



New Interest in IRS Audits: Is Meaningful Opportunity Being Provided? Opportunity for Financial Advisors!

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Recent reports of 403(b) plan audits in progress in April and May 2013 may shed some light on how the IRS views whether “meaningful opportunity” is being provided by employers to employees. The final 403(b) regulations, in 1.403(b)-5(b)(2), speak to the universal availability requirement that there be an *effective* opportunity given for purposes of new enrollments, or changes for current participants in the 403(b) plan. Whether an “effective opportunity” has been provided is “determined based on all the relevant facts and circumstances, including notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections.” This language has left us in the dark as to what comprises an effective or meaningful opportunity.

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However, reports from employers, followed with an extensive discussion with a Senior Staff Specialist from the IRS Audit area, may help us begin to define what the IRS has in mind in requiring that eligible employees receive an effective (or meaningful) opportunity to enroll or make changes! First the IRS Field Examiners are looking at low participation rates (reportedly in the 18-20% range in reported audits); then, asking the employer to provide information on the employer’s education plan for eligible employees. In discussions about this issue with the IRS staff member, this writer was told that there is immediate concern that the employer has not actually fulfilled the requirements for a meaningful or effective opportunity if there is no educational program in place in plans where participation rates are low.

What Are the Elements of an Education Program for Employees?

Since the employee population is diverse (with some employees needing more help to get started than other employees), it makes sense that the education program should also be diverse. Employers will want to consider offering the following:

- 1) Online tools for the computer oriented population of employees. These can be provided by TPAs and product providers.
- 2) Periodic employee workshops to include information about the primary pension plan, social security benefits, and the need to fill the gap with voluntary savings in 403(b) and 457(b) plans. The generic workshop should explain the importance of the voluntary savings element of retirement planning (since these are dollars controlled by the employee, while the pension plan and Social Security benefits are *not* within the individual employee’s control). It is important for employees to know that their 403(b) and/or 457(b) savings can be used in diverse ways (either to generate additional monthly income, or to fill the need for lump sums post-retirement).
- 3) Face-to-face meetings with financial advisors. It is a fact that numerous studies reveal that there is increased participation when financial advisors are providing personal service to encourage enrollment and following up with annual reviews to encourage increased

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contributions as the years roll by. Studies (which this writer is glad to send to interested NTSAA members who request them at elowder@gainbroadband.com) also reveal that employees who have a financial advisor are better diversified, which results in a higher account balance than those who go it on their own!

- 4) Involvement from key administrators of the employer. As an example, written communications should emphasize the importance to employees of saving voluntarily with 403(b) and/or 457(b) plans, while workshops should include a few introductory remarks by a key administrator of the employer to make it clear that the employer has made a plan or plans available to permit employees to enjoy a comfortable and timely retirement.

The benefit of an employer supported plan to educate employees is several fold in that it encourages a timely retirement versus employees who work long after normal retirement ages. Clearly the retirement of employees who are at the top of the salary schedule permits employers to hire replacement employees at starting salaries—a real budget savings. It also clearly demonstrates an employer that cares about employees by sponsoring voluntary plans and providing much needed education to employees. Never mind that it also satisfies IRS questions about whether effective opportunity has been given.

Financial Advisors Should Be Involved!

Begin discussions with your employer clients on beginning an educational program or improving the program to increase participation of employees in voluntary plans. Emphasize your willingness to help. Discuss the issues with the employer's TPA (many TPAs can and will assist in establishing or improving a program to help employees better prepare for retirement). Remember, too, that the product providers will often have generic programs in place (such as financial literacy workshops) which they can quickly offer as a part of the program. You can suggest that rules be put into place to require that the presenting product provider include information about the list of the other approved providers with contact information. You can suggest, too, that workshops can be presented on a rotating basis if the product providers do have seminar material in place.

You can also offer to sit down with payroll personnel to help them understand the importance of measuring the success of a diverse educational program by comparing the participation rate before launch and each year thereafter as the program is undertaken.

Some plan sponsors have even taken the step of composing a written Education Policy Statement that documents this process. Though there is no requirement under the regulations for such a Statement, it may serve as evidence to a field examiner that the proper steps have been taken to provide meaningful notice to employees of the right to make elective deferrals to the 403(b) program, even if the employees ultimately choose not to defer. Thus, even if voluntary participation is low (not an unusual situation in these difficult economic times), the plan sponsor can provide evidence to the field agent via a simple document that all necessary steps have been taken to educate employees.