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MANAGING YOUR 401(K) DURING A PANDEMIC

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August 11, 2020

Fee Litigation Developments

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New Case Filings

- *There have been more than 20 new 401(k) class actions in 2020*
 - New plaintiffs' lawyers entering the market
 - Pennsylvania, Wisconsin – Nationwide
 - The story of Mark Gyandoh
 - Smaller plans
 - \$250 million – \$900 million
 - Same claims
 - Fees
 - Share classes
 - Recordkeeping
 - Active v. Passive
 - Mutual fund v. Collective trust
 - Revenue-sharing rebates – how do they factor into the analysis?
 - Performance claims?

Might SCOTUS Finally Weigh In?

- *Divane v. Northwestern Univ.*, No. 18-2569, __F.3d__, 2020 WL 1444966 (7th Cir. Mar. 25, 2020).
- The court held that “[w]hen claiming an ERISA violation, the plaintiff must plausibly allege action that was objectively unreasonable.” Begs question of appropriate pleading standard.
 - Based on plaintiffs’ allegations and Northwestern’s reasonable explanations for its fiduciary decisions, court determined that Northwestern fiduciaries had valid reasons for multiple recordkeepers and offering the challenged investments.
 - ERISA does not mandate any particular fee structure or recordkeeping arrangement, that the plans offered an appropriate range of investment options, and that mere underperformance of an investment does not “add up to a breach of fiduciary duty.”
 - Plaintiffs only seek review of portion of the Seventh Circuit’s affirming dismissal of the excessive-fees allegations; not appealing the dismissal of the underperformance claims.
 - Argue split with Third Circuit in *Sweda v. Penn*, which has own SCOTUS backstory.

Eighth Circuit Clears Its Throat

- *Davis v. Washington University in St. Louis*, No. 18-3345 (8th Cir. May 22, 2020).
 - Reversed dismissal on the question of fees, but affirmed dismissal on the underperformance allegations.
 - Fees -- “The complaint alleges that the marketplace for retirement plans is competitive, and with \$3.8 billion invested, Wash U’s ‘pool of assets’ is large.”
 - “For an investment-by-investment challenge like this one, a complaint cannot simply make a bare allegation that costs are too high, or returns are too low. Rather, it ‘must provide a sound basis for comparison—a meaningful benchmark.’”
 - Theoretical large exposure typically grounded upon investment performance claims. Ninety percent of the exposure eliminated here with Eighth Circuit ruling.

Who's On First?

- *Martin v. CareerBuilder*, No. 19-06463 (N.D. Ill. July 1, 2020).
 - “Plaintiffs and courts cannot use ERISA to paternalistically dictate what kinds of investments plan participants make where a range of investment options are on offer.”
 - Fees charged indistinguishable from those at issue in *Northwestern*. As to performance, because changes were made, could be no inference that an unreasonable process.
 - “Perhaps an imaginative reader could spin a speculative yarn as to Defendants’ imprudence.”
- *Pinnell v. Teva Pharmaceuticals USA*, No. 19-5738 (E.D. Pa. March 31, 2020).
 - The shortest of shrifts, i.e., rapid and unsympathetic dismissal.
 - “But the participants plausibly alleged Defendants failed to adequately review the Plan’s investment portfolio to ensure prudence of investment options, maintaining expensive investments despite the availability of ‘virtually identical’ lower-cost alternatives.”

Summary Judgment Granted in *Oracle*

- *Troudt v. Oracle Corp.*, 2019 WL 1006019 (D. Colo.)
 - One of the largest 401(k) plans in the nation (\$12B assets, 65,000+ participants)
 - Plaintiffs asserted fiduciary breach claims for excessive recordkeeping fees and offering allegedly imprudent investment options in the plan
 - Alleged defendants breached fiduciary duties by failing to monitor recordkeeping fees and take the plan out for competitive bidding
 - Breached duty of loyalty by retaining Fidelity to advance Oracle's other business relationships with Fidelity
 - Failed to monitor and remove three investment options that underperformed

Summary Judgment Granted in *Oracle*

- *Troudt v. Oracle Corp.*, 2019 WL 1006019 (D. Colo.)
 - Claim for failure to monitor recordkeeping fees
 - Undisputed facts demonstrated a prudent process
 - Committee met with Fidelity and investment consultant on a quarterly basis
 - Investment consultant provided quarterly reports showing investment options' expense ratios and administrative fees paid (total and on per-participant basis)
 - Fidelity provided four reports showing its compensation and how it compared to fees paid by other plans
 - Even though committee minutes did not reflect that the committee discussed recordkeeping fees at every meeting
 - Overall plan costs decreased throughout the class period through choice of cheaper replacement funds, selection of lower-cost share classes, and elimination of revenue sharing

Summary Judgment Granted in *Oracle*

- *Troudt v. Oracle Corp.*, 2019 WL 1006019 (D. Colo.)
 - Claim for imprudent investment options
 - Plaintiffs alleged that committee selected and retained three underperforming investment options
 - Court noted “voluminous and arguably compelling evidence” of a prudent investment management process
 - Committee retained an investment consultant who attended committee meetings and provided advice and quarterly reports, including reviewing investment performance, comparing plan investment options to benchmarks, highlighting market trends, and suggesting potential changes to the plan’s lineup
 - Implemented and followed IPS
 - Made 57 fund replacements throughout the class period
 - However, the court refused to grant summary judgment
 - Testimony from plaintiffs’ expert Buetow sufficient (not challenged by defendants)

