



Employee Benefits News

SUMMER 2005

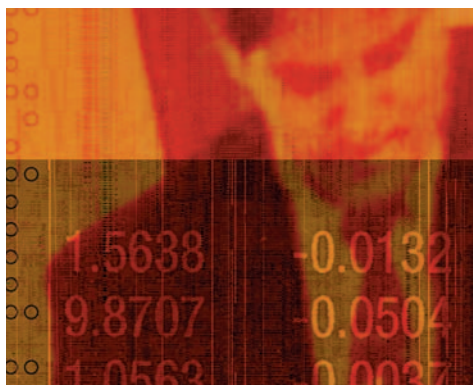
Help your employees with investment advice

4 01(k) plans that are participant-directed are the most common type of U.S. retirement plan. So employees seemingly have it all: round-the-clock availability to transfer assets from one investment to another, unlimited investment options in some cases and a seemingly infinite combination of risk-and-reward portfolios.

But for most investors in defined-contribution retirement plans, this investor's heaven — as envisioned and created by ERISA Section 404(c) — can feel more like hell. To the average employee lacking financial and investing expertise, selecting investment options may seem a scary and confusing no-man's land where the wrong choices often mean painful financial consequences.

In fact, most of the estimated 43 million Americans who save for retirement via defined-contribution plans may feel they're investing without a net. Some rely on not much more than a dartboard approach to select the investment portfolio on which their retirement security rests.

Stock market declines in recent years as well as Enron's dramatic collapse highlighted the situation's precariousness. Both of these phenomena substantially reduced the retirement accounts of many workers nearing



retirement. Experts wondered: How could workers have failed to minimally diversify their assets? How could those so close to retirement have chosen to keep their assets in risky equity markets?

Professional expertise needed

According to a U.S. House committee and the Department of Labor (DOL), the generalized investment education that the government and employers have advocated simply doesn't meet workers' informational needs. Participants in retirement plans, these authorities now realize, require customized investment advice from professional financial advisors.

DOL Assistant Secretary Ann L. Combs testified before Congress that the importance of assisting participants in making informed and appropriate investment decisions "cannot be overstated." She pointed out that 401(k) plans hold

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CBIZ Quote of the Quarter

"You can take my factories, burn up my buildings, but give me my people and I'll build the businesses right back again."

- Henry Ford

an estimated \$1.7 trillion and many provide more than 10 investment options. “The increasing variety of factors outside the pension plan and the workplace that need to be considered when planning for retirement further emphasize the importance of enabling participants to effectively tailor their investment strategies to their individual circumstances.”



Employers understand that providing investment advice to employees could increase the perceived value of retirement benefits and their employees' financial stability. But employers are reluctant to offer such advice.

Fear of liability

Although external vendors would provide the service, employers fear that they themselves will be held liable for the advice and for any unfortunate financial implications employees encounter after heeding it. Previous DOL guidance clarified that while providing general investment education doesn't trigger ERISA fiduciary responsibility, the provision of investment advice does. And because freedom from fiduciary liability for investment decisions was a key reason employers turned to defined-contribution plans in the first place, they've steered clear of more guidance and continued instead to offer still greater — and increasingly confounding — investment choices.

Most employers are afraid to appoint an advisor for their plan participants for fear of assuming fiduciary liability. Some fear that their responsibility could extend to monitoring every recommendation given to every participant. To combat this problem, Rep. John Boehner introduced the Retirement Security Advice Act. It aims to close what he calls the “advice gap” by making it easier for employers to give workers access to professional investment advice.

Protection for investment advice

Under the bill, employers would retain fiduciary liability for the prudent selection and review of any investment advisor they contract with to assist employees in making retirement-investment decisions. But the bill

clarifies that employers wouldn't be legally responsible for advisors' individual suggestions.

The bill would provide for protection for investment advice only if given by “fiduciary advisors” - qualified entities that are already fully regulated under existing federal and state law. Today, fiduciary advisors include registered investment advisors, registered broker dealers, insurance companies and banks.


The bill further requires that those offering advice must provide participants with written notice of:

- Fees or compensation that the advisor or any of its related businesses receive for providing advice or selling investment vehicles,
- Affiliations or contractual relationships of the fiduciary advisor to any of the investment options advocated,
- Limitations placed by the employer or others on the scope of investment advice,
- Types of services the advisor provides, and
- The fact that the advisor is acting as a plan fiduciary in providing investment advice.

