Plan Sponsors can show compassion for their recordkeepers, while at the same time ensuring their plans are operating smoothly.

Reported by LEE BARNEY

While recordkeepers are under considerable pressure, they are showing compassion for participants during the coronavirus pandemic. From waiving fees to offering additional assistance, recordkeepers, third-party administrators (TPAs) and advisers, as well as financial wellness providers, are to assist plan sponsors and employees in a number of ways.

Plan sponsors can, in turn, show compassion for their recordkeepers, while at the same time ensuring their plans are operating smoothly.

In a blog post on The Wagner Law Group’s website, attorneys say operating during this strain on recordkeepers’ business continuity plans (BCPs) “and creates new challenges.” The attorneys list action items for retirement plan service providers.

The Coronavirus Aid, Relief and Economic Security (CARES) Act created a new emergency retirement plan distribution option dubbed the “coronavirus related distribution,” or “CRD” for short. A CRD can be drawn from a defined contribution (DC) plan or from individual retirement accounts (IRAs) in any amount up to $100,000. The law also doubled the amount of loans that participants can take—from $50,000 or 50% of their account balance, whichever is lower, to $100,000 or 100% of their account balance.

The attorneys note that recordkeepers that offer volume submitter or master prototype plans will have to amend the plans and distribute a summary of material modifications to allow for the CRD withdrawal. “Given the challenges to document execution and obtaining signatures, the negative election procedure should be considered where available,” the attorneys advise providers.
Paul Neuner, managing director and founding partner of Concurrent Advisors, says the negative election process is common among recordkeepers. “Many recordkeepers have used negative election and provided an extremely narrow window to make the necessary modifications,” Neuner says. “This is largely due to timing and number of plans they serve. If a sponsor desires to sign, then it would be prudent for them to be in a conversation with the vendor.”

However, Marcia Wagner, owner of The Wagner Law Group, tells PLANSPONSOR it is more prudent for sponsors to get actual signatures if they are running an individually designed plan. “With respect to there is a distinction between individually designed plans and standardized and non-standardized plans says. “Only in very limited circumstances has the absence of a written signature been excused by the IRS in connection with an individually designed plan. Standardized and non-standardized plan amendments will frequently provide a default version of a plan amendment, and if the plan sponsor has no objection to the amendment, no further action is required.”

The Wagner Law Group suggests recordkeepers train their call center representatives to discuss loans, in-service withdrawals, COVID-19-related withdrawals and the consequences of each. Recordkeepers need to ensure they have the supervision in place to ensure these reps are only providing education, not advice,

“While a plan sponsor can certainly inquire of a recordkeeper if it is adequately training their employees to respond to the new questions that they will be receiving, the recordkeeper is in a better position to make that determination than the plan sponsor,” Wagner says.

The Wagner Law Group says many recordkeepers are closing offshore call centers and may be facing staffing challenges if a significant number of employees are required to quarantine because of the coronavirus. It also says that with increased call center volume, if possible, recordkeepers should expand their call centers. The group suggests one way to address this need is to turn to a broker/dealer (B/D) firm with the capacity to provide call center services and/or to redeploy staff from other departments.

Neuner believes inquiring about adequate staffing, particularly as call volumes are spiking, is an important question for sponsors to be asking of their recordkeepers. “Plan sponsors should never have a ‘set it and forget it’ mindset as it relates to running a retirement plan, especially if the vendor is serving as a directed trustee,” he says. “The sponsor should have regular checks and balances for various types of vendor activities.”

The Wagner Law Group says that besides ensuring recordkeepers’ call centers are open...
also confirm that all of their [recordkeepers’] operations (e.g. investing, trading, investor relations, compliance, required recordkeeping) are all functioning as anticipated under their business continuity plans, even if such functions are occurring remotely."

Wagner thinks it is unlikely that the contracts sponsors have with their recordkeepers reference BCPs, but, more likely, they do address how the recordkeeper will be able to continue to function in the event of an emergency. "While the existing agreement with the recordkeeper may not specifically reference business continuity plans," she says, "it may contain a force majeure provision. That provision, in all likelihood, will not address generally how the recordkeeper is to respond in an emergency situation. The plan sponsor could inquire how the business continuity plan has been working and if there have been any glitches, but if it is working well, it probably has no further duty of inquiry."

Recordkeepers with BCPs that do not have procedures for pandemics should add them, the blog says. Recordkeepers’ BCPs should call for having emergency contact information for all staff and using cloud-based systems to reduce the risk of inadequate security around mobile devices, the law firm adds.

The blog says that while the U.S. government has not indicated when the stay-at-home guidelines in place across much of the country are likely to be lifted, recordkeepers should be prepared to continue operating under their BCPs for the next three to six months.

Neuner says “the pressure on recordkeepers is tremendous. Call centers are receiving huge swings in activity, with much of the conversations from concerned to panicked participants. sponsors to help their participants weather the current market volatility by focusing on..."
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