Ramos v. Banner Health

- *Ramos v. Banner Health & Jeffrey Slocum & Assocs.* (D. Colo.)
 - Only Slocum, the plan's investment advisor, moved for summary judgment
 - Court granted summary judgment as to recordkeeping claims because Slocum was not responsible for advising on recordkeeping issues
 - Slocum settled (less than \$1 million)
 - Banner Health trial
 1. Court found several problems with the process for selecting and monitoring investments, and negotiating recordkeeping fees
 2. Plaintiffs experts did not prove damages because the damages models were flawed

University 403(b) Plan Cases

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Recent Third Circuit Decision

Sweda v. University of Pennsylvania, 2019 WL 1941310 (May 2, 2019)

- Plan had two recordkeepers (TIAA and Fidelity) and, over time, offered from 78 to 118 investment options arranged in four tiers
- District court dismissed all claims
- Third Circuit reversed as to two counts: breach of fiduciary duties by allowing plan to pay excessive recordkeeping fees and offering imprudent investments

Other Courts

- NYU
 - Appeal pending in case post trial where NYU prevailed
- Northwestern
 - Same allegations as *Sweda*
 - Seventh Circuit affirmed dismissal
 - Supreme Court review sought
- Washington University of St. Louis
 - Again, same allegations
 - Eighth Circuit affirmed dismissal of investment claims, but allowed recordkeeping claims to go forward

Stock-Drop Litigation Revived

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Prior State of Play

- Claims for breach of fiduciary duties brought by 401(k) plan participants alleging that insider fiduciaries failed to act on non-public information to prevent losses from investments in allegedly overvalued employer stock
- *Fifth Third Bancorp. v. Dudenhoeffer*, 573 U.S. 409 (2014)
 - Set forth criteria for adequately pleading breach on the basis of inside information
 - Plaintiff must allege:
 - an alternative action that the plan fiduciary could have taken that would have been consistent with securities laws and
 - that a prudent fiduciary in the same circumstances could not have been viewed as more likely to harm the fund than to help it
 - Very high bar - Fifth Circuit described it as “virtually insurmountable”

Prior State of Play

- Standard confirmed in *Amgen Inc. v. Harris*, 136 S. Ct. 758
 - Ruled that Ninth Circuit erred in permitting fiduciary breach claim to proceed without first determining whether the complaint contained facts and allegations supporting a claim that removal of the Amgen stock fund was an alternative action that no prudent fiduciary could have concluded would cause more harm than good
- Since *Dudenhoeffer*, four circuit courts have affirmed dismissal of stock drop complaints
 - Reasoned that a prudent fiduciary could have concluded that an unusual disclosure of negative news by a plan fiduciary before issues were fully investigated would spook the market into believing that problems at the company were worse than they actually were and thus harm plan participants already invested in the company stock fund
 - Second Circuit: *Rinehard v. Lehman Bros. Holdings Inc.*
 - Fifth Circuit: *Whitley v. BP*; *Martone v. Robb*
 - Sixth Circuit: *Saumer v. Cliffs Natural Resources*; *Graham v. Fearon*
 - Ninth Circuit: *Laffen v. Hewlett Packard, Co.*

Recent Second Circuit Decision

- Gives the plaintiffs' bar renewed hope in stock-drop claims
- *Jander v. Retirement Plans Committee of IBM*, 910 F.3d 620 (2d Cir. 2018)
 - Plaintiff alleged that the defendants knew of, and should have disclosed to plan participants, certain accounting irregularities that the defendants themselves were responsible for
 - Failure to disclose that it left IBM's stock price artificially inflated and harmed participants when the irregularities were eventually disclosed and the price of stock declined
 - Second Circuit reversed district court's dismissal of complaint
 - Supreme Court granted review, but did not decide anything – just asked the Second Circuit to reconsider
 - Second Circuit reached the same decision again
 - What happens next?

Presenters

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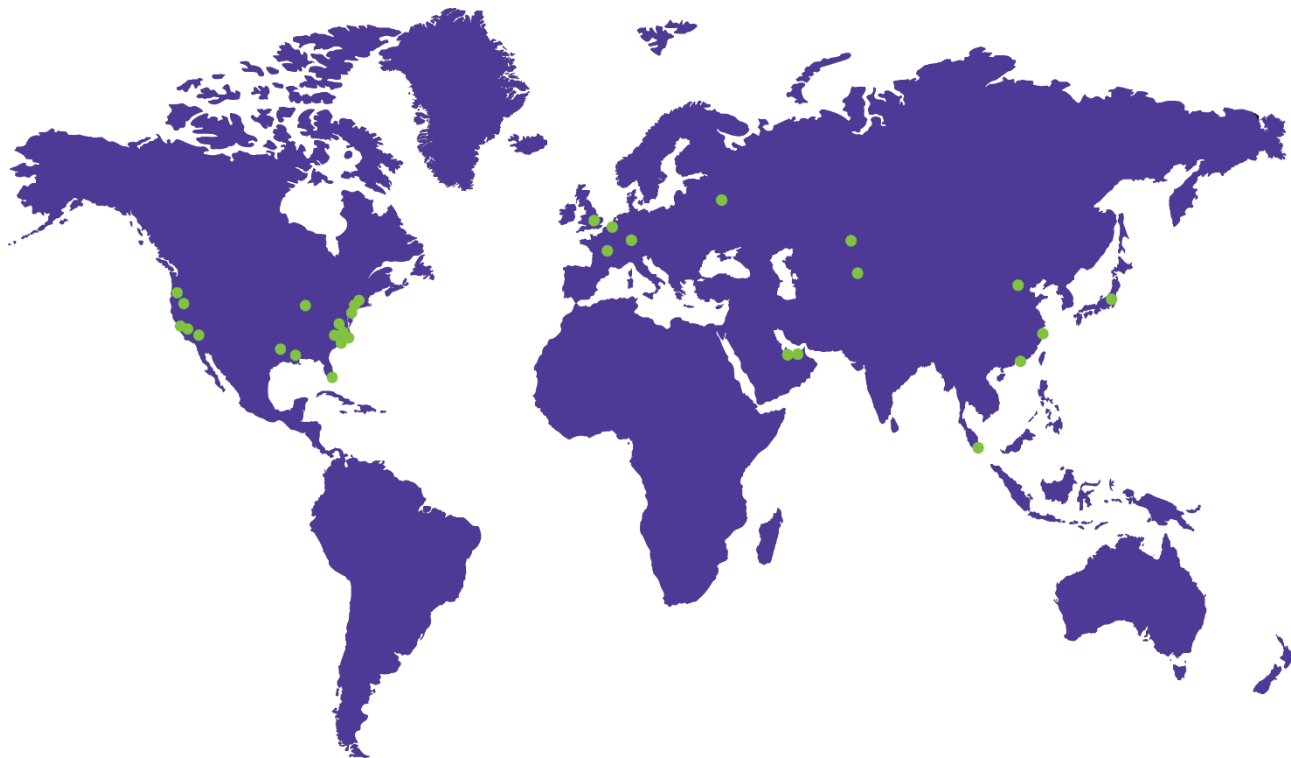
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Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Beijing*
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong*
Houston
London
Los Angeles
Miami
Moscow
New York
Nur-Sultan
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Retirement savings plans **the way forward**

