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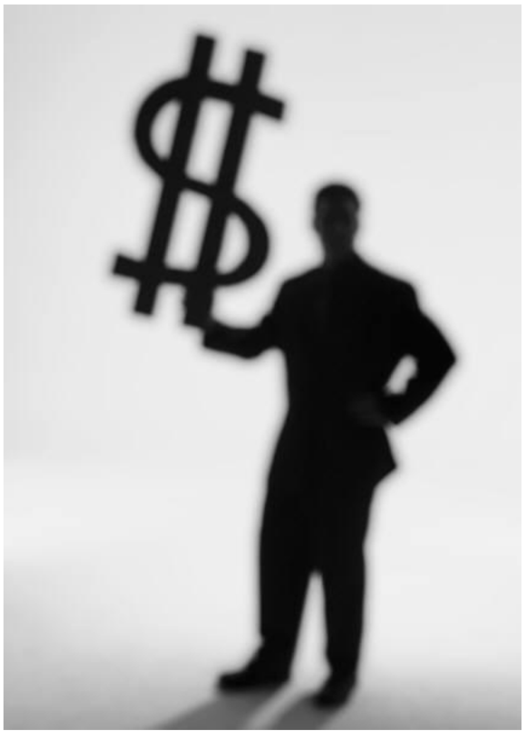
Retirement Report

NEWS AND UPDATES FOR PLAN SPONSORS AND FIDUCIARIES OF DEFINED CONTRIBUTION PLANS

Fees *written by Mike Falcone – Director of the Eastern Region*



Chances are that sometime recently you saw an ad for a product or service you had some interest in and it grabbed your attention. Whatever it was, it intrigued you enough to do some research and find out if it really was a good deal. After further investigation, maybe you realized the product or service wasn't as good as you first thought. Others were offering the same product for less, or including more bells and whistles for the same price. Trying to figure out which deal is best can be confusing because no two offers are exactly the same. Furthermore, if it's something you don't need at the moment you may find it easier to set aside and deal with later.

As a plan sponsor, you've likely gone through a very similar experience. With the 408(b)-2 regulations in effect, you've now received information from your providers that shows how much it costs to use their services, and it would be safe to assume that they promised you are getting a great deal. At the same time, their competitors are probably pounding on your door with what they believe are better offers. Sounds interesting, but you're not really in the market for a new provider and there are lots of other things on your plate that are more pressing, so you figure you can set it aside and deal with it later.

The problem is that this may not be a good enough answer for the Department of Labor (DOL). As a plan fiduciary, one of your key responsibilities is to ensure plan

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Investment Commentary: Specialty Funds and Retirement Plan Implications

Specialty funds generally refer to funds that invest in focused and/or relatively small market segments in the global market place. Some of the more common include emerging markets funds, science and technology funds and real estate (REIT) funds. While specialty funds can add value to a portfolio when used properly in an investor's overall asset allocation, they can also be extremely risky and deteriorate the value of a portfolio if used improperly. This can occur when utilizing specialty funds as a substantial part of a portfolio, or even diversifying across a number of specialty funds, which can lead to a false sense of security.

Emerging Markets, a strong performing sector as of late, provides one example of the downside risk faced by investors. The MSCI Emerging Markets index provides us evidence that the risk of a

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DOMA Ruling Raises Big Questions for Plan Sponsors

The U.S. Supreme Court's ruling that overturned a key section of the federal Defense of Marriage Act (DOMA) holds wide-ranging implications for retirement plans and participants.

Among other things, it affects how account assets are divided in a divorce, how they are distributed in retirement, and how they will be parceled out upon an account holder's death. Beyond retirement plans, the decision has major ramifications for health and welfare benefits and for income and payroll tax rules.

The court on June 26 struck down the section of the 1996 measure that, for purposes of federal law, said the term "marriage" must be limited to marriage between a man and a woman and that the term "spouse" must be limited to opposite-sex spouses.

Now that this portion of the law is moot, implementing the court's decision for retirement plans will depend largely on how the Obama administration and various federal agencies interpret the decision as well as existing federal law and regulations. The exact contours of what will follow remain uncertain.

"We are very early in the process," said Jamey Delaplane, head of Vanguard ERISA and Fiduciary Services. "There's a lot we don't know yet."

Execution less clear than potential implications

In principle, the ruling in *United States v. Windsor* means that:

- Same-sex spouses who live in a state that recognizes their marriage will now have spousal consent rights currently limited to opposite-sex spouses, such as default beneficiary rights, qualified joint and survivor annuity (QJSA) benefits, and qualified preretirement survivor annuity (QPSA) benefits. They also will be able to request a qualified domestic relations order (QDRO) to protect their retirement benefits in the event of divorce.
- Same-sex spouses qualify for the more favorable required minimum distribution (RMD) and rollover rules for retirement plans and IRAs that apply to spouses, rather than those for nonspouse beneficiaries.
- The IRS safe harbor for hardship distributions from a 401(k) plan apply to same-sex spouses, thus allowing qualifying distributions to pay for medical care, tuition, and burial costs.

