City and County of Denver
Deferred Compensation Plan

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DEFERRED COMPENSATION PLAN BASICS
DEFERRED COMPENSATION PLANS

What is a Deferred Compensation Plan?

- Non-qualified plan created under IRC 457
- Federal Income Tax deferred for standard contributions
- Roth 457 available
- Deferred amounts subject to FICA and FUTA withholding at time of deferral
- Subject to IRC Section 457 since 1986 but prior to 2002 directly offset other defined contribution plan contributions.
- Plan document is required
  - Establishes the rules of the Plan

IRC 457 Eligible Employers

- State and local governments & any instrumentality
- Non-governmental entities tax exempt under IRC 501
- Tax exempt rural electric cooperatives
457 PLAN RULES

Eligible Plan Limits

- Maximum Deferral – IRC 457(b)(2)
- Plan aggregation
- Catch-up – IRC 457(b)(3)
- Additional Catch-up age 50

Trust Requirement for Governmental Plans

- IRC 457(g)
- Assets and income must be held in either:
  - Trust
  - Custodial account
  - Annuity contract
- Assets must be “held for exclusive benefit of participants”
457 RULES

Catch-up Contribution Rules

- Greater of Age 50 catch-up or
- IRC 457(b)(3) catch-up

Age 50 Catch-up

- EGTRRA - IRC 414(v)
- Additional $1,000 (2002) to $5,000 (2006)
- Indexed in $500 increments thereafter
IRC 457(b)(3) Catch-Up Contributions

- Plan may permit catch-up
- Each of last three (3) years ending before NRA “under the plan”
- Limited to:
  - Prior unused Maximum Deferral Amounts
  - Only in years participant was eligible
- Single 3-year period to use this option
- Deferral amount LESSER OF:
  - Twice the dollar limit or
  - Sum of current year ceiling + unused portion of prior year ceilings
- Must have been eligible for this plan and must consider prior year pre-tax deferrals with this ER
- Can not use age 50 and 3-year catch up together
457 RULES

457(b) Withdrawal Restrictions

- Availability of funds generally subject to:
  - Attaining age 70½
  - Separation from service (any age with no pre-59 1/2 withdrawal penalty)
  - Unforeseen emergency

- Portable to 403(b), 401(k), other 457, or IRAs at separation from service (loses 10% tax penalty advantage if rolled non-457 plan)

In a “participant-directed” environment when the 457(b) Plan complies with the protocols of ERISA 404(c)... the Plan Sponsor retains responsibility for the following:

- Selecting plan investment options
  - May be delegated to a 1940 Act Manager per ERISA 3(21)(A)

- The monitoring of the plans investment options
  - May be delegated to a 1940 Act Manager per ERISA 3(21)(A)

- Collecting and implementing investment instructions from participants
ADMINISTRATIVE RESPONSIBILITIES
RESPONSIBILITIES

• Establish Plan Committee

• Committee responsibilities
  - Awareness of responsibilities
  - Assume an active and responsible role and have a working knowledge about:
    • Federal and state regulations (structure, plan documents, fiduciary liability, etc)
    • If sponsoring plan through multiple providers, responsible for coordination of administration and compliance between all plans and service providers (Settler Functions, Aggregation Rules, etc.)
    • Understand and review permissive features
  - Delegate plan administration & compliance to a recordkeeping administration firm(s)
  - Select and monitor Plan investments
  - Establish procedures to oversee service providers to the plan
COMMITTEE RESPONSIBILITIES

Administrative Responsibilities

• Review your Plan’s eligibility, permissive features, and exclusions
• Plan language should be kept current with legislative changes and new regulations
• Forms, documents, agreements and procedures must be kept current
• Accurate records must be maintained for possible IRS audits and for internal use
• Adopt a single Plan Document
  – Generic document (not provider specific) encompassing all available features under federal and state
  – Normal Retirement Age required to be specified
• Coordinated Adoption Agreements
  – Establish the permissive features of your Plan based on your selection of available options
• Establish written service agreements with each of the service providers of your Plan
COMMITTEE RESPONSIBILITIES

Selecting and monitoring plan investments

• Important decision items:
  • What asset classes are appropriate for employee demographics?
  • Number of investment options?
  • How to select most appropriate options from available universe?
  • Establish and maintain an Investment Policy Statement (IPS)?
COMMITTEE RESPONSIBILITIES

Investment Policy Statement

The importance of an Investment Policy Statement:

• Provides the framework for all investment related decisions
• Provides a roadmap for your investment due diligence process
• Prudent process for selecting and monitoring investments
• Provides documentation for IRS audit
• Statutes do not require an IPS (although it is prudent to maintain)
  - According to the Deloitte Consulting Annual Defined Contribution Benchmarking Survey approximately 83% of plan sponsors maintain a formal investment policy statement.
Investment Policy Statement