August 2020

welcome to brighter



Creating and maintaining a high-performing DC plan can be complicated

Review/update oversight committee charter to reflect changing environment	Review and optimize Plan Document to align to plan objectives	Establish retirement income menu	Evaluate fee methodology Eliminate revenue sharing
Evaluate investment structure and menu	Conduct analysis of participant demographics	Benchmark administrative fees Negotiate per head fees	Develop and implement education/communications strategy
Review/update investment policy statement	Employ financial wellness strategy and tools	Monitor recordkeeper for regulatory compliance and adherence to terms of Service Level Agreement	Monitor plan expenses and recordkeeper revenue
Evaluate plan default option — Target Date Funds	Conduct fiduciary training	Review/update fee policy statement	Quarterly monitoring of investment performance and fees to fulfill fiduciary requirements under ERISA

DC landscape at a glance

2020 seems just as busy

COVID-19 Impact

- Employee concerns
- Impact on recordkeepers
- Suspension/reduction of company match

Market Turmoil:

- How did participants react?
- How did investment managers fare?

CARES Act

- Coronavirus distributions & loans
- Student loan changes
- Suspension of loan repayments

Post-CARES Act (Respond – Return –Reinvent)

- Participant impact
- Plan operations
- Plan design

Settlements: Cybersecurity
and Data Privacy

Settlements:
Fees and Investments

Settlements: Proprietary
Investments

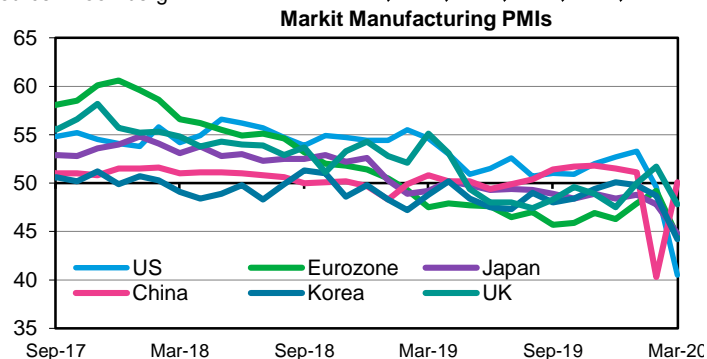
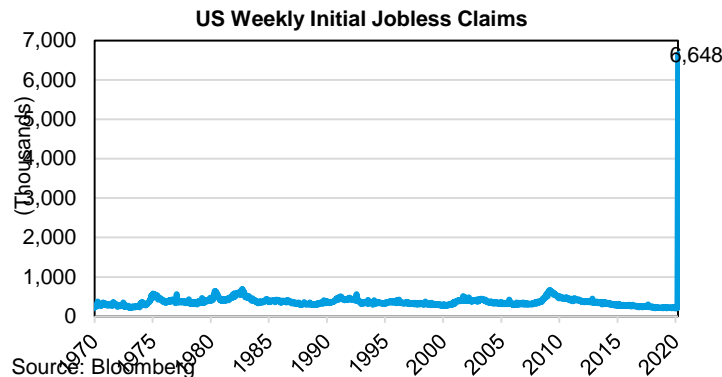
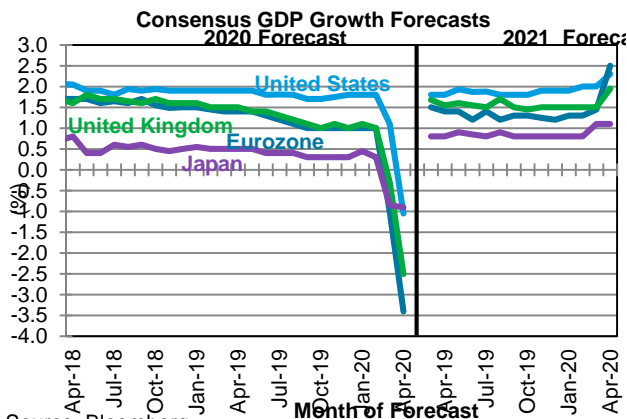
SECURE Act
(Open MEPS/PEPS)

EBRI Retirement Confidence Survey

Economic fundamentals

COVID-19 drives a collapse in economic activity

- The global economy experienced an unprecedented halt in activity in March, as social distancing policies have forced many businesses to temporarily close.
- The global economy is almost certainly in a recession, although estimates for its magnitude and duration vary widely.
- The initial impact on the US labor market has been dramatic, with nearly 10 million initial jobless claims registered during the last two weeks of March alone.
- The fiscal and monetary response has been swift in hopes of reducing damage and preparing the economy to rebound once the virus has been contained.



