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FEEDBACK

Our main goal is to provide you with the information you need. Please send your feedback and suggestions to:

sponsorconnect@transamerica.com

The stock market has continued to be in the news for its ups and downs since our last newsletter. We presented our *Investing in a Volatile Market* brochure to you last month. Now, we have another piece from one of our investment management companies to share with you on how to handle market fluctuations.

In February, we ran a special edition of Fiduciary Focus to provide you with up to date information on a recent Supreme Court Ruling. This month, we continue the discussion on this Ruling and provide some further details below.

The Department of Labor has provided specific directives on how a plan fiduciary should go about locating missing participants and what they can do if the participants remain unfound after using all recommended methods. Please read below for helpful options if you find yourself in this situation.

This month we focus on your participants and, specifically, helping you engage your younger employees to join your retirement plan. Please read below for some suggestions.

We are excited and proud to tell you that Transamerica recently won a first place "Eddy Award" for our enrollment and education kit. Read below for more information about this award..



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(866) 498-4557

INFORMATION

Economy: Dealing with the stock market fluctuations

To help you and your participants gain some perspective on how to deal with the stock market fluctuations, we have a brochure from one of our investment management companies, American Century, that discusses time-tested investment strategies. This brochure talks about long-term investing, how market-timing doesn't work, and capitalizing on market declines. [Download](#) a copy to share with your participants today.



Methods to Find Missing Participants

The Department of Labor has stated in a Field Assistance Bulletin ("FAB") that "a plan fiduciary cannot distribute a missing participant's benefit in accordance with the distribution options discussed below unless each of these methods proves ineffective". Below are some resources you might find useful.

1. **Certified Mail**—This method is fairly inexpensive and provides you with written proof of delivery to the participant.
2. **Related Plan Records**—You can run the Indicative Data report and Account Balance from our Web site. Additionally, you could contact your group health provider as the participant may still be receiving benefits.
3. **Internet Search Services**—Missing persons "locator" Web sites or search engines can be useful resources. If you incur a cost during your search, you may charge the missing participant's account for the cost of using these locator service. However, you should consider the size of the participant's account balance in relation to the cost of the services to determine if this is prudent.
4. **Designated Plan Beneficiary**—If the beneficiary named on the Beneficiary Designation Form has a different address from the participant, the participant may be locatable through the beneficiary. To ensure a participant's privacy is maintained, the plan fiduciary can contact the designated beneficiary and request that contact be made by the participant to the plan fiduciary or forward a letter on behalf of the plan to the participant.
5. **Letter-Forwarding Service**—Both the Internal Revenue Service and Social Security Administration offer letter-forwarding services. A plan fiduciary must choose one service and use it in attempting to locate a missing participant or beneficiary. You can obtain copies of the details on their respective Websites www.irs.gov or www.socialsecurity.gov.



Distribution Options – Once the above options have been exhausted and you are unable to locate participants, you may make a determination as to the best course of action to take. The Department of Labor has provided the following guidance:

1. **Individual Retirement Plan Rollovers**—In the opinion of the Department of Labor, it is always best to distribute missing participant benefits into IRAs. This results in the deferral of income tax and may permit the capital to remain intact. Many banks and investment institutions offer an IRA product that can accommodate these types of rollovers.
2. **Federally Insured Bank Accounts**—This option may subject the deposited amounts to income taxation and withholding. The plan fiduciary can establish a federally insured bank account with an initial interest rate in the name of the missing participant allowing the participant an unconditional right to withdraw funds from the account.
3. **Escheat to State Unclaimed Property Funds**—Some states may not accept such distributions, however many now not only accept such funds but provide a searchable internet database that lists the names of property owners.
4. **Forfeiture**—Some plans provide that missing participants balances are forfeited, and then if/when the participant makes a claim, the balances are restored. Please review your plan for the provisions in your document before taking any action.

Ultimately, you, the plan fiduciary must determine what action, if any, to take and ensure that you have a policy in place to handle these situations on a consistent basis. Please call us if we can provide you any further information or assistance.