• Identify plan fiduciaries and their responsibilities
  - Plan Trustees
  - Plan Administrators
  - Committee Members
  - Investment Management Consultant

• Identify acceptable/suitable asset classes

• Identify investment structures

• Identify specific criteria for selecting and monitoring investments

• Identify specific criteria for replacing investments
Committee Responsibilities

Establish procedures to oversee service providers to the plan

- **Investment Management Fees**
  - For management of a plan’s assets.
  - Costs netted out of assets, invisible to participants.
  - Largest cost item, between 60% and 80%

- **Plan Administration and Recordkeeping Fees**
  - Contribution and distribution processing
  - Maintenance of account balances
  - Website and customer service telephone lines.

- **Investment Consulting/Plan Advice Fees**
  - Selection and monitoring of investment managers
  - Investment policy statement preparation
  - Vendor management and selection including:
    - Fee benchmarking and analysis.
    - Assistance with plan design and features
  - Compliance with fiduciary responsibilities.
ISSUES SPECIFIC TO USING MULTIPLE PROVIDERS

• Who is responsible for oversight of the Plan?
  - Meeting federal and state regulatory requirements

• Who is responsible for meeting 457(b) Aggregation Rules?
  - Correction of excess contributions
  - Normal Retirement Age
  - Catch-up amounts
  - Compliance in Form and Operation

• Who is responsible for ensuring that Employee Education requirements are met – whether services are provided by Plan Sponsor or investment provider?

• Who maintains records for the Plan?
  - Certification of approval, denials and appeals for loan and distribution requests
  - Maintains records of alternate deferral limits elected and amounts used
    • 3-Year Catch-up participation
    • Age 50+ Catch-up limit
    • Catch-up contribution Ordering Rule
ISSUES SPECIFIC TO USING MULTIPLE PROVIDERS

Typical Sponsor/Provider Responsibilities

City/Committee responsibilities
• Keep plan(s) in compliance with IRS and State regulations
• Establish and monitor contribution limits – prevent your Plan from becoming an “Ineligible Plan”
• Monitor investment providers
• Perform Settler Functions
• Maintain all historical records, elections, contributions

Investment provider responsibility
• Includes processing contributions and investment allocations
• Tax reporting of distributions
• Provide participant account statements
• Prepare employer reports
FIDUCIARY RESPONSIBILITIES
RETIREMENT PLAN FIDUCIARIES

Fiduciaries are:
- Someone who has discretionary authority over the management or administration of the plan or its assets
- Exercise controls, authority, or influence over the management or administration of the plan or its assets
- Renders investment advice for a fee
- Automatic by being named Plan Administrator, Fiduciary, or Trustee

Fiduciaries:
- Trustees
- Investment advisers
- All individuals exercising discretion in administration of the plan as described above

NOT Fiduciaries:
- Attorneys, accountants, and actuaries – when acting solely in their professional capacities
Fiduciaries must:

- Understand fiduciary responsibilities
- Follow plan documents
- Review and ensure the plan pays reasonable plan expenses
- Fiduciaries do not need to be investment experts, but must seek advice of knowledgeable experts
Fiduciaries liabilities:

- Personally liable for losses that result from a breach of fiduciary duties

- Can be liable for acts of co-fiduciaries

- Liable for losses resulting for the use of plan assets in violation of fiduciary obligations

- Poor investment results do not create a liability if the process was prudent at the time
COLORADO REVISED STATUTES:

- Fiduciary responsibilities as fiduciaries to trust defined in Uniform Prudent Investors Act
  - CRS 15-1.1

- Authorization to establish plan provided in County, Municipal, and Special District Officers’ and Employees’ Retirement System:
  - CRS 24-54
DUTY OF LOYALTY:

“Act solely in the interest of plan participants and beneficiaries (duty of loyalty).”

C.R.S. 15-1.1-105 (2011)

The duty of loyalty forbids a fiduciary not only from using plan assets for his or her personal interest but also from favoring the interests of a third party over the interests of a plan participant, even if the fiduciary’s own interests are not impacted.
FIDUCIARY RESPONSIBILITIES

PRUDENT INVESTOR RULE:

“A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.”


Prudent investing amounts to a process which one follows. If the process followed in making investment decisions is prudent (based on what is known and not known at that time), then the decisions being made are prudent, regardless of subsequent results.
FIDUCIARY RESPONSIBILITIES

FIDUCIARY BEST PRACTICES:

- Create Fiduciary structure
- Appoint plan fiduciaries
- Document authority
- Document fiduciary responsibilities
- Establish regular meetings
- Monitor plan investments
- Monitor plan documents
- Monitor plan providers
- Understand plan costs and ensure they are reasonable