Fiduciary risk

Understanding your fiduciary risk

The Employee Benefits Security Administration (EBSA) is responsible for enforcing ERISA and ensuring the integrity of the private employee benefit plan system.

Every year, they investigate a number of employee benefit plans, targeting ERISA violators.¹

1,329

private employee benefit plans
closed civil investigation in 2018
by the Employee Benefits
Security Administration.

64.7%

of those investigations in
2018 resulted in corrective action.

\$1.6b

was recovered in total from
2018 EBSA investigations.²
Up 45% from 2017.

¹ DOL Employee Benefits Security Administration "Agency Enforcement Results."

² Includes recoveries from enforcement actions, voluntary fiduciary correction program, abandoned plan program and monetary benefit recoveries from informal complaint resolution.

Changing risk

Fiduciary protections explained

Protections can be used **individually** or **combined**



3(16): Outsourced administration

A 3(16) fiduciary covers only non-investment services and can vary from vendor to vendor.

What is covered could include: loan approval, distribution of notices and enrollment materials.



3(21): Investment advice

Mitigate fiduciary risk with appropriate level of plan oversight and ongoing monitoring



3(38): Outsourced investment decisions

Provide employees with potential benefits to improve financial well-being, enhance participant success

The plan sponsor is ultimately responsible for any decisions made, on behalf of the plan, through an obligation to prudently select and monitor all third party service providers.

Fiduciary best practices

Potential benefits of adopting best practices



Uncover
omissions



Define
philosophy



Educate
fiduciaries



Evaluate
compliance



Prioritize
objectives



Measure
progress



Reduce
Fees

Help improve outcomes

Potential benefits of adopting best practices



Streamlined line-up

- Make it simple
- Use of Target Date Funds
- Managed accounts



Broad use of institutional vehicles

- Lower fees
- Manager variety



Use of Multi Manager Funds

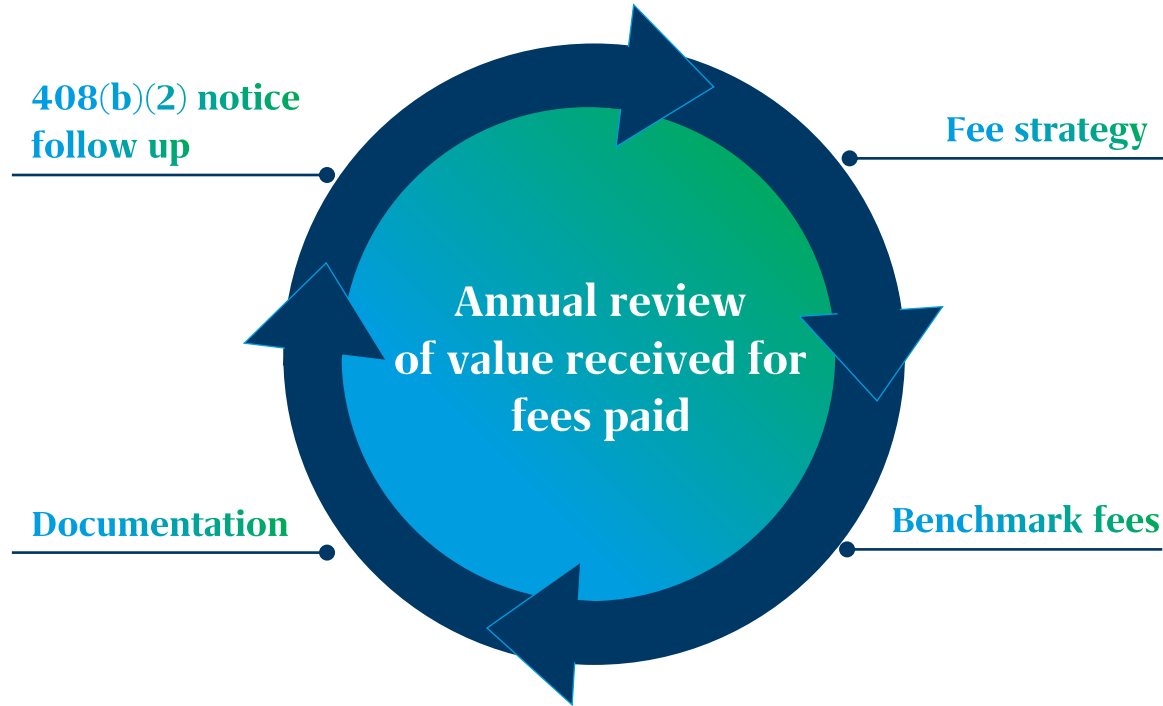
- Broader diversification
- Ease of transition



