

## **HUMAN RESOURCES**

### **Employee Benefits**

#### **Tax-Deferred Annuity Accounts (TDAs)**

This regulation supersedes Regulation 4750.6.

#### **I. PURPOSE**

To outline the procedure for selecting tax-deferred annuity (TDA) vendors and to identify specific guidelines to be followed by these vendors in selling tax-deferred products.

#### **II. SUMMARY OF CHANGES SINCE LAST PUBLICATION**

- A. Section I. changes “account” to “annuity.”
- B. Section IV.A. corrects the name of SEBAC.
- C. Section V.F. clarifies the catch-up provisions.
- D. Section V.H.7. clarifies IRS regulations.
- E. Section V.H.9. clarifies the specific reports the vendors submit to FCPS and participants on a quarterly basis.
- F. Section V.H.11. clarifies vendors and agents will share information with FCPS staff members within a required time frame.
- G. Section VI.A.1. changes IRS code to applicable IRS regulations.
- H. Section VI.A.4. added for FCPS to notify approved vendors of other approved vendors.
- I. Section VII. adds a contribution minimum of \$200 on an annual basis.
- J. Section VII. changes Human Resources Employee Center to HR Client Services.
- K. Section VII. updates the web site for the list of approved 403(b) vendors and agents.

### III. SELECTION OF VENDOR

#### A. Initiation of Review Process

A TDA review shall be conducted periodically by the assistant superintendent, Department of Human Resources. Following a review, the selected vendors shall receive contracts for three years; up to three one-year extensions shall be exercised at the discretion of Fairfax County Public Schools (FCPS).

#### B. The Review Process

The review and selection of vendors shall be conducted in accordance with the competitive procurement procedures established by the Fairfax County Government Purchasing and Supply Management Agency (county purchasing). A request for proposal (RFP) shall be issued, and each interested vendor must respond to the RFP within the time frame specified therein and in accordance with the requirements stipulated by county purchasing in the RFP. The responses to the proposal shall be evaluated by a selection advisory committee (SAC) based on a predetermined set of criteria. The SAC shall be assisted in this process by a consultant. The SAC shall analyze the vendor responses and recommend those vendors that should be authorized to sell tax-deferred products to school employees. The committee's report shall be reviewed by the assistant superintendent, Department of Human Resources, and shall be forwarded through the Division Superintendent to the School Board for final approval or disapproval.

#### C. Disapproved Vendors

Subject to the provisions of section V.G. and once approved as a TDA vendor, the vendor has three years to obtain and maintain at least 300 FCPS employee clients (active employees for which a TDA deduction is being taken). If the vendor fails to attain this level of participation by June 30 of the third year of this contract, or if the vendor fails to maintain 300 FCPS employee clients subsequent to that June 30 date, the vendor will no longer be authorized to sell tax-deferred products to new clients.

The vendor may continue to manage accounts for the existing FCPS employee clients provided the vendor maintains at least 200 FCPS employee clients. If the number of FCPS employee clients falls below 200, the vendor and employees will be given at least a 90-day notice of the intent to suspend employee pretax contributions to that vendor. To continue to participate in a tax-deferred program, the employee must select a new TDA vendor from the remaining authorized vendors.

### IV. RESPONSIBILITIES OF THE SELECTION ADVISORY COMMITTEE

#### A. Composition

The SAC shall be selected from employees of the FCPS Departments of Human Resources and Financial Services and members of the School Employees' Benefits Advisory Council (SEBAC).

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**B. Responsibilities**

Evaluate those vendors submitting proposals and recommend vendors for approval.

**V. RESPONSIBILITIES OF TDA VENDORS**

Vendors approved by the School Board must adhere to the guidelines outlined below for selling tax-deferred products to employees of FCPS.

**A. Registration of Sales Agents**

Each vendor shall advise the assistant superintendent, Department of Human Resources, of the agent of record for the vendor within 30 days of approval to sell tax-deferred products to employees of FCPS. Each vendor is limited to six sales agents, the names of whom must be on file with the assistant superintendent, Department of Human Resources. It shall be a breach of contract for a vendor to use sales personnel not on record with FCPS.

Sales agents must be licensed in the state of Virginia and with the appropriate federal agencies. A sales agent may not be an employee of FCPS or the county government of Fairfax, Virginia.

**B. Sales Presentations**

Sales presentations must be conducted by authorized agents and conducted in accordance with the performance standards outlined in this regulation. The marketing of products other than 403(b) and 403(b)(7) products is prohibited.

