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Regulators crack down on teacher pension plans rife with conflicts

Experts: Recent Delaware settlement a sign of things to come



Jan 16, 2020 @
7:30 pm

By **Mark Schoeff**

Jr.

A recent investigation in Delaware of a company running a teacher pension plan that resulted in \$500,000 in penalties and reimbursements could be a harbinger of a regulatory crackdown in an area rife with conflicts of interest, according to experts.

Earlier this week, the Delaware attorney general **announced a settlement** with the Horace Mann Educators Corp. The state is the most recent to



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zero in on 403(b) plans, which are vehicles for teacher retirement savings. **The Securities and Exchange Commission** and the state of New York also are investigating the sector.

The teacher retirement plans are similar to workplace 401(k) programs. But many 403(b) plans, which are mostly offered by school systems to K-12 teachers, are not covered by federal retirement law. That makes them vulnerable to investments that have high fees and other costly provisions, such as surrender charges and riders.

“There’s going to be more to come,” said Jim Lundy, a partner at Drinker Biddle & Reath. “It’s a reasonable inference that the [SEC] enforcement division has a sweep in this space, although they don’t use that term anymore.”

In a **speech in November**, Stephanie Avakian, co-director of the SEC Division of Enforcement, said the agency is probing compensation and sales practices of third-party administrators.

“Among other things, we are digging into how administrators and their affiliates choose and recommend investment options, how they are compensated – including whether they receive compensation for referring retirement plans to certain vendors or service providers – and how they deal with conflicts of interest,” Ms. Avakian said at a conference in London.



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The market is big, with **\$1.1 trillion being held in 403(b) plans** at the end of the third quarter of 2019, according to Investment Company Institute.

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The SEC is likely to find a lot of problems with 403(b)s, said Tony Isola, head of the 403(b) practice at Ritholtz Wealth Management.

“I would say the majority of holdings of [teacher retirement plans] wouldn’t pass the litmus test to say, ‘This is appropriate,’” Mr. Isola said. “Hopefully, the bad actors will see they’re on the radar of various regulators. Before, they were acting with impunity.”

Marcia Wagner, owner of Wagner Law Group, said it’s difficult to predict how many other states will **follow the lead of the SEC and New York**. But momentum may be generated by the fact that there is bipartisan concern about the lack of retirement savings.

“Excessive fees charged to participants in school district 403(b) plans makes it more difficult for them to obtain an appropriate level of retirement income, even if they contribute diligently to the 403(b) plan,” Ms. Wagner wrote in an email.

Financial advisers who work with 403(b) plans should beware of

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the regulatory scrutiny, Mr. Lundy said.

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“Firms should take a good look at the financial incentives and revise disclosures as needed,” he said.

Mr. Isola recommends straight talk to teachers about the details of complex plans.

“I would make sure the teachers understand the product fully before they sign on the dotted line,” he said.



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