Disaggregated fees

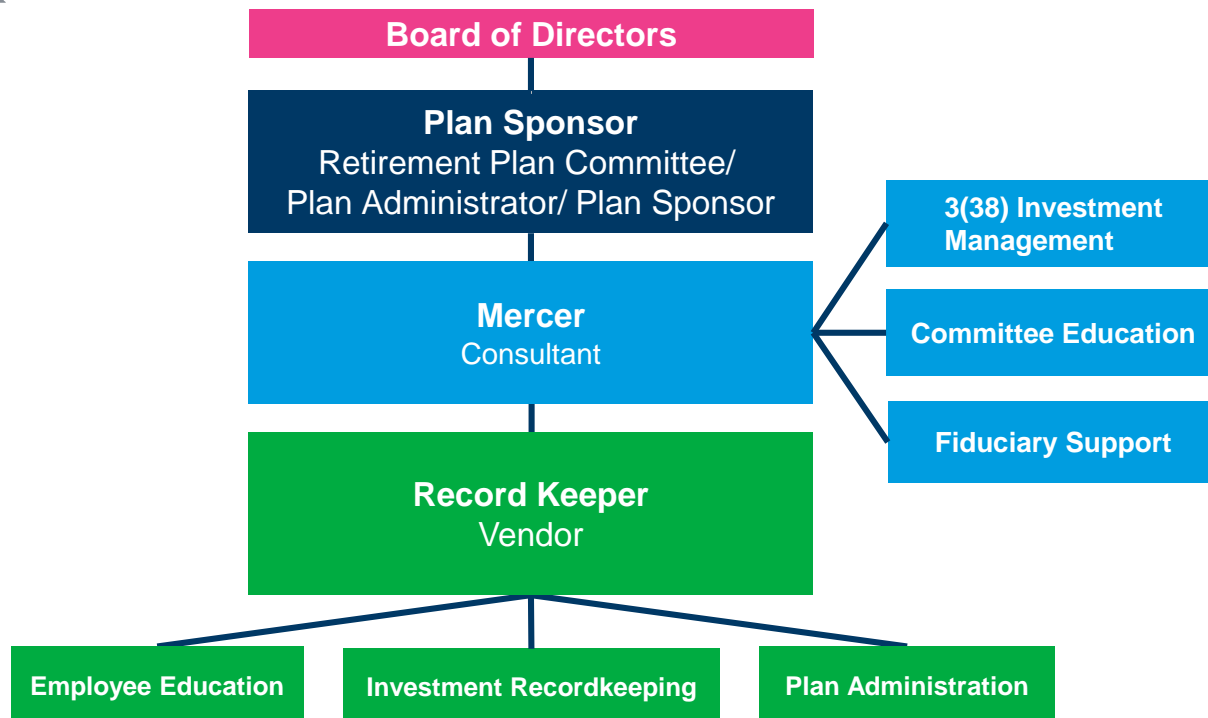
- Clarity of fees
- Equality in disaggregation

Ensure reasonableness of plan fees



Plan sponsor 401(k)

Typical plan structure



Get fiduciary training early & often



Fiduciary training is highly recommended for retirement committee and subcommittee members



Baseline training for each new member



At least annual refresher training for all members to keep current



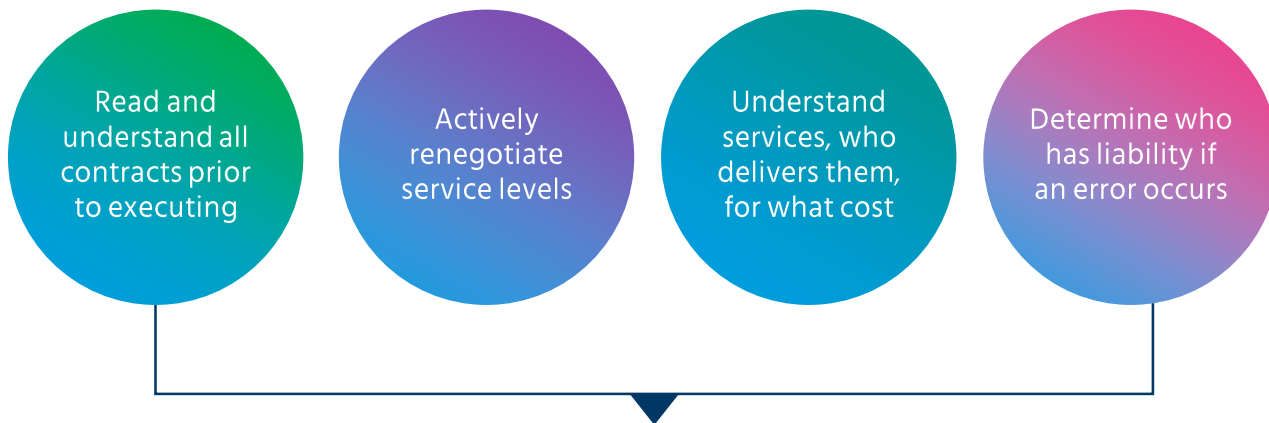
Keep records of what training was provided

Retirement committee

Baseline and periodic assessments



Understand service provider contracts



Oversee plan operations

Ensure that plan document aligns with plan operation – e.g. definition of compensation

Random spot checks of discrete issues

Work with vendors to establish internal controls and review procedures

Early intervention when errors arise

Document decisions and actions

Memorialize committee meetings with minutes



Documentation of decisions and actions is critical component of the fiduciary process

Minutes should be **reviewed and approved** by the Committee

Create a **record of who attended** the meeting, **issues discussed, decisions made** and the **actions that will be taken** as a result of those decisions

