

Every year, in September, the National Association of Government Defined Contribution Administrators (NAGDCA) holds its annual conference. Each annual conference provides an excellent opportunity to learn from key Washington personnel what is happening on the legislative, regulatory and IRS audit front and to also hear from peers about their best practices. Each year we send to our clients a summary of the key conference issues and recommendations.

KEYNOTE SESSION

This year, the conference featured a humorous and entertaining presentation by Peter Ricchiuti, Professor of Finance at Tulane University's Freeman School of Business. Mr. Ricchiuti focused his remarks on the financial markets and the importance of proper diversification of investments. In general, he contended that following "the herd" rarely produces good results. He also contrasted what he considers "irrational pessimism" in the markets with his own, more optimistic assessment that the market is expanding, albeit unevenly.

At Tulane, Ricchiuti's students have produced research reports on local companies in Louisiana, Alabama, Georgia and Florida. These research reports have formed the foundation of Burkenroad Mutual Funds in 2001, managed by Hancock Bank. NAGDCA distributed a sample of one of these reports which is available at www.burkenroad.org.

(Conference presentations are currently on NAGDCA's website. They were not made available at the conference as part of NAGDCA's "green" strategies.) Presentations can be found at their website (www.nagdca.org). Many of the outlines and handouts are worth viewing.)

GENERAL SESSIONS

Legislative Activities

The Monday session on the Washington Report was entitled *Retirement Security and Individual Responsibility*. Susan White, NAGDCA's Legislative Counsel and Jennifer Eller from the Groom Law Group provided a recap of the past year's activities including the:

- Second stimulus bill which was passed in August, 2010,
- Frank Dodd Wall Street Reform which was passed on July 21, 2010,
- Likelihood of a lame duck Congressional session that is expected after Thanksgiving,
- Potential 457 Roth adoption,
- Fee Disclosure legislation and
- Review of stable value wrap contracts and whether they will be regulated as swaps in future additional legislation or regulatory action.

Susan also discussed the November elections and their potential impact on prospective legislation.

Jennifer Eller spoke more specifically about the fee disclosure initiatives and NAGDCA's contention that stable value fund wraps should not be regulated as swaps. The Department of

Labor (DOL) and other regulatory agencies have been given the next 15 months to research and review this area to determine what, if any, additional regulation needs to be considered.

Jennifer expects the DOL to receive responses to its Interim Final Regulations on §408(b)(2) by early October. She indicated that although these regulations pertain to ERISA plans they are also likely to impact government plans. Since public plans are likely to have access to the same information as private plans, this information will almost certainly become a “standard” on what a “prudent” administrator would do in managing its fiduciary responsibilities.

Jennifer contended that these summary disclosure requirements will emerge from the DOL; if not, she believes Congress will consider legislation in this area. Either way, employers should anticipate that they will need to:

- Identify their covered service provider(s),
- Develop a system for evaluating those services and
- Incorporate requirements in RFPs and contracts concerning disclosure information.

IRS Update

Tuesday began with a general session on current and prospective IRS activities. Cheryl Press from the IRS talked again this year about unforeseen emergencies. She re-enforced last year’s comments about the IRS’ belief that their definition of dependent vs. family member is too narrow and that funeral and medical expenses for adult children and parents will be permitted as long as other criteria are met (e.g. unforeseen, out-of-the-control-of, efforts to remedy the hardship).

Cheryl also focused on natural disasters contending that unforeseen emergencies must determine whether there is other insurance coverage. She stated that credit card debt and car breakdowns were two major areas of concern as they are not eligible criteria on their own but must arise out of other eligible categories in order to qualify (e.g. debt traced to unreimbursable funeral or medical expenses and car breakdowns resulting from an accident). She emphasized that 457 unforeseen emergencies will always represent a higher qualification standard than those in 401(k) and 403(b) plans precisely because 457 funds are not subject to the 10% penalty at age 59½.

Marilyn Collister, legal counsel from Great-West Retirement, discussed fee disclosure. ERISA requires that fees be “reasonable” and if there is no fee disclosure it cannot inherently be deemed “reasonable”. For plans that have current contracts, the contracts do not need to be modified to include new disclosure language but plans will need to determine direct and indirect compensation, especially for record-keeping fees, in writing. She also warned that disclosure does not, by itself, make fees reasonable but that plan sponsors will need to ascertain their appropriateness. She also expects that there will be additional guidance on disclosure of these fees to participants and enforcement with providers.

