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Nationwide® Business Solutions Group | NQDC Plan Review Guide

Your guide to a nonqualified deferred compensation plan review

Why you should conduct a plan review

Most nonqualified plan sponsors want to get the most out of their nonqualified deferred compensation (NQDC) plan. Through a plan review, you can uncover the opportunity to make changes that dramatically affect the use and total cost of the plan.

NQDC plan reviews generally focus on these five categories, discussed on the pages noted:

To prepare for a plan review, you will need to provide the following materials:
✓ A copy of the Plan Document
✓ Plan communication materials
✓ The plan investment lineup
✓ The plan's current financial reporting
✓ Information on the informal funding of the plan

Plan design

Reviewing the plan design and available plan features can help you understand whether you are taking full advantage of the flexible utility of your specific NQDC plan options.

Your review should start with the stated goals and objectives of the plan. You should consider whether the plan type and related features are meeting those goals and objectives.

Questions to be considered may include:
Are all participants eligible for elective deferrals?
Are all forms of cash compensation eligible to be voluntarily deferred?
Does the plan allow for in-service distributions (e.g., to pay for a child's tuition)?
Do employer contribution vesting schedules accomplish retention?
Are fund allocation options considered best-in-class and all-encompassing?

As the plan sponsor, you may have other questions to be answered via the plan review. Identifying those questions at the outset can help ensure that the review is successful.

Participants' view and use of the plan

How your eligible employees view the plan's utility can offer insights to its attractiveness and effectiveness. For example, if eligible employees don't participate, it's important that you, as plan sponsor, determine the reasons why.

Your plan review should identify opportunities to cultivate eligible participant views of the plan's benefits:
Does each eligible participant understand how the plan can affect their retirement planning?
Does each eligible participant understand the tax benefits of their plan?
What does a participant's benefit statement look like?
How clear and compliant are plan communication and enrollment materials?
Are customized planning tools being provided to participants?

Answers to these questions may generate new questions. That's to be expected when conducting a comprehensive plan review.

Plan recordkeeping

Plan recordkeeping and administration is the day-to-day lifeblood of every plan. You expect your provider to generate acceptable accounting and financial reporting, of course. But you may want to consider how well those reports and other administrative services are meeting your needs, as well as those of the plan's participants.

For example:
How frequently is reporting received?
How understandable and well-formatted is the reporting?
Does reporting include customized journal entries?
Does the recordkeeper report on both plan liabilities and assets?
How functional is the administration platform for both plan sponsor and participants?

You may also want to consider whether the plan recordkeeper is able to deliver administration services that align with the flexibility of the plan and whether it can execute investment allocation adjustments to both the participant account balances and the corresponding informal funding.

Plan legal and compliance

A plan must comply with all applicable laws, rules and regulations. Noncompliance penalties can be harsh.

A well-designed plan review will not only identify potential compliance and legal issues, but also consider whether best practices have been established and are being followed.

You and your plan reviewer may want to consider questions such as these:
Is the plan compliant with all rules and regulations of Internal Revenue Code §409A?
Is FICA taxation being properly determined and assessed?
Are proxy disclosures and excess interest calculations being handled properly?*
Are covered employees identified accurately?**
Is the impact on the timing of their benefit payments managed appropriately?

* This question applies to publicly traded companies.

** IRS Notice 2018-68 provided initial guidance on the application of Section 162(m) of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act so that a company's "covered employees" for any tax year starting on or after January 1, 2018, includes anyone who:

- Served as its Principal Executive Officer ("PEO") or Principal Financial Officer ("PFO") for any portion of the year
- Was one of its top three highest-paid officers for the year
- Was one of its covered employees for any prior tax year beginning after December 31, 2016

Federal income tax laws are complex and subject to change. Neither Nationwide nor its representatives give legal or tax advice. Please consult your attorney or tax advisor for answers to specific questions.

Effect and efficiency of plan assets

Extrapolating the cost and efficiency of plan funding is a cornerstone of any nonqualified deferred compensation (NQDC) plan review. NQDC plans can be informally financed through several asset types. Each asset type has pros and cons. A plan review can help you identify how different plan asset types affect your cash flow, profit and loss statements, balance sheet, and total plan costs.

Sample questions that a plan review will ask include:
Are the plan assets tax-generating or tax-efficient?
Will the plan assets create cost recovery at the life of plan?
How efficiently are the plan assets offsetting the plan liability, including from an accounting treatment perspective?
Can you, as plan sponsor, access plan assets without generating tax liabilities?
Are the assets best managed inside or outside a trust?

Enhance your NQDC plan's total effectiveness as you potentially decrease its total cost.

To learn more about conducting a plan review, contact your wholesaler, or call Nationwide® Business Solutions Group at 1-877-351-8808.

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