For sales presentations and meetings with employees, agents must provide accommodations as required by the Americans With Disabilities Act (ADA) should an employee who is disabled as defined by the act request accommodation.

**C. Disclosure of Costs**

Prior to obtaining a final signature from the employee client, an authorized sales agent must make a full and fair disclosure of all costs, including but not limited to the following: sales charges, yearly fees, surrender charges, guaranteed cash values, projected cash values (if applicable), guaranteed annuity rates, projected annuity rates (if applicable), and settlement options available. The agent must make a clear statement that the annuities are tax-deferred and not tax-free. All Securities and Exchange Commission, state, or industry sales requirements must be adhered to. Failure to do so could result in the suspension of the agent, the vendor, or both from the authorized FCPS-approved TDA list.

The vendor also shall provide clients with information regarding changes in all costs relating to fees, penalties for early withdrawal, sales and surcharges, and commissions for existing and new products as this information becomes available.

D. Annual Review of Maximum Amount Contribution

The agent shall inform the sales prospect of the maximum amount contributable, if applicable, permissible by law and shall perform annual reviews to ensure that contract holders are not violating the current Internal Revenue Service regulations on tax-deferred accounts.

The annual review of the maximum amount contributable, if applicable, shall be conducted in January of each year. A letter attesting that this review has been completed must be submitted to the Office of Payroll Management no later than February 15 of each year. Failure to submit this annual review shall result in the suspension of that vendor from entering into new contracts with FCPS employees and, if not received by July of a given year, shall result in the revocation of that vendor's right to continue contracts for any FCPS employees.

FCPS shall have the right (but not the obligation) to review all or any part of any maximum amount contributable computations for accuracy and for compliance with applicable federal, state, or local laws and regulations. The school system shall take any action, including but not limited to cancellation or modification of one or more salary reduction agreements, that it may in its sole discretion believe necessary or advisable on the basis of such review.

E. Salary Reduction Agreements

Salary reduction agreements for tax-deferred accounts must be submitted on a form or forms specified by FCPS, copies of which may be obtained from the Office of Payroll Management. Vendors and agents must allow adequate time for processing of salary reduction agreements and should ensure that all steps are taken in order. Vendors and agents managing a change in vendor for an employee are required to ensure that salary reduction agreements are appropriately canceled before a new agreement is established. In addition, vendors and agents are required to give the FCPS employee-client a copy of the completed salary reduction agreement.

FCPS will continue to submit employee contributions to vendors, and vendors must continue to accept employee contributions if the salary reduction agreement and the agent of record on file in FCPS have not been changed.

F. Computation of Maximum Amount Contributable

The maximum amount contributable (MAC) is now standardized for all eligible employees. The limits generally increase each year and can be found in the Internal Revenue Service Publication 571.

There are two catch-up provisions an employee may be eligible for:

- The age-based catch-up for an employee aged 50 years or older.
- The length-of-service catch-up (also known as the lifetime catch-up) for employees who have 15 years or more employment with FCPS.

The vendor agents have the option to use software provided by their companies or may contact the Office of Payroll Management for a calculation to perform this test. Documentation of the test and proof of eligibility for the length-of-service catch-up is required as part of the salary reduction agreement.

#### G. Minimum Number of Contracts

By the end of the three-year period of the contract, an approved carrier must have attained tax-deferred accounts with a minimum of 300 FCPS employees in order to continue to sell TDAs during the one-year contract extensions and receive consideration in the next review process. Any exception to this rule must be approved by the Department of Human Resources, Office of Benefit Services, based on the written explanation provided by the vendor supporting the reasons why an exception should be granted.

#### H. Performance Standards

**Expected Performance:** It is expected that all authorized TDA vendors will perform in a technically proficient and professional manner. To assure that this is accomplished, the School Board has mandated that all selected TDA vendors and their agents must abide by the following rules of conduct and performance:

1. Agents will not misrepresent their investment products.
2. Agents must fully disclose all product fees and sales charges.
3. Agents will refrain from marketing products other than TDA products.
4. Agents will not harass FCPS employees or engage in any aggressive sales practices.
5. Agents will not disrupt the school learning environment.
6. Agents will abide by the rules established by individual school principals or program managers regarding access to FCPS employees.
7. Vendors will assure that each TDA contract is in compliance with all applicable IRS regulations currently in effect.
8. If applicable, vendors will compute the maximum amount contributable (MAC) in accordance with IRS regulations.
9. Vendors will provide participant reports to FCPS and account statements to participants on a quarterly basis.
10. Vendors will be responsible for losses resulting from their errors.
11. Vendors and agents will share information in required time frames with FCPS staff members regarding forms, reports, statements, verifications, or any other required documents.
12. Vendors and agents will conduct all business with FCPS, its staff members, and its employees in a prudent, ethical, and responsible manner.