How To Get Younger Employees Interested in a 401(k) Plan

What can be done to make your company's 401(k) retirement plan more appealing to younger employees? Getting twenty-something workers excited about a retirement savings plan is not the impossible dream. You can help increase employee participation in your plan by targeting your communication efforts to younger workers.



Younger employees have to take responsibility for their own retirement by making the most of their 401(k) plans. That's why it's important to educate younger workers about the benefits of investing for retirement in a 401(k) plan. Here are some suggestions to help increase plan participation.

- Furnish plenty of plan information to employees to reinforce your retirement message. Use several methods to tell employees about the plan, such as e-mail, newsletters, Internet and Intranet promotional materials, posters, and payroll stuffers. Transamerica has many offerings of e-Tips, posters, payroll stuffers, and other materials available for your use. Simply log on to www.TA-Retirement.com and look under Resources/Participant Education/Investment Education & Planning.
- Hold enrollment/education meetings on a regular basis. Require employees to attend a meeting immediately before they're eligible to participate. Arrange for employees who decline participation to attend another meeting. This will help to keep the retirement savings message fresh in the minds of non-participants. Remember, the more opportunities employees have to enroll, the more apt they are to join.
- Use specific examples to impress on employees the importance of investing in their 401(k) plan for retirement. Let young workers know that delaying contributions can make a big difference in the long run. For example, if a 24-year-old defers \$100 a month for the next 41 years and earns an 8% average annual total return during all those years, the account would be worth \$379,321 at age 65. Under the same circumstances, if this person waits just *one year* to begin contributions, the account would total \$349,101 at age 65. That's a difference of \$30,220. Factor in a 25% employer matching contribution and the difference swells to almost \$38,000. Your participants have access to many Investment Calculators in the Resources section of our website.
- Don't forget about an extra incentive to save for retirement: Not only will deferrals not count as taxable income in the year contributed, but workers may also qualify for a saver's tax credit — a direct reduction of a worker's tax bill — on a portion of the contributions they make to their 401(k) plan. Eligibility for the credit is based on the participant's adjusted gross income.

For help from Transamerica on promoting your plan to younger workers or scheduling educational meeting opportunities, please contact us at (866) 498-4557.

INFORMATION

Transamerica Earns First Place

Transamerica Retirement Services garnered a first place "Eddy Award," by *Pensions & Investments* magazine, for its redesigned enrollment kits. The award was given for the "Initial Education" category.

Pensions & Investments recognized the enrollment kit for being easy to read and complete with good information presented in a strategic and logical order. *Pensions & Investments* commended the use of projections and simple-to-follow tables in the kit to help employees estimate how much they will need at retirement, how much their current savings will be worth at retirement, and how much should be contributed to meet retirement savings goals.



Transamerica's redesigned kit offers participants a simple, linear enrollment process, starting with general financial education, followed by risk assessment and retirement savings goals, concluding with investment selection and enrollment. The kit offers easy-to-follow savings tables, shortened enrollment forms, and provides employees with the simplest investment choices—such as target funds—first.

This is the first year *Pensions & Investments* recognized plan providers for excellence in employee investment education. Previous years' entries were limited only to plan sponsors.

To review the enrollment workbook click here: [Sample Enrollment Workbook](#)

LEGISLATIVE/COMPLIANCE

Fiduciary Focus

In a unanimous decision decided on February 20, 2008 in the case of *LaRue v. DeWolff, Boberg & Associates, Inc.*, the United States Supreme Court held that James LaRue, an individual participant in a 401(k) plan, can sue his employer for breach of fiduciary duty and recover losses suffered in his individual account due to a failure to follow his investment directions. This decision overturns a lower court decision (in the 4th Circuit) which held that Mr. LaRue could not sue his employer for breach of fiduciary duty and recover losses because his claim was an individual claim that related to his individual plan account and not to the plan as a whole.



