



Employee Communication is Key

A sputtering economy and declining stock market have taken a huge toll on investors' portfolios, including employees' 401(k) accounts. Some studies show that stock market drops resulted in the average 401(k) account balance falling nearly 30 percent in 2008. This occurred despite participant contribution levels that continued at slightly higher rates than in 2007.

Losses can be frightening to any investor, but they may be particularly alarming to employees. For many 401(k) participants, their plan accounts represent their largest single asset outside of their homes, and a primary expected source of retirement income. And in many cases, 401(k) accounts represent participants only experience with stock market investing. Such high stakes, coupled with fear and inexperience, could be fodder for lawsuits in which employees look to recover losses.

ERISA Section 404(c) can protect plan fiduciaries from liability for the consequences of participants' investment decisions -- if the provisions of that section are followed. However, fiduciaries continue to have the duty to act prudently and solely in the interest of plan participants when choosing the investment options offered by the plan and when selecting investment managers.

Under the law, both investment offerings and investment managers must be monitored to ensure that they continue to be prudent choices. Lawsuits could be forthcoming in the wake of the 2008 U.S. Supreme Court case of *LaRue v. DeWolff, Boberg & Associates*, which ruled a plan participant can sue plan fiduciaries to recover individual losses alleged to be caused by a breach of fiduciary duty.

Clearly, present-day circumstances provide ample motivation for 401(k) plan sponsors to take steps to make sure they adequately

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protect themselves. It is an important time to review the administrative processes and fiduciary procedures associated with your plan, including those related to investment managers, investment line-up and fees.



The following are among the issues to consider in conducting such a review:

- **Investments.** Review your plan's investment choices to determine whether the selection available to participants is appropriate. Does the line-up offer options along the risk and return spectrum for all ages of participants? Are any pre-mixed funds, which are based on age or expected retirement date, appropriate for your employee population? If the plan includes a default investment for participants who have failed to direct investment contributions, review the option to ensure that it continues to be appropriate. If your company plan currently does not have a written investment policy in place, or does not use an independent outside consultant to assist in selecting and monitoring investments, take steps to incorporate these into your investment procedures.
- **Fees.** 401(k) plan fees have recently come under criticism. Last week, a bill was introduced in the U.S. House of Representatives that would require greater 401(k) fee disclosure to participants. Determine the amount of current participant fees associated with your plan's investments, and benchmark them against industry standards.
- **Investment managers.** Review (or create if you don't have them) the written processes your plan has in place for the selection and monitoring of investment managers.
- **Administrator.** The plan administrator is the face of the plan to employees. Solicit and monitor participant feedback on the administrator so that you know about problems before they grow into headaches. Further, have criteria in place to assess the plan administrator's performance on an ongoing basis and to benchmark performance against industry standards.
- **Compliance.** Are your plan's administrative procedures in compliance with current regulations? If you intend your plan to be a participant-directed individual account plan, are all the provisions of ERISA Section 404(c) being followed?

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