**Infractions:** If any TDA vendor or agent violates the rules of conduct and performance, a principal or program manager should provide, in writing, to the Office of Benefit Services, evidence of departure from the performance standards as outlined. The FCPS Office of Benefit Services will obtain any additional

information needed to substantiate the written notice and duly record that a written notice has been filed.

**Remedy:** If two written notices concerning violations of the rules of conduct as outlined are filed within a 12-month period, the Office of Benefit Services will issue a formal warning.

If a vendor or its agents receive a formal warning and, subsequently, if at least one additional written notice is filed in connection with the vendor or its agents, a final warning will be issued by the Office of Benefit Services.

If, after a final warning has been issued, a subsequent written notice is filed in connection with a vendor or its agents, the vendor and its agents will no longer be authorized to sell new TDA products to FCPS employees.

**Administration:** The staff members from the FCPS Office of Benefit Services and the School Board have complete authority over the administration and the implementation of the performance standards for authorized vendors of the FCPS TDA program.

## VI. RESPONSIBILITIES OF FCPS

A. The school system shall perform the following functions as they relate to tax-deferred accounts:

1. Accept and manage salary reduction agreement forms for employees from approved vendors that comply with this regulation and the applicable Internal Revenue Service regulations.
2. Deduct and transmit tax-deferred amounts to the appropriate vendor on a timely basis. However, FCPS will not be liable for any losses or gains in employee accounts as a result of misdirected payments or other processing delays. In addition to receiving a printed copy of the deduction information each pay period, the vendor will have the option of receiving the same information in an ASCII text file format on a 1.44MB diskette. The vendor must notify the Office of Payroll Management, in writing, if the diskette is desired.
3. Provide to approved vendors, by the end of December of each year, a list of employees who have salary reduction agreements with that vendor and corresponding salaries on which the annual contributable amount, if applicable, is to be calculated for the annual review.
4. Notify approved vendors of all other approved vendors in the plan in order to allow appropriate transfer activity accordingly. Communicate updates with vendors as necessary.

5. If applicable and upon vendor request, provide the software necessary for calculating the maximum amount contributable including any appropriate updates.
- B. The school system shall not perform the following functions as they relate to tax-deferred accounts:
1. Approve or acknowledge employee requests for hardship withdrawals or loans.
  2. Approve or acknowledge agreements authorizing individuals other than the employee to execute purchase, exchange, or sell orders related to employees' tax-deferred accounts.
  3. Provide fund or account information for individual employee accounts or general funds of vendors.

## VII. INSTRUCTIONS TO EMPLOYEES

|| All employees willing to contribute a minimum of \$200 on an annual basis who are interested in establishing a tax-deferred account or in learning more about the options available should refer to Notice 4750 for the list of authorized vendors and agents of record. For the most current information, contact HR Client Services or access the FCPS Department of Human Resources web page. The web address is: <http://www.fcps.edu/DHR/employees/benefits/403b.htm> .

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- A. The employee must contact a vendor or vendors for detailed information about the program(s). All authorized vendors will have the necessary FCPS forms and salary reduction agreements.
  - B. The vendor is responsible for submitting the forms to the Office of Payroll Management for salary verification. Completed verification forms will be returned to the vendors who must calculate the maximum amount contributable, if applicable. The employee and agent then execute the salary reduction agreement. The agent then must submit the salary reduction agreement to the Office of Payroll Management. For the monthly payroll, forms received by the first working day of the month will be effective for the pay period at the end of that month. For the biweekly payroll, the biweekly processing schedule must be followed.
  - C. A contract change is defined as a change in the amount of an employee's contribution. Generally, an employee may submit two contract changes during a calendar year. Changes required because of a change in an employee's employment status (e.g., employee goes from full-time to part-time employment) or changes required because of an administrative error that would result in an over exclusion are not considered contract changes. Further, a change of vendor is considered an amendment to the original contract rather than a new contract if the salary reduction amount remains unchanged.

- D. An employee may terminate a salary reduction agreement by submitting a written request to the Office of Payroll Management. The employee may not close the tax-deferred account with the vendor until the salary reduction agreement has been terminated with FCPS. Amounts deducted under valid salary reduction agreements and directed to closed accounts shall not be refunded to the employee by FCPS.

Legal Reference: Internal Revenue Service Publication 571

See also the current version of: Notice 4750, Tax-Deferred Accounts (TDAs)—Authorized Carriers