Marilyn also talked about the current Congressional hearings on annuities and determining what constitutes a fiduciary “safe harbor”. She expects information in these areas in the coming

weeks. As with the Washington update, the subject of Stable Value Funds (SVF) and their consideration as wraps was discussed. She expects that current SVFs will be grandfathered even after the DOL has concluded its 15 month review. Finally, she covered Target Date Funds (TDF) which was a featured topic at this year's conference. She summarized the recent recognition by Congress and the industry that funds with the same name can be very different and therefore confusing to participants. She expects that Plan Sponsors will need to develop checklists in the future to investigate TDF characteristics and assure that all marketing and advertising provides additional detail to participants.

Target Date Funds – New Trends

Wednesday's first general session featured three providers who discussed the latest trends in Target Date Funds. The session began with a broad overview of how TDFs grew significantly in the period from 2004-2008. At present, 80% of portfolios incorporate TDFs but they only represent 8% of assets. Current assets total \$300 billion but are expected to grow to \$2.5 trillion in the next 8-10 years. Implications for plan sponsors include:

- Adequately disclosing and communicating how these funds are structured,
- Determining appropriateness of asset allocation,
- Understanding that they are likely to increase fiduciary standards and legislative action and
- Establishing processes to avoid potential conflict of interest.

The session also featured descriptions of new provider products and research to determine how TDFs can minimize risk while providing reasonable diversified return from accumulation through retirement. This is clearly an area that is likely to see significant legislative activity and provider product development that will require plan sponsors to be more diligent in:

- Incorporating new RFP and contract standards,
- Assuring disclosure of product characteristics,
- Communicating fund characteristics to plan participants and
- Monitoring and evaluating ongoing fund performance.

Fiduciary Responsibilities

Wednesday's second general session focused on fiduciary responsibilities. Being a Fiduciary is a big responsibility and needs to be taken seriously. The speakers focused on who is a fiduciary (whether they like it or not) and how important it is to have a reasonable process in place for making decisions. While outcomes are important, it is the process that really matters. In other words, while no one wants to choose a bad investment option for the plan, if they do so they will have fulfilled their Fiduciary Responsibility if they used a reasonable process to come to the conclusion that the investment made sense when chosen (and continued to make sense while monitoring). While a reasonable process will not guarantee you won't be sued, it may help to prevent lawsuits and will serve as your best defense in such a scenario.

CONCURRENT SESSIONS

Employee Education and Saving for Retirement

This session focused on financial education research and how employers can build best practices in their educational efforts with plan participants. There were a number of excellent graphs in this session which focused on recent trends and how education can be used to address participants savings needs. Although the session was primarily targeted to schools (K-12 and Higher Education) the essential takeaways for all plan sponsors were compelling. Employers need to focus on:

- Simplifying complex ideas,
- Being creative with ideas and graphs,
- Segmenting audiences,
- Personalizing messages and
- Adopting a “multi-channel” approach.

The session closed with a brief focus on social networking / learning (featured in another concurrent session) and concluded that it is not a fad but a critical new avenue for reaching participants.

Communication with Participants

This session showcased three employers (States of Indiana, Ohio and Tennessee) all of whom received special recognition awards this year from NAGDCA for their communication efforts. In Indiana, their strategy included dinner seminars which sought greater participant contributions than those obtained through auto enrollment. The State previously offered a match which was eliminated this year. They found that although auto enrollment at a \$15 minimum limited opt-outs to 3%, participants were neither increasing their contributions above that amount, nor modifying the default selections incorporated into auto enrollment.

The state of Ohio has created a branded retirement “Journal” which featured initial basic information like plan documents and investment policies but were structure to also include new articles and communications. Promotions, announcements and plan enhancements can all be included in these journals so that plan participants have a personalized, single source for all the information provided on their plan.

The state of Tennessee began their communication efforts with an employee survey which sought to identify what features would provide more participant ownership of the plan. The results of the survey prompted a new strategy for communicating plan features and increased participant involvement with plans changes and improvements.

Social Networking and Its Place in Plan Administration

Social media has grown tremendously in the past decade and it is estimated that two-thirds of the internet population visit social networking or blogging sites. Social networking is now the

number one internet visited area representing an estimated 10% of all internet time. With the exponential growth in social media, plan sponsors might consider this as another channel to inform participants and retirees of plan information and peer acceptance. It is important that social networking is about having fun, being informative and not all business. Plan sponsors need to be aware to not violate FINRA or SEC regulations.

