Bolton
Insight

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Fiduciary Diligence – Now More Than Ever

With the current disruption that we are all experiencing, it is important to remember critical fiduciary functions. The recent spike in volatility on Wall Street is a strong reminder to plan fiduciaries that they need to remain vigilant overseeing the governance of their plans. While many participants may not want to check their statements this quarter, plan fiduciaries should continue to meet regularly and evaluate the processes for their plans.

The past decade was marked by strong economic and market environments. The United States did not experience a recession, and in fact, the S&P 500 recovered from the market lows of 2009. Even during this prosperous timespan, retirement plan litigation skyrocketed. These lawsuits mainly focused on fee litigation, investment selection, and investment monitoring processes. A prolonged downturn in the market will likely result in further participant litigation.

It is important to remember that a lengthy market downturn would stagnate growth in participant balances and could cause those closer to retirement to experience poorer retirement outcomes than they had expected. This is especially true for those who may no longer be able to work. It is in this novel environment that reviewing and strengthening fiduciary processes is extremely vital.

So, what should plan sponsors do now to solidify their investment processes? We recommend that plan sponsors review their plan governance and take the following actions:

Document all investment decisions and processes. Courts usually hold plan sponsors accountable for the fiduciary processes that may or may not be in place when making any plan and investment decisions. Documentation proves that a plan committee has a process, and has followed that process, in making plan investment decisions.

Review investment performance periodically. While plan sponsors typically won't be judged on market performance, it is important to prudently monitor funds in the lineup to ensure they are meeting the objectives stated in the IPS. We recommend comparing investment performance to relevant benchmarks and indices on a quarterly basis.

Update the Investment Policy Statement (IPS) annually. The IPS is the guiding document that provides general investment goals and objectives. The IPS is the roadmap for informed decision making and enables plan fiduciaries to stay focused on the long-term objectives.

Identify and benchmark plan fees to the marketplace. Contrary to popular belief, the lowest fee is not always the right choice. There are many sensible reasons a plan sponsor may want to incur higher fees such as enhanced communications or a robust online platform, just to give a couple examples. However, it is prudent to evaluate plan fees to ensure that they are reasonable for the services being provided. Plan fees are represented in a variety of different ways and any fee comparison should be a fair comparison of like fees. An experienced consultant can assist plan sponsors in making a valid fee comparison.

Utilize the DOL TIPS for Target Date Funds (TDF) to confirm the target date selection process. TDFs have become the most common Qualified Default Investment Alternative (QDIA), and many participants that make no election become automatically enrolled in the TDF that best matches their projected retirement age. If TDFs are your plan's QDIA, it is imperative that the selection and monitoring meets industry best practices.

Review the share class of the investment options selected. This is where lowest net fee is best. An investment option may meet the standards of evaluation as stated in the IPS, however plan fiduciaries should always make certain that they are using the least expensive share class, on a net expense basis, available to their plan. Recordkeepers are not obligated to automatically switch to the lower expense share class when available. Many of the lawsuits against plan sponsors have been based on the use of more expensive share classes when a lower expense share class was obtainable. This is important because when markets are up, participants may not realize as much of their potential gains and when the markets are down, participants may realize greater losses.

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Conduct annual fiduciary training. In this ever-changing landscape, it is recommended that plan fiduciaries receive training to stay abreast of best practices and new regulations.

Plan fiduciaries should acknowledge their fiduciary status in writing. This is a key part of the documentation process and represents that the plan fiduciaries fully understand their responsibilities and are acting in the best interest of the plan and its beneficiaries.

Update or create a committee charter. Similar to the IPS, a committee charter is a guiding document. Unlike the IPS, which guides investment and evaluation standards, the Charter defines the purpose of a committee and how it will operate.

Review fiduciary insurance coverage. Fiduciary insurance coverage is designed to protect businesses and employers against mismanagement of a company's employee benefit plan. Similar to E&O insurance, fiduciary coverage typically covers legal expenses and financial losses due to errors, omissions or breach of fiduciary duty.

Confirm the number of vendors/plan providers and why. Single vendor solutions streamline plan fiduciary oversight and provide economies of scale – a key factor in obtaining a lower share class. If a multiple vendor solution is being utilized, there should be clear documentation as to why.

It is important to remember that prudent discharge of your fiduciary duties is driven by process, not outcomes. Our experienced consultants can help Plan Sponsors refine their existing processes or establish new ones. By taking action now, plan fiduciaries can reduce the likelihood of potentially expensive and harmful litigation in the future.

If you would like more information on how to better meet your fiduciary responsibility administering your retirement program or improve participant outcomes in these unprecedented times please contact Mike Beczkowski at 443-573-3901 or mbeczkowski@boltonusa.com