

By Fred Reish and Bruce Ashton

What Plan Sponsors Should Do

The Coronavirus pandemic is disrupting everyone's personal and financial lives. While our health, and that of our families and friends, is paramount, we realize that the sudden and large investment losses in the 401(k) plans that you sponsor – and act as fiduciaries for – present issues more challenging than those typically encountered by employers and plan committees. This article suggests steps that you can take as fiduciaries to address those challenges. The article also applies to advisors because it addresses questions they may get from plan sponsors.

With the stock market dropping precipitously and 401(k) accounts shrinking, participants may be shell shocked—and considering changes that may be harmful over the long run. Here are several suggestions for fulfilling your legal responsibilities, as well as best practices for managing your 401(k) plan. Be sure that you consult with your plan's investment advisor about these suggestions and other ideas the advisor may have.

- ◆ **Legal Obligation: Duty to Monitor.** As the plan committee, you should monitor the plan's investments and service providers as you always have. (Note: we are referring to the "plan committee" to mean the fiduciaries of the 401(k) plan even though it could be a single officer or owner who makes the plan decisions.) Don't put off your committee meetings, even though you may need to do them using one of the remote meeting programs. We discuss plan investments in the next section, but remember that you also need to monitor your plan's service providers. This means, in part, making sure they are continuing to provide all their services to the plan and participants.
- ◆ **Legal Obligation: Plan Investments.** Here are several things you should do in monitoring the investments in your plan. For all of these, you should consult with your plan's investment advisor about these suggestions and additional ideas that the advisor may have.
 - ◇ Review your plan's investment policy statement (IPS) and make sure that you are following the processes outlined in the IPS. This is always a requirement, but it is particularly important now because you might be preoccupied by the fallout of the pandemic. You should follow the terms of the IPS in your monitoring. If on reflection, though, the IPS is not consistent with the steps that you want to take, make sure to work with your advisor to amend it.
 - ◇ If the plan's investment lineup was well selected and monitored in the past, it is likely that the investments continue to be prudent, even though they may have lost a significant part of their value in the market downturn.
 - ◇ Committee members should work closely with their advisors to determine if any investment changes need to be made at this time. Unless changes are required at this time (e.g., an investment no longer satisfies the requirements in the IPS), it may be better to wait until after the markets have stabilized. But that's not to say that investment changes shouldn't be considered later...see below.
- ◆ **Best Practice: Plan Investments.** Once the markets have stabilized, it could make sense to review your plan's investments in light of the investment volatility resulting from the Coronavirus pandemic. Here are some suggestions. Discuss them with your plan's advisor, who will likely have additional ideas:
 - ◇ Consider offering managed accounts as a service to participants. After a decade of steady market growth, some participants may have become over-confident in their ability to manage their accounts, but now realize they need help. This is a step that could be taken now or later.
 - ◇ Review your plan's suite of target date funds and consider whether you are comfortable with their level of volatility. For example, are the allocations of the TDFs appropriate for the participants who are approaching retirement? That is, should you offer TDFs that have a more moderate or conservative glide path?

- ◇ Look at your lineup of fixed income alternatives to decide if your plan has an adequate array of fixed income funds so that participants who are seeking to diversify in a more conservative manner have choices.
- ◇ Review the equity, or stock, funds in your investment lineup to see if there are options that participants may not understand or know how to use, and ask if they should be removed from the lineup.
- ◇ Consider whether to offer a suite of balanced funds based on risk in addition to the target date lineup.

For the most part, these suggestions are best practices; however, the use of best practices can be a way to mitigate fiduciary risk.

- ◆ **Best Practice: Monitoring of Participant Actions.** Consider obtaining information from your plan's recordkeeper on changes in participant deferrals or investments in their accounts. While these decisions are up to the participants, having the information will be helpful in establishing the need for communication with your participants. For example, if there have been very few changes, you could reasonably conclude that participants understand that the market downturn may be temporary. But if there has been significant transfers to cash, you may want to discuss with the recordkeeper or plan advisor whether additional investment education or other communications should be provided.
- ◆ **Best Practice: Communicate with the Recordkeeper.** You should reach out to your recordkeeper to get information on a number of issues.
 - ◇ Will the recordkeeper continue to provide all of the same services, even if they are offered remotely, and has this been communicated to the participants?
 - ◇ Is the call center prepared to answer your participants' questions about market volatility? What are the call center representatives telling participants about market volatility?
 - ◇ What informational and educational materials does the recordkeeper have that can be distributed to your participants? Are they already sending those materials to your participants? If not, will they?
 - ◇ If the recordkeeper has a financial wellness program, consider making that available to participants.
 - ◇ If your offices are shut down or you've had to lay off part of your workforce, how is the recordkeeper staying in touch with the participants?
- ◆ **Best Practice: Communication with Participants.** You should consider letting your participants know that you are actively monitoring the plan's investments and services. The purpose is to reassure them that you are paying attention to the plan and its investments. Once confirmed with the recordkeeper, you can tell your participants that all of the plan's usual on-line and call-in services are still available to them, e.g., the recordkeeper call center, and inform them of any new services that are available. As a part of this, consider referring the participants to the call center or other service providers if they have questions about the investments in their accounts, their deferrals or other issues about their accounts.
- ◆ **Best Practice: Plan Provisions.** Consult with the plan's ERISA counsel to see whether changes need to be made to the plan in terms of the participant loan program, hardship withdrawals, and in-service withdrawals related to COVID-19. The objective is to make it easier for participants to access the funds in their accounts in case they need cash during an extended layoff period. (We will be sending out separate pieces discussing these issues in more detail. Look for them this week or next.)

These are some of the steps that plan sponsors and plan committees need to take (those mandated by law) or might consider (best practices) during this turbulent period.

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