Retain minutes for at least **seven years**

Avoid common mistakes

Plan and trust documents

- Must be signed and dated
- Need both adoption agreement and basic plan document
- Must be timely updated for changes in the law and plan design/operation
- Summary plan description (SPD) is not the same thing as the plan document

Plan document vs plan operation

- Wrong definition of compensation being used
- Contributions calculated incorrectly or not made to appropriate employees
- Eligible employees excluded (or ineligibles included)
- Loans don't conform to the terms of the plan or IRC
- Hardship withdrawals not made properly

Annual testing issues

- Improper classification of HCEs
- Contributions exceed annual limits
- Top heavy testing not done (or contributions not made)
- Nondiscrimination tests not done (or done incorrectly)
- Testing failures not corrected (or done late)

Avoid common mistakes

Contribution and reporting issues

- Late deposits of employees deferrals and employer contributions
- Missing, late, incomplete or inaccurate Form 5500 filing including annual financial audit report (if plan has 100+ participants)
- IRS Form 8955-SSA for terminated vested participants with money left in the plan

Required participant notices

- Several notices must be delivered to employees depending on plan design
- Notice delivery timing, method and audience are prescribed by law
- Late or missing notices can result in substantial penalties

Business transactions

- Mergers, acquisitions, joint ventures, reorganizations, and divestiture of business units may trigger plan changes
- Consider testing, reporting, design, vesting and communication issues

Potential advantages of good governance

- 1** **Manages risk** through effective structures, appropriate accountabilities, relevant policies, rigorous monitoring and effective communication protocols
- 2** **Reduces financial exposure** to costly litigation brought by participants, beneficiaries and governmental bodies
- 3** **Lowers personal liability** risk to individual officers, directors and fiduciary committee members, as well as damage to organization's reputation and adverse publicity
- 4** Provides better ability to demonstrate **good faith action** when undergoing governmental audit scrutiny or litigation
- 5** **Promotes efficiency and consistency** in benefit program administration and deployment of resources generating greater confidence in program integrity and legal compliance
- 6** Receiving quarterly legislative, industry trend and best practices updates and annual fiduciary training along with specialized knowledge training helps individual fiduciaries fulfill their **prudent expert standard of care**

Going Forward

When to hire experts

Delegate to external service providers

- Hiring expert external service providers helps meet the prudent person rule
 - Weigh value received against price paid for expert services
 - Fees must be reasonable if expert is paid from plan assets
- External providers may or may not accept fiduciary responsibility
 - Check service contracts
- Select and monitor external service providers carefully
 - Continuing duty to monitor as appropriate under the circumstances

Delegating fiduciary responsibility

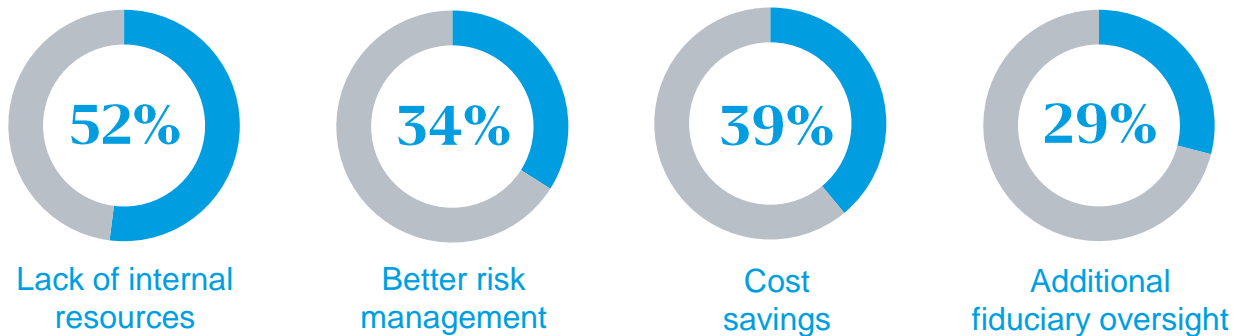


The committee is typically established via a charter

- Establishes governance protocols
- Considers applicable provisions of the plan document and/or organizational bylaws
- Defines Committee membership
- States members' authority and responsibilities

OCIO grows among plan sponsors





Top Reasons for Pursuing an OCIO Solution in 2019



Source: 2019 Outsourced Chief Investment Officer Survey

Summary

Suggested action items

-  Review fiduciary governance process
-  Analyze plan costs and structure
-  Regularly review investments
-  Consider alternative governance models

Appendix

Fiduciary Checklist and DC Compliance Calendar

Fiduciary checklist

Committee Charter

- ☐ Has it been formally adopted?
- ☐ Have members reviewed and discussed it?
- ☐ Have you made updates as appropriate?

Fiduciary vs. employer roles

- ☐ Do committee agendas distinguish between settlor and fiduciary roles?
- ☐ Are separate notes and files maintained?
- ☐ (Alternatively) does a separate committee make non-fiduciary decisions?

Committee meetings

- ☐ Does the committee adhere to preset agendas?
- ☐ Is an annual cadence for meeting topics set and updated as necessary?
- ☐ Are accurate minutes of the meetings maintained?

Orientation of new committee members/keeping committee members up to date

- ☐ Do new members receive training and orientation?
- ☐ Is fiduciary education refreshed periodically?
- ☐ Is the Committee reasonably up to date on current judicial, regulatory, and marketplace developments that impact their oversight and their participants?

Investment policy

- ☐ Has the Committee established a comprehensive, written investment policy for each plan?
- ☐ Is each policy regularly reviewed and updated?

