



# Retirement Report

*News and Updates for Plan Sponsors and Fiduciaries of Defined Contribution Plans*

Volume I, Number III

JRN Benefits, Inc.

March 2001

## **Handling Participant Contributions Properly Requires Timely Action**

The Department of Labor (DOL) has increased audit activity around employers' timely remittance of participant contributions to 401(k) plans, and plan sponsors would be wise to pay attention.

A fundamental principle of employee benefits law is that ERISA-covered retirement plan assets generally must be held in a trust. Exactly when do participant contributions made by payroll deductions become plan assets? The DOL answered this question in final regulations in 1996 (an update to those issued in 1988). Despite this guidance, some 401(k) plan sponsors continue to hold participant contributions in the general assets of the employer after the contributions have become plan assets under the DOL's guidance. In the DOL's view, these sponsors violate ERISA's trust requirement and could be engaging in a prohibited transaction. If audit activity is any indication, the DOL is particularly sensitive to this issue and zealously enforces the plan asset rules as they apply to 401(k) contributions.

## **Final Regulations**

Some employers' noncompliance may be attributed to a failure to understand the plan asset regulations. The general rule with respect to participant contributions to retirement plans made by payroll deduction is that the contributions become plan assets and, therefore, cannot be held by an employer as of the earliest date on which the contributions can "reasonably" be segregated from the employer's general assets. Any remittance date beyond the 15th business day of the month following the month in which the participant contribution amounts would otherwise have been payable to the participants in cash, is, essentially, unreasonable.

The second part of the rule (the part that provides the outside limit on what "reasonably" means in the first part of the rule) is not a safe harbor. It does not permit employers to wait until the 15th business day of the month following the month in which the participant would otherwise have received contribution amounts in cash to remit those contributions to the trust. DOL's enforcement position in connection with these regulations, and the prior version of these regulations, makes that clear.

For more information please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).



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## **Smart Investing for Your 401(k) Account**

### ***On what type of odyssey will the financial markets lead the 401(k) plan participants in the year 2001?***

Last year turned out to be the worst year for mutual fund investors since 1990. The average stock mutual fund delivered a negative 4.51% return last year. That is the first negative return since 1994's 1.60% loss and the worst annual performance since 1990's 7.02% loss.

With the tech-heavy NASDAQ Composite down a stunning 39% in 2000, the average science and technology fund declined 33.92% and the average fund investing in large cap growth companies lost 16.22%. The ugliness of 2000 is just sinking in for most 401(k) plan participants. They will see the bad news in dollars and cents as year-end participant statements arrive in the mail over the next few weeks.

In the past years, figuring out how to invest your 401(k) account was pretty easy: Just stick it in stocks. Stocks seemed to know only one direction - up. But after last year's dismal market performance and the New Year's volatility, participants are wrestling with what to do now. Is reshuffling your 401(k) account the right strategy?

If you've allocated your 401(k) account properly, the answer is NO. Remember that these are long-term accounts and you should not respond to short-term market conditions in a long-term account. Trading out of your stock funds now, after the market has been knocked around, smacks of market timing - and late market timing at that.

There are many factors that play into investing your 401(k) account, but three of the most important are:

- The amount of time you have until retirement - the longer you are from retiring, the more aggressive you should be,
- Your tolerance for risk, and
- Dollar-cost averaging - the very reason 401(k) plans work so well is because participants dollar-cost average their investments every month. When the market is down and mutual fund prices have fallen, you have greater purchasing power because your contribution is going to buy more shares.

***Your goal for 2001 should be to "Stay the course"!***

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