Mr. LaRue, who was a participant in his former employer's 401(k) plan, which permitted participants to direct their accounts, alleged in his lawsuit that his account in the plan suffered a loss of \$150,000 after the employer failed to carry out directions he made in 2001 and 2002 to make certain changes to the investments in his account. The lower court's decision in favor of Mr. LaRue's employer was based on a prior Supreme Court decision in the case of *Massachusetts Mutual Life Insurance Co. v. Russell* (1985) which held that participant claims for monetary damages under ERISA must be on behalf of the [entire] plan; otherwise, the participant is restricted to pursuing a claim for equitable relief which does not involve the recovery of money damages. The Supreme Court distinguished the Russell case from the LaRue case in pointing out that the Russell case involved a defined benefit plan.

The outcome of the Supreme Court's decision in the LaRue case should not be a surprise to plan sponsors and employers, many of whom already assumed that ERISA provides a remedy for their participants to recover investment losses in their individual accounts resulting from a negligent failure to follow investment directions. Indeed, although some lower court rulings, such as the 4th Circuit, followed the rationale of the Russell case; other lower courts have followed the line of thinking expressed by the Supreme Court in the LaRue case. A concurring opinion by Justices Scalia and Thomas points out that the Supreme Court's unanimous decision in the LaRue case is, in fact, consistent with the prior ruling in the Russell case because any investment loss in a defined contribution plan is a loss sustained by the plan itself even though the loss is allocated, as a bookkeeping matter, to one or more individual participant accounts. Moreover, it is very likely that a decision on behalf of Mr. LaRue's employer would have encouraged Congress to change ERISA, possibly resulting in legal remedies for participants that would have been even broader than the outcome of the LaRue case. Consequently, this Supreme Court decision should not have a significant impact on the future of 401(k) plan litigation.

Plan sponsors and employers who are understandably concerned about a potential avalanche of lawsuits by participants should know that such lawsuits are highly unlikely if their participant-directed defined contribution plans have in place clear and consistent policies and procedures for processing participant investment instructions and any other type directions involving assets in a participant's account. Furthermore, plans that have a clearly defined administrative procedure in place that enables participants to address their claims if they feel that their directions are not followed further minimize the likelihood of a lawsuit such as the LaRue case. Chief Justice Roberts, in a concurring opinion joined by Justice Kennedy, expressed the view that LaRue's breach of fiduciary claim may in fact be a claim for benefits under the terms of the plan, which would require Mr. LaRue to exhaust administrative remedies before filing suit. This is very significant because, even if Mr. LaRue's claim were to be adversely decided upon by the plan administrator, the court in any subsequently filed lawsuit would, absent any finding of discretionary abuse by the plan administrator in denying the claim, have to apply a more deferential standard in reviewing the plan administrator's decision rather than a de novo standard of review. In this respect, the claims appeal procedure found in a plan's Summary Plan Document, and whether or not it was followed, would be relevant to the outcome of the lawsuit.

Understandably, many plan sponsors will also want reassurances from service providers for their participant-directed defined contribution plans that there are measures in place to ensure timely and accurate processing of participant investment instructions.

With regard to Transamerica Retirement Services' participant processing procedures, our recordkeeping system automatically identifies and restricts transaction requests that may conflict with plan provisions or regulatory limits. Transactions are executed immediately (as of the end of the business day) since our Voice Response Unit and web site are fully integrated with our recordkeeping system. In addition, a written confirmation of each transaction is sent to the participant's home for their verification.

Our comprehensive quality control procedures incorporate stringent audit controls designed to track and measure the quality of all transaction processing. Some of our notable quality measures governing transaction processing include:

- All correspondence and transaction requests are imaged and logged into a workflow management system.
- Each team involved in transaction processing operates within rigorous quality control procedures that are carefully monitored.
- Department Managers review transaction exceptions for immediate resolution.
- Daily transaction reports track the volume and quality of all transactions processed. Daily transaction reports roll up into monthly reports reviewed by Transamerica's senior management.
- A dedicated team tracks our quality reporting and is charged with implementing process improvements when quality deficiencies are identified.

Transamerica Retirement Services will continue to monitor legislation and litigation and will report to our clients any significant developments that have the potential to affect their plans.



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