Bonding and fiduciary insurance

- ☐ Is the employer's ERISA bond up-to-date?
- ☐ Has fiduciary insurance been secured?
- ☐ Are the plans consistent in their indemnification provisions?

Other governance documentation

- ☐ Are loan procedures up-to-date?
- ☐ Are there QDRO procedures?
- ☐ Have other written policies been adopted?
 - Fee Policy statement
 - Conflicts of interest
 - Cybersecurity
 - Compliance

Consistency of plan documents and actual practices

- ☐ Have plan documents been amended to reflect the Committee structure?
- ☐ Do procedures conform to Committee charter and plan document?
- ☐ Is the SPD consistent with the plan document (or have SMMs been prepared)?

Board¹ oversight

- ☐ Has the Board formally delegated fiduciary duties to the Committee?
 - Is the Board's oversight properly limited?
 - Is the role of the Board clear?
 - Are plan documents and Committee charter consistent with current procedures?
 - Is the Committee following through with annual reporting to the Board or Board committee?

¹ Or such other appropriate body

Participant communications

- ☐ Do participants timely receive all required notices and disclosures?
- ☐ Are you reviewing all disclosures and notices developed by the recordkeeper?
- ☐ Do participants receive investment education (including ongoing communications regarding the value of investment diversification)?

Compliance monitoring

- ☐ Is the Committee overseeing its outside vendors to handle compliance problems?
- ☐ Is there a process in place to monitor compliance issues?
- ☐ When problems occur, is there follow up to determine whether they indicate broader issues?
- ☐ Is the Committee documenting receipt of provider fee disclosures?
- ☐ Are vendor fees reviewed and benchmarked regularly?
- ☐ Has the Committee recently reviewed all service agreements?
- ☐ Have vendors provided a recent AICPA SSAE 16 report (Reporting on Controls at a Service Organization)?

Investment Option Monitoring

- ☐ Has the Committee reviewed the appropriateness of the QDIA?
- ☐ Has the Committee reviewed the suitability of investments for participant circumstances?
- ☐ Is fund performance regularly monitored? In particular, against any target/ watch lists set out in the investment policy statement?
- ☐ Are fund fees and share classes reviewed and benchmarked regularly?
- ☐ (If applicable) Has the Committee reviewed managed account provider and participant use?

Glossary

ERISA

Employee Retirement Income Security Act

Ministerial

Administrative tasks performed under fiduciary's direction

Settlor

The employer who adopts the plan

Parties-in-interest

Includes the employer; employees, officers and certain owners of the plan sponsor; a union whose members are covered by the plan; a plan fiduciary; a person providing services to the plan; and certain relatives

Commit a breach

Violate one of the fiduciary duties set forth in ERISA

Summary Plan Description (SPD)

Summary of key features of retirement plan in plain language.

Summary of Material Modifications (SMM)

Describes plan changes that have been made by a plan sponsor that affect information required to be disclosed in an SPD.

Qualified Default Investment Alternative (QDIA)

Investment option that fiduciaries can use as a default for participants who do not make their own investment elections. Includes target-date funds, managed accounts, and balanced funds.

Qualified Domestic Relations Order (QDRO)

Special court order for a retirement plan to pay benefits to a former spouse or other dependent of a retirement plan participant. Typically prepared during divorce proceedings.

Statutory References

Diversify investments to minimize risk of large losses

[ERISA § 404 (a) (1)(C)]

Act in accordance with written plan documents and ERISA

[ERISA § 404 (a)(1)(D)]

Act solely in the interest of the plan's participants for the exclusive purpose of providing benefits, and defraying reasonable expenses of administration

[ERISA § 404(a)]

Make decisions with the level of care, skill, prudence and diligence that a prudent person familiar with retirement plans would use

[ERISA § 404 (a)(1)(B)]

2020 DC plan compliance calendar

FOR PLAN YEARS BEGINNING JAN. 1, 2020

January						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
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26	27	28	29	30	31	

February						
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March						
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29	30	31				

April						
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26	27	28	29	30		

May						
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24	25	26	27	28	29	30
31						

June						
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21	22	23	24	25	26	27
28	29	30				

July						
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August						
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30	31					

September						
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27	28	29	30			

October						
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November						
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29	30					

December						
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

2020 DC plan compliance calendar

FOR PLAN YEARS BEGINNING JAN. 1, 2020¹

JAN. 31, 2020 (FRIDAY)

- Form 1099-R to recipients of 2019 distributions
- Form 945 for 2019 nonpayroll withholding if deposits were not made on time and in full to pay all taxes due²

FEB. 10, 2020 (MONDAY)

- Form 945 for 2019 nonpayroll withholding if deposits were timely made to pay all taxes due²

FEB. 14, 2020 (FRIDAY)

- Q4 2019 benefit statement for participant-directed plan
- Q4 2019 participant fee disclosure

FEB. 28, 2020 (FRIDAY)

- Form 1099-R if filed on paper (use Form 1096 to transmit)³

MARCH 15, 2020 (SUNDAY)

- If plan (other than eligible automatic contribution arrangement) failed ADP/ACP test, corrective refunds of excess 2019 401(k)(m) contributions and allocable income (or recharacterization of pretax contributions as after-tax) to avoid 10% excise tax⁴

MARCH 31, 2020 (TUESDAY)

- Form 1099-R if filed electronically³
- Form 5330 excise tax return and payment for excess 2018 ADP/ACP contributions (or Form 5558 to request extension to file return up to 6 months)

APRIL 1, 2020 (WEDNESDAY)

