should be able to choose from a broad range of investments and have ample ability to change investment options with materially different risk and return characteristics with materially different risk and return characteristics (frequency should be determined based on market volatility and investments offered). It is the fiduciary's responsibility to ensure participants can obtain sufficient information to make informed investment decisions. This information includes historical returns, fee information and disclosure.

Third, fiduciaries must demonstrate loyalty to plan participants and beneficiaries. The exclusive benefit rule requires a fiduciary to act solely in the interest of plan participants and beneficiaries for the exclusive purpose of providing benefits and that plan expenses are reasonable. There should be sufficient assurances that impartiality and monitoring techniques exist to ensure there are no conflicts of interest.

Finally, fiduciaries must ensure compliance with plan provisions. The plan administrator should be responsible for overall management of the plan, including responsibilities such as providing appropriate education, calculation and payment of benefits, managing plan expenses, assuring plan documents and provider agreements are current, and complying with legal and legislative changes.

Best Practices

Now that you know who could be considered a fiduciary and the associated responsibilities, how do you apply these concepts to the operation of your plan? Here are eight best practices to help reduce your fiduciary risk and liability:

1. **Review the current state of your plan.** Take a fresh look at your current arrangement with your service provider. You should be monitoring your service provider to ensure they are meeting your performance standards and guarantees. Review the performance, reports, complaints and strategies. Look closely at your current provider’s fees to be sure they are reasonable and commensurate with the services rendered and that all expenses are valid. Review the financial condition and experience, and performance record of the provider with plans of similar size and complexity. Review the qualifications of professionals who will be handling your plan account. Make sure there aren’t any litigation or enforcement actions against the provider. Make sure the salary reduction deferrals and loan repayments are being collected and invested into the plan as soon as administratively practical. Benchmark your stable value rate with alternatives being offered by other providers. Determine whether your plan has a simple approach to allow participants to make prudent asset allocation decisions that are cost-effective and customized to the plan’s investments. Ensure that your plan educators are compensated in a manner that is aligned with the best interests of your plan and participants. If you are utilizing multiple providers, is it making your plan cumbersome and costly? Is your plan taking advantage and benefiting from the reimbursements and savings available from product providers? You may need to evaluate alternative arrangements and providers that could better serve your participants’ retirement needs.

2. **Look at alternative plans.** Can you take advantage of an alternative plan with greater scale that might provide better investments and/or lower costs (i.e., municipalities and counties, and universities may be able to join their State 457 plan)? Even if you can’t join your State 457 plan, you may be able to use it as a benchmark for costs and investment choices.

3. **Identify your plan fiduciaries.** Review your plan documents and activities to produce a list of plan fiduciaries. Remember that anyone who exercises or has the power to exercise discretionary control over plan administration or plan assets, or provides investment advice, may be a fiduciary. That could include a city council member or a personnel administrator. Identify and document those individuals whose actions make them fiduciaries, even if they are not formally designated as such. Develop prudent fiduciary procedures and processes based upon fiduciary principles. Be sure that each fiduciary is aware of his or her status and review documents and activities regularly. . Maintain a fidelity bond covering fiduciaries and all persons handling plan assets to protect against personal liability. Provide periodic fiduciary seminars for your committee and board members. Document compliance with your processes and procedures to increase your chances of limiting your fiduciary liability.

4. **Conduct periodic plan audits and evaluate your plan design.** Conduct ongoing audits of your plan to identify and correct any deficiencies. Determine if your plan is being administered appropriately and within the provisions of your plan document. Review your plan design (e.g., eligibility, enrollment, investment options, transaction limitations, asset flow, etc.) to validate its effectiveness to fulfill its primary goal of income replacement for participants and beneficiaries. When was the last competitive bid issued to benchmark your plan design, provider, and investments? If using multiple providers, consider consolidating to simplify your plan design. Make any changes you deem appropriate and document your decisions. Also, stay current on regulatory and legislative changes that might require a change to your plan.

5. **Review participant communication and education experiences.** Communications should provide an unbiased education to help plan participants make well-informed decisions in order to save for retirement. Are your Educators “educating” participants or “selling” to attract assets to expensive investment options? Make sure that your Educators are fully dedicated, encourage employees to join the plan and understand the nuances of your plan. All participant communication should clearly identify plan features and benefits as well as appropriate regulations and required disclosure. Don’t forget to communicate with retirees.

6. **Update your investment policy statement.** If a formal written investment policy statement does not exist today, be sure to create one. Investment policies should establish the framework to identify and define the duties of key players (e.g., the investment committee, board or outside advisors, etc.), document the goals and objectives of the investment options, detail the process and criteria for selecting investment options prudently, and designate responsibility for monitoring fund performance as well as the process for adding or replacing funds. Along with your investment policy statement, you

should maintain documentation of its use in administering the plan. Consider alternative plans that could lessen these responsibilities.

7. **Evaluate fund performance regularly.** Make sure you have selected appropriate qualified members for your investment review committee. These fiduciaries must monitor the appropriateness of each investment option, assess the market volatility of investment alternatives, and provide appropriate information to participants and beneficiaries in order for them to make informed decisions and exercise control over their assets. The details and documentation of these ongoing reviews should adhere to and be kept with your investment policy statement. If you offer a stable value investment, benchmark your stable value rate with alternatives being offered by other providers.