The bill requires the advisor to give this notice in a language easily understood by the average participant when giving the initial investment advice. After making the initial investment recommendation, the advisor must make the above information available at least annually, and must update employees when any of the information materially changes. The advisor must also make the information available at any time on request and without charge.

Broad support

The DOL has enthusiastically endorsed the bill. It also enjoys bipartisan support and more than 40 Congressional sponsors, so it may become law. But employers should note that even if passed, the act won't require any employer to contract with an investment advisor, nor will any employee be obligated to accept or follow any employer-contracted advice.

Employers wishing to consider contracting investment advisors should contact us for assistance in exploring their options. 

For more information, contact your local CBIZ advisor or visit www.cbiz.com.

FSAs allow over-the-counter drug reimbursements

Flexible spending accounts (FSAs) allow employees to set aside a designated amount of pre-tax money each year that they can withdraw to pay medical expenses not covered by insurance, such as doctor copayments, deductibles, prescription drugs, eye exams, chiropractor visits and dental work. Many people don't know that over-the-counter drugs are also included on this list.

This is an important benefit for people who have seen their prescription drugs move to the over-the-counter market. The benefit of buying the drug without a prescription is made even sweeter by using FSA pre-tax dollars.



What qualifies?

Some examples of qualifying nonprescription drugs are antacids, allergy medicines, pain relievers and cold medicines. Nonqualifying items include cosmetics, toiletries such as toothpaste, general dietary supplements and other products that are “merely beneficial to the employee’s health,” according to the IRS.

FSAs faced criticism because of their use-it-or-lose-it format. Because principals automatically forfeit money

remaining in the account at year’s end, many employees have found these plans too risky.

Including over-the-counter drugs in FSAs makes the use-it-or-lose-it format a little less intimidating. If participants have more money in their account at year’s end than anticipated, they can purchase needed over-the-counter medications. The IRS, however, has recently granted FSAs a grace period that allows reimbursement for expenses incurred up to 2½ months after the plan’s year end.


Will debit cards ease paperwork?

Another drawback to FSAs is the reimbursement process. Participants must pay for the medicine or service and then submit the receipt to request reimbursement. Most employees fund FSAs by a payroll withdrawal from their paycheck. So until they are reimbursed, they are essentially paying the expense twice.

Nonprescription drugs are no different, and paperwork is still required to process a reimbursement. To substantiate a claim, participants must put the drug name (such as Tylenol® or Claritin®) and purchase date on the receipt.

But a recent IRS ruling could change this paper-intensive reimbursement system. Many companies are starting to use a debit card format for their FSAs. With the new format, the employee presents an employer-sponsored debit card when purchasing a qualified medicine or service. The claim is sent to the plan administrator, where it is substantiated and the money is then deducted from the FSA.

Time to add this benefit?

Implementing IRS rules relating to FSAs can cause headaches. If you have any questions please give us a call. 

For more information, contact your local CBIZ advisor or visit www.cbiz.com.

Did you know?

While you are well aware of the quality employee benefits services we provide, did you know that CBIZ also offers **Accounting, Tax & Advisory Services?**

How severance pay affects two common benefits

Severance plans vary from employer to employer. Some companies may not offer severance pay at all, while others may offer a comprehensive benefits package. Because the law doesn't require severance pay, confusion can arise when determining the appropriate plan for your organization. Unless your employees have a contract outlining a severance agreement, you have many options. When evaluating your severance plan, keep in mind how an employee's termination affects his or her benefits. Two benefits that frequently cause confusion:

Cafeteria plans. Whether your employees can participate in your cafeteria plan with their severance pay is up to you — as long as your plan document permits it. Former




employees can buy plan benefits on a pre-tax basis, but only if their severance payments are W-2 wages. Wages paid in any other manner cannot take advantage of this benefit. This is also true of COBRA payments.

401(k) plans. Federal rules generally prohibit terminated employees from participating in 401(k) plans. Recently issued proposed 415 regulations set out limited circumstances in which elective deferrals can be made from post-termination pay. These include:

- Payments that the individual would have received without regard to the termination of employment, such as overtime pay, shift differential pay, commissions or bonuses that become due.
- Bona fide accrued sick leave or vacation that would have been available, had the individual remained employed.

The proposed regulations provide that deferrals cannot be made from any other kinds of post-termination pay, such as nonqualified deferred compensation or other kinds of severance, no matter when paid.

While the regulations will not be finalized until some point in the future, the IRS has indicated that 401(k) plans can rely currently on this guidance. 

For more information, contact your local CBIZ advisor or visit www.cbiz.com.



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