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Leveling the playing field for public employee retirement security

ICMA-RC Chief Legal Officer Angela Montez advocates lower costs and greater participation in defined contribution plans

Public employees are the backbone of local communities, serving as teachers, firefighters, police, emergency medical technicians, park employees and in many other roles to benefit all of us. Without them, no town, city or county can function. But when it comes to retirement security, the playing field is not level for public employees.

Laws that apply to some public employee defined contribution retirement plans impede access to low-cost investment options and make it impossible for plan sponsors to implement auto-enrollment and auto-escalation, two very effective strategies for increasing participation and retirement plan contributions.

As one of the leading providers of public sector defined contribution plans, ICMA-RC has long sought to ease the burdens of local and state governments by helping their employees build retirement security. Angela Montez, ICMA-RC's senior vice president, general counsel and chief legal officer, has advocated for changes at both the federal and state level to make it easier for public employees to save for retirement and bring them into parity with employees at private-sector companies. In this Q&A, she discusses this advocacy initiative.

P&I: How did ICMA-RC's advocacy get started?

Angela Montez: ICMA-RC has always engaged in advocacy through participation in, and partnerships with, other organizations. We've found, however, that public sector retirement plan issues often get drowned out because the private-sector plan community is much larger and more vocal. We want to bring public sector issues into the conversation, providing the public plan perspective as members of Congress draft legislation and agencies develop regulations.

Our focus isn't just on public sector retiree savings, but also their health, where we are furthering our mission. We also support issues pertinent to the larger retirement community to provide greater coverage and greater savings opportunities to all Americans.

P&I: You're working to make collective investment trusts, or CITs, eligible as 403(b) plan investments. Tell us about that.

Montez: Historically, 403(b) plans, which are DC retirement plans for employees of public schools and certain other tax-exempt organizations, were almost entirely invested in annuities to provide a guaranteed income stream similar to a defined benefit plan. These plans couldn't even include mutual funds until 1974.

Because of this history, you see significantly higher fee structures in 403(b) plans than in 401(k)s and 457 plans.



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CITs can help reduce expenses. They provide the same investment strategies as mutual funds with greater flexibility and at a significantly lower cost. It has been estimated that incorporating these vehicles into 403(b) plans could save teachers and other public employees as much as \$10 billion per year¹ — a meaningful contribution to public employee retirement security.

P&I: What are you doing to advocate for this change?

Montez: Earlier this year, we asked the IRS for a private letter ruling to permit 403(b) plans to invest in CITs on a limited basis.

More broadly, we've partnered with organizations that are among the leading voices in the retirement industry, including the Coalition of Collective Investment Trusts, National Association of Government Defined Contribution Administrators (NAGDCA) and the Stable Value Investment Association (SVIA).

We've also met with officials who are leading legislators, including Senators Rob Portman, R-Ohio, and Ben Cardin, D-Md., to advocate that the CIT provision be included, along with a broad package of retirement savings reforms, in the Retirement Security and Savings Act.

P&I: There's an election coming up next year. How does that affect prospects for your bill?

Montez: There are several pieces of legislation that could include this provision this year. As with all legislation, next year is going to be tough as the focus shifts to the election. The good news is that retirement is a space where there is true bipartisanship. Our hope is that this biparti-

anship creates an environment to allow 403(b) plans to offer CITs to benefit the nation's hardworking teachers.

P&I: You've also been working to allow governmental plans to implement auto-enrollment and auto-escalation. Tell us about that.

Montez: Auto-enrollment changes the dynamic of plan participation to allow easy, automated enrollment at the start of a new job with the goal of increasing retirement security. While this plan feature is not mandated, and participants can opt out at any time, it has substantially increased participation and retirement savings in the plans that have used it.

Governmental 457 and 403(b) plans are governed by state law — unlike corporate plans, where the Employee Retirement Income Security Act, ERISA, preempts conflicting state and local statutes. The issue is that many states have laws against garnishment or wage deduction. These laws have nothing to do with retirement, but they can effectively prohibit auto-enrollment, where employees have to actively opt out of, rather than opt into, a plan, and auto-escalation, where their contributions gradually increase over time.

Only a small number of states have amended their laws to permit or require auto-enrollment. In most cases, there's been no real opposition to the change. It is just a matter of making state legislators aware of what's needed to make this feature available to public plans. For legislators who are interested, there is already model legislation.

This is a state-by-state process, where we have partnered with a number of organizations. This year, we attended the annual summit of the National Conference of State Legislators to raise awareness of the issue and received considerable interest from both legislators and their staffs. We intend to focus on approximately five states per year, starting with ones where legislation has already been introduced or where we have a strong presence. •

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¹Aon-Hewitt, "How 403(b) Plans are Wasting Nearly \$10 Billion Annually, and What Can Be Done to Fix It", January 2016.