8. **Maintain documents and records.** You should keep documentation of your plan governance process, including reviews of investments, contracts and service agreements, compliance reviews, plan audits, participant communications, etc. A copy of any IRS determination letter or private letter ruling approving your plan document should be maintained, if applicable. Make sure the plan trustees have been properly appointed and the plan's trust agreement is properly executed. Maintain records of all actions and decisions relating to the plan for at least six years. If you utilize multiple providers, consider consolidating to simplify this process.

9. **Investment advice or managed accounts.** Many plans contract with an advisor to be a fiduciary and provide specific investment advice, others have a non-fiduciary provider of general financial and investment education, interactive investment materials and information based on asset allocation models. Either way, selecting an investment provider is a fiduciary action and must be carried out in the same manner as hiring any plan service provider. Use ERISA Section 404(c) as a guide for proper participant disclosure and education. Such programs are a way of minimizing fiduciary risk for the plan sponsor, while increasing the likelihood of successful retirement outcomes for plan participants.

10. **Prohibited transactions**. Fiduciaries must not engage in self-dealing and must avoid conflicts of interest. Certain parties (called parties-in-interest) are prohibited from doing business with the plan, including employers, unions, plan fiduciaries and service providers. Fiduciaries cannot receive money or other consideration from any party doing business with the plan. Unless an exception applies, some of the prohibited transactions include:
    - a sale, exchange or lease between the plan and party in interest,
    - lending money or other credit between plan and party in interest,
    - furnishing goods, services or facilities between plan and party in interest.

11. **Breaches of fiduciary duty**. Plan fiduciaries may be personally liable if found to have breached a fiduciary duty. You may be considered in breach of fiduciary duty if you:
    - enter into self dealing transactions,
    - fail to exercise plan duties in a reasonable manner,
    - fail to diversify the menu of investment options,
    - fail to monitor plan investments to ensure compliance with you investment policy, or
    - engage in a prohibited transaction.

NAGDCA Can Help

NAGDCA's vision is to be the leading association for defined contribution retirement plans of government employers to advocate opportunities that empower sponsors to preserve and enhance these plans to meet their goal of providing participants with financial security at retirement.

NAGDCA is your partner in retirement plan administration. As a member of NAGDCA, you can enjoy the benefits of ensuring compliance with your fiduciary responsibilities through:

- Legislative updates that apply to government plans
- Sample documents, including plan documents, RFPs, and investment policy statements
- A voice in Washington to ensure the concerns of government plan sponsors are heard
- Access to NAGDCA and other industry surveys
- Trends in government plan and participant behavior
- Webcasts on relevant defined contribution topics

Disclaimer

Restricted Nature of Comments. Neither NAGDCA, nor its employees or agents, nor members of its participating committees, provide legal advice. This white paper should not be construed legal advice; it is provided solely for informational purposes. NAGDCA members, both government and industry, are urged to consult with their own attorneys about the issues addressed herein.

News from Marin County Deferred Compensation Program, California
By: Allen Haim

Allen Haim, retiree representative of the Marin County Deferred Compensation Program, indicates success in the implementation of Marin's new 457 investment alternatives. A fund in excess of 100 million, Marin, thru Nationwide its Provider, and the consulting services of Arnerich Massena and Jayson Davidson successfully transitioned its program line up for approximately 18 investment options, the most prominent consisting of 5 pre mixed portfolio representing investing styles of aggressive, moderate aggressive, moderate, moderate conservative, and conservative. Marin with its consultant selected the funds for the mix which are made up in part of its stand alone funds. The funds are monitored for performance and after following selective criteria if performance is unacceptable may be placed funds on watch and as to some terminated with a careful selection by the deferred compensation committee of appropriate replacements.

The DC committee meets quarterly. Response from participants has been excellent and Marin has an over 75% participation of its total workforce, as well as its retirees. The pre-mixed portfolios depending on a participant's level of tolerance takes much of the stress of investing away from individuals. Past returns have been in line with expectations and works in terms of asset allocation much like a defined benefit plan. Ongoing education and training has provided participants both with on-site meetings and online support.

NAGDCA Member Benefit Spotlight

To remind members of benefits they receive that they may not be aware of, we will be spotlighting a benefit of membership in each edition of *The Contributor*. For more information on this or any benefit of membership, please visit our website at http://www.nagdca.org/ or contact NAGDCA staff at (859) 514-9161.

Information

- *The Contributor*, NAGDCA's quarterly newsletter that provides the latest information on association issues, members and legislative matters.
- An interactive Web site at www.nagdca.org that provides current information on federal activities, meetings, members, RFPs, presentations and more!
- An electronic clearinghouse with resources that offer answers and perspectives on various issues by showing actual practices used by members across the country.
- Legislative representation in Washington, DC.

New Members

Please visit the NAGDCA on-line directory for member's full contact information. You will need a username and password to access the information.

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The Contributor is published quarterly by the National Association of Government Defined Contribution Administrators, Inc. (NAGDCA). NAGDCA encourages the submission of articles on topics relating to defined contribution/ deferred compensation retirement savings/plans. Articles that appear under the by-line of an individual express the opinions of the author and not those of NAGDCA as an organization. The deadline for submissions for the next issue is October 13, 2006. Articles should be approximately two pages in length and should be submitted in Word format. Please direct all newsletter items and questions to NAGDCA, 201 East Main Street, Ste. 1405, Lexington, KY 40507. You may also e-mail submissions to Robert Hansel at rhansel@AMRms.com. Please contact Robert Hansel at 859-514-9161 with any questions or comments.

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