Stable Value Funds and Fixed Account Options

This session focused more on the state of the Stable Value market rather than the nuts and bolts. The consensus was that as a whole Stable Value survived the recent financial crisis pretty well; but the underpinnings of these contracts have now changed dramatically. There are fewer wrap providers (though we are slowly beginning to see more providers enter) and the ones that remain have altered their agreements significantly. The major changes are higher fees (increased from average of 6 basis points to a range of 20 - 30 annually), stricter investment guidelines (shorter duration, larger cash buffer and higher quality) and an increasing number of investments that are labeled as "competing" (those investments that are not allowed to have money transferred directly into them from Stable Value). One speaker stressed the importance of communicating to participants that Stable Value funds (excluding general account products) are not insured or guaranteed against loss.

Understanding Risks

With the volatility in the financial marketplace for the past two years, this was arguable one of the most widely attended concurrent sessions of the conference. As might be expected, the presenters had wide definitions of risk including market volatility, systemic risk, non-systemic risk, credit risk, opportunity cost, inflation, liquidity, operational risk (failed internal process of people or systems), and risk risk. Presenters provided an overview of modern portfolio theory risk / return characteristics of minimizing various risks through portfolio diversification.

One of the presenters suggested a possible consideration for plan sponsors was to implement an entire re-enrollment of the plan as an educational opportunity that was received very positively by participants. Careful attention should be weighted on contractual obligations such as wrap contracts on stable value funds and other possible equity wash issues.

Building the Ideal Retirement Plan / Fund Lineup

This session focused more on simplifying the investment menu. With so many asset classes and so many asset allocation options (target date funds, target risk funds, managed accounts) the participant may become overwhelmed. The manner in which you communicate your plan investment options can be just as important as those options themselves. One suggestion was to structure your lineup in tiers with Asset Allocation options in Tier One, the Core Investment lineup in Tier Two and the Brokerage Window as Tier Three. With innovation comes

complexity (even when that innovation is supposed to make it easier). How you communicate that becomes vital to ensuring participants make it into the appropriate investment vehicle.

Successful RFP Design

This session focused on the importance of investing time before RFP distribution in learning about participant preferences and establishing specific Plan Sponsor goals / outcomes. The clearer the goals and outcomes the more likely Plan Sponsors will obtain their and not the providers desired plan features. The session also focused on the design of RFPs which should emphasize structuring RFPs to simplify provider evaluations. Maintaining participant communication throughout the process was discussed to assure no surprises or confusion about both the purpose and process of RFP solicitations. In general, three consultants shared their ideas about how employers can shape their RFPs to obtain optimal outcomes for plan participants.

Keep Participants Saving for Retirement

In today's environment, only 18% of people are on track for retirement. Life expectancy and inflation are working against retirement savings patterns. Aggressive campaigns with education and communication by stations of career from new employment through retirement with different messages is imperative. Engaging in new developing social media is a possible channel to attract participants to enroll or increase contribution rates.

Preparing for the Inevitable: Security / Off Site Storage, Contingency Planning

This session was directed at recommended strategies for data protection of plan service providers and recognition of procedures in place for plan sponsors. Recommendations included "scenario based" procedures for all different types of disasters, some of which happen quickly without warning or little warning (fire, earthquakes, floods) or with some warning (snow / ice, pandemic) because testing procedures can be different depending upon the disaster. Data centers should image documents and then input data from the imaged document to avoid loss of input information. Remote worksites should be considered if the primary worksite is not available for use to ensure business continuity. All scenarios should be tested on a regular basis.

Is Your Organization Ready for the New Retirement Environment?

INFre and Texas Tech University discussed the expanded need for capable financial advisors and employees to assist with the estimated 78 million baby boom population that are expected to retire in the immediate and near future. They estimate that a 40% increase in advisor capacity will be needed over the next decade. Plan service providers and, to a lesser extent, plan sponsors are encouraged to look to knowledgeable and skilled graduates out of college to fill this need. Intern programs can be developed to assist with new employee demand.

NAGDCA Publications

Three publications were distributed at the conference (also available on the website). They are:

- What Plan Sponsors Should Know about Stable Value Funds
- The Evolution of the Government Deferred Compensation Plan market: The Road Toward Retirement Sufficiency
- Building a DC Investment Menu in a Changing Risk Environment

Contact Us

SST Benefits Consulting's representatives will be available to clients and non-clients to **discuss any of NAGDCA's conference sessions in more detail and the potential strategic opportunities it represents for public sector employers.** Please contact us at (866) 443-1557 for more information.