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ERISA Section 403(b) and 457 Retirement Plans Are the Subject of New Government Agency Investigations

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For the past several years, ERISA Section 403(b) retirement plans, typically sponsored by governmental and education institutions, have been the subject of many lawsuits challenging the propriety of their plan investment options and administrative fee charges. As these cases have moved through the legal system, more attention has been given to ERISA Section 403(b) plans than had existed for several decades previously.

In the past few weeks, ERISA Section 403(b) and 457 retirement plans have been the subject of a new round of publicity, this time from governmental agencies. This week, the US Security and Exchange Commission (SEC) sent letters to companies that administer Section 403(b) and 457 retirement plans, opening an investigation to determine whether violations of federal securities laws have occurred in the plans' administration. The SEC is seeking details on how the plan administrators, which often serve crucial roles in selecting investments for the retirement plans of employees including teachers and government workers, choose investment options and police themselves when conflicts of interest arise.

The SEC also is requesting (1) documents pertaining to any compensation that the administrators have received since January 1, 2017 for referring investors to specific investment options or companies; (2) explanations of any gifts that administrators have received from companies that sell investments; (3) "information and documents" pertaining to how administrators provide investment counseling to investors; and (4) organizational charts that show companies that own or have ties or partnerships with 403(b) and 457 plan administrators.

The investigation is currently non-public, and it is unclear how many Section 403(b) or 457 plan administrators have received the SEC investigation notices.

The probe comes after the New York Department of Financial Services opened an inquiry last week into insurance-industry practices in the Section 403(b) plan market. The New York state watchdog is investigating whether life insurers and their agents are taking advantage of teachers to sell them potentially high-cost and inappropriate investments in Section 403(b) plans. The Department sent letters to a dozen major insurers seeking details on how they market retirement-income products to teachers.

This round of agency investigations into Section 403(b) and 457 plan investments and administration may well lead to additional litigation in this market. Before any potential litigation arises, Section 403(b) and 457 plan administrators should review their investment strategies and plan administration with an eye to the propriety of the investments and any potential conflicts of interest that may exist. At minimum, Section 403(b) and 457 plan administrators should seek legal advice to determine if their plans could be subject to either of these agency's investigations and what liabilities could exist.

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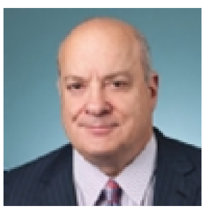

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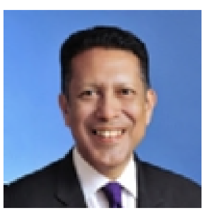

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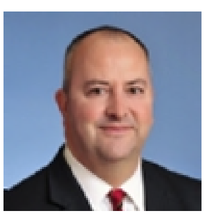

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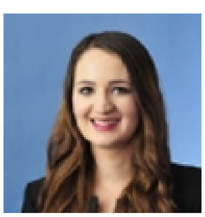

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