While that much seems clear, Mr. Delaplane said key points about execution are unresolved.

Plan sponsors don't yet know how a plan's spousal benefits will be affected if same-sex couples who live in one of the 37 states that do not recognize same-sex marriage were married earlier o get married in the future in a state (or country) that does recognize same-sex marriage. For example, work transfers for same-sex couples may involve moving from a state that recognizes same-sex marriage to one that does not; how plans should treat such participants and situations is not yet clear.

ERISA historically required a uniform federal process for administering benefit plans and generally preempts state law. However, since ERISA does not define the term "spouse," it will likely be necessary to look to the state law definition of marriage. Variation among states' laws regarding same-sex marriage creates significant complexity. Benefit plans may well have to use differing rules when their participants and participants' beneficiaries live or work in multiple states.

"Plan sponsors will need to evaluate their plan documents and plan operations to implement the Windsor decision," Mr. Delaplane said. "They may need to amend the definition of spouse in their plan documents. They also may need to begin tracking the states in which same-sex couples live or marry, depending on the guidance the federal government provides."

Vanguard

This article was written by Jamey Delaplane, head of Vanguard ERISA and Fiduciary Services, and originally published in Vanguard's July *Your Insights* newsletter.

Employee Communication Strategies for All Seasons

With all the uncertainty in the marketplace, there is likely no better time to provide education to your participants then there is today! Education may consist of the following vehicles: employee meetings, webinars, memos, flyers, payroll stuffers, or mailers (just to name a few). We encourage you to utilize a variety of these methods to keep the material fresh and exciting to participants. We also encourage you to focus on more than one education topic throughout the year. For example, one quarter, you may consider mailing participants a piece on the benefits of automatic rebalancing. The next quarter your education focus could be about investing during recessions. The following quarter could be a webinar to tour your service provider's website capabilities. We also encourage you to reach out to your service provider to see what new information and materials they have available for your participants and find out what assistance they may provide. Creating a clear education plan is a great way to keep you on track to meet your goals and objectives.

Fees

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fees are reasonable, especially when the plan and/or its participants are absorbing the cost (which is the case for the vast majority of fees in a defined contribution plan). And with having this new information in your hands, the expectations of the DOL are that you will be in a position to do so. But how do you prove the fees for your plan are reasonable?

The only true way to do this is to take your plan to the market and find out what other providers would charge. An important first step in creating a level playing field is to find out exactly what services your current provider is delivering. Once you have this, package it along with demographic information about your plan (number of participants, how your plan's assets are allocated among the funds, cash flow, etc.) in the form of a Request-For-Information (RFI), distribute it to a group of 3-5 providers you believe would be able to service your plan and have them tell you what revenue they would require to deliver the same suite of services to your plan. Your trusted advisor can shoulder most of this load for you.

Having the results in hand puts you in a much better position to determine if your plan's fees are reasonable. If they are, you've satisfied your obligation as a plan fiduciary and done what the DOL is expecting. If not, look for opportunities to bring them in line with the market. This could include lowering or eliminating any out-of-pocket costs, lowering investment-related fees and/or possibly adding services.

In any event, it's important to recognize that this is not something you can put aside for a later date. The sooner you go through this exercise, the sooner your participants will likely benefit from your being a prudent fiduciary who is carrying their responsibility to ensure plan fees are reasonable.

Not only is it your responsibility, it's good business, so do it prudently and make sure you document what you've done.

Investment Commentary

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large loss is possible in a very short period of time. The worst one month return since its inception was -29%, which was almost twice that of the worst monthly return for the S&P 500 index (-14%) across the same time period (10/1989-3/2013). Science and technology fund investors witnessed this same volatility years ago during the dot-com bust (2000-2002). According to Morningstar's Technology fund universe if an investor bought into technology at its high point and sold at the bottom that investor would have lost 82%, a devastating impact to any individual's retirement plan.

Not only do specialty funds provide participants with volatile investment options that can hinder them in attaining their retirement goals, but the fiduciary is also charged with an additional responsibility to educate participants on how these investments work and how they should be used. This can be a complicated task due to the unique nature of specialty funds, but is a very necessary one considering that participants are generally unaware of the associated risks. Only after understanding all of the issues associated with specialty funds can the fiduciaries make the best determination of their suitability in the plan.

COMMUNICATION CORNER: Most Popular Investment Option

This month's sample employee memo is part two of a six part series in which we answer the most common questions we receive from participants. In part two we answer: What is the most popular investment option in retirement plans?

As a reminder, we post each monthly participant memo online via the Fiduciary Briefcase™ (fiduciarybriefcase.com) and is also available in Spanish.

Call or email your Plan Consultant if you have questions or need assistance.