- First minimum required distributions to terminated participants who reached age 70½ in 2019 and to participants older than age 70½ who retired in 2019

APRIL 15, 2020 (WEDNESDAY)

- Refunds of 2019 elective deferrals exceeding 402(g) limit

MAY 15, 2020 (FRIDAY)

- Q1 2020 benefit statement for participant-directed plan
- Q1 2020 participant fee disclosure

JUNE 30, 2020 (TUESDAY)

- If eligible automatic contribution arrangement failed ADP/ACP test, corrective refunds of excess 2019 401(k)(m) contributions (and allocable income) to avoid 10% excise tax

JULY 28, 2020 (TUESDAY)

- Summary of material modifications or summary plan description furnished to participants, if amendments adopted in 2019 plan year

JULY 31, 2020 (FRIDAY)

- Form 5500 for 2019 plan year (unless extended by Form 5558 or automatically with extended corporate income tax return)⁵
- Form 8955-SSA and terminated vested participant statements for 2019 plan year (unless extended by Form 5558 or automatically with extended corporate income tax return)⁶
- Form 5558 to extend Forms 5500 and 8955-SSA due date by 2½ months for 2019 plan year (use a single Form 5558 to extend Forms 5500 and 8955-SSA) unless automatically extended with corporate income tax return⁴
- Annual benefit statement for plans not offering participant-directed investments (due by Form 5500 deadline or, if earlier, actual 5500 filing date)⁵

AUG. 14, 2020 (FRIDAY)

- Q2 2020 benefit statement for participant-directed plan
- Q2 2020 participant fee disclosure

SEPT. 15, 2020 (TUESDAY)

- Minimum funding contribution due for money purchase pension plans

SEPT. 30, 2020 (WEDNESDAY)

- Summary annual report for 2019 plan year (unless Form 5500 deadline extended)⁵
- Form 5330 excise tax return for excess 2018 ADP/ACP contributions, if due date extended by Form 5558

OCT. 15, 2020 (THURSDAY)

- Form 5310-A qualified separate line of business election for the 2019 testing year (or revocation of prior year election)
- Correction of 410(b) or 401(a)(4) testing failures for the 2019 plan year
- Contributions correcting 2019 ADP/ACP test failures to count as 2019 annual additions
- Form 5500 for 2019 plan year, if due date extended by Form 5558 or corporate income tax extension⁵
- Annual benefit statement for plans not offering participant-directed investments (due by extended Form 5500 deadline or, if earlier, actual 5500 filing date)⁵
- Form 8955-SSA and terminated vested participant statements for 2019 plan year, if due date extended by Form 5558 or corporate income tax extension⁶

NOV. 14, 2020 (SATURDAY)

- Q3 2020 benefit statement for participant-directed plan⁴
- Q3 2020 participant fee disclosure⁴

DEC. 2, 2020 (WEDNESDAY)

- 401(k) plan annual safe harbor notice for 2021 plan year
- Annual auto-enrollment notice(s) for 2021 plan year
- Annual qualified default investment alternative (QDIA) notice for 2021 plan year
- Diversification notice to participants first eligible to divest employer securities on Jan. 1, 2021

DEC. 15, 2020 (TUESDAY)

- Summary annual report for 2019 plan year, if 5500 due date extended by Form 5558 or corporate income tax extension⁵

DEC. 31, 2020 (THURSDAY)

- Ongoing minimum required distributions (regardless of plan or tax year)
- If plan failed ADP/ACP test for the 2019 plan year, refunds of excess 401(k)(m) contributions and allocable income or recharacterization of pretax contributions as after-tax (if not done by March 15 to avoid 10% excise tax), or corrective contributions (if not made by Oct. 15 to have them count as 2019 annual additions)

2020 DC plan compliance calendar

FOR PLAN YEARS BEGINNING JAN. 1, 2020¹

Notes

1. This list summarizes common reporting, disclosure and other operational compliance obligations for single-employer, tax-qualified defined contribution (DC) plans covered by ERISA (excluding ESOPs) that have more than 100 participants and are sponsored by for-profit corporations with calendar plan years. This list is not exhaustive. Your plan may have other operational compliance requirements. For more information, see the plan reporting and disclosure guides from the [IRS](#) and [Department of Labor](#) (DOL). When the "weekend rule" applies, deadlines falling on a Saturday, Sunday or holiday move to the next business day; otherwise, actions should be taken on the business day before a weekend/holiday deadline.
2. Deadline for Form 945 is extended 10 days if full payment of taxes for the year deposited on time.
3. Deadline for Form 1099-R is extended one month for electronic filers.
4. Although this date is a Saturday, Sunday or legal holiday, no guidance clearly allows using the weekend rule to move this due date to the next business day.
5. An automatic 2½-month extension to file Form 5500 and/or Form 8955-SSA is available by filing Form 5558. Without filing Form 5558, an employer that is granted an automatic extension for its corporate tax return and has the same tax year as the plan year receives an automatic extension to file Forms 5500 and 8955-SSA by the extended filing deadline for the corporate tax return (but no later than 9½ months after plan year-end). The Form 5558 deadline for a calendar-year plan and extended corporate tax return deadline for a calendar-year C corporation fall on the same day: Oct. 15. However, S corporations must file Form 5558 to get the maximum extension. Employers that rely on the corporate tax return automatic extension to extend the deadline for the Form 5500 and/or 8955-SSA can't obtain an additional extension by filing Form 5558.
6. The summary annual report must be distributed within two months after the due date of the Form 5500 (including extensions).

Questions



Contact us

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