



# Retirement Report

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

Volume IV, Number I

JRN Benefits, Inc.

January 2006

This report identifies several key plan-related reminders for plan administrators to review and consider for the 2006 plan year. Most relate to action that may need to be taken early in the plan year, but a few are applicable based on the calendar year.

The reminders in this article are a synopsis of relevant plan information, but are generic in nature and may or may not apply to a plan. Plan administrators should review their plan documents to determine which ones apply. The material is divided into three sections: administrative, participant communication, and participant election reminders.

## **ADMINISTRATIVE REMINDERS**

### **Update payroll system for new participant contribution limits**

Employers should review their payroll systems and update the applicable fields for the new contribution and compensation limits.

### **Distribute minimum required distributions (MRDs) to affected participants**

In general, certain participants in defined contribution plans who turn 70½ are required to receive at least annual distributions of their plan account assets before the end of each calendar year to avoid a 50% excise tax. An exception is available for participants who have a required beginning date during the current year. These individuals can delay the current year's MRD until April 1st of the following year. Participants who turn 70½ in 2005 have until April 1, 2006 to receive their MRD for the 2005 calendar year. However, they also will be required to receive another MRD by December 31, 2006 if they delayed their initial MRD, so they will receive two MRDs in 2006. Plan administrators should review participant information in their plan and determine whether any initial MRDs should be made to affected participants before April 1, 2006.

### **Monitor plan investment options under ERISA Section 404(c)**

In general, the fiduciary responsibility rules of ERISA provide that a person who is a fiduciary can be held liable for plan losses resulting from his or her failure to carry out specific duties and responsibilities. ERISA section 404(c) relieves plan fiduciaries of certain responsibilities if participants are permitted to direct investment of their individual accounts provided all the other requirements are satisfied.

Despite the protection offered under section 404(c), plan sponsors are still responsible for the selection and monitoring of the plan's investment options. Failure to comply with these requirements can lead to potential fiduciary liability for plan sponsors. Plan administrators should make sure that participants receive all the required materials to comply with ERISA section 404(c). In addition, plan sponsors should develop procedures to periodically review the investment options offered to participants and beneficiaries in its retirement plan. Due diligence should be exercised by the plan sponsor to monitor existing investment options and select new ones, or replace existing options when appropriate.

### **Timely changes to the plan's interest rate for participant loans (whenever there is a change in the prevailing interest rate)**

Participant loans must be administered in accordance with the loan procedures identified in the plan document or other written loan policy established by the employer. Loans must be administered in accordance with Internal Revenue Service (IRS) and Department of Labor (DOL) requirements. Generally, a participant's loan must satisfy certain legal requirements, including that the loan must have a reasonable rate of interest based on the prevailing interest rate that would be charged by a lending institution making a loan under a similar circumstance. A plan administrator should review its procedures to ensure that appropriate changes will be made to the interest rate that will be used for participant loans made after any change in the prevailing interest rate, including prime rate.

## **PARTICIPANT COMMUNICATION REMINDERS**

### **Distribute enrollment forms to newly eligible participants**

Newly eligible participants need to determine: 1) whether they want to make 401(k) contributions; 2) the percentage of their eligible compensation that will be contributed; and 3) how the contributions will be allocated among the plan's available investment options. Participants also need to complete a beneficiary designation form. All of these elections should be made using the employer's enrollment forms or available automated channels.

### **Distribute summary plan description (SPD) to participants**

An SPD describes the key provisions of an employer's retirement plan and participant rights. SPDs must be distributed to new participants within 90 days after a participant becomes eligible to participate. In addition, SPDs must be distributed to all participants once every five years unless there have been no amendments to the plan during that period. The DOL issued final regulations on electronic delivery that indicate an SPD can be delivered through an electronic medium if all the requirements are satisfied.

### **Distribute safe harbor contribution notice to eligible participants**

Employers with a 401(k) plan may adopt a safe harbor contribution formula which eliminates the need to perform the 401(k) test, and in certain situations, the company match test. The employer contributions are 100% vested and subject to certain withdrawal restrictions. A safe harbor contribution notice must be distributed to new employees who become eligible during the plan year within a reasonable time before they become eligible.

### **Distribute new beneficiary designation forms to participants with life event changes**

During a plan year, eligible participants may get married, divorced, have or adopt children, have relatives die unexpectedly, or temporarily leave their employer for military service. Plan administrators should consider having eligible participants complete new beneficiary designation forms to update prior designations when one of these events occurs. Otherwise, these life event changes could cause potential problems for plan administrators if participants later die without updating their beneficiary designations. In addition, information about updating beneficiary designation forms should be sent to all participants, including those who are inactive or are not currently employed by the employer.

### **Review benefits information and rights with employees who return from military leave (upon the employee's return to employment)**

Employees who leave their employer under a qualified military leave are entitled to certain rights by law when they return to their employer within a certain time after their leave is completed. Their rights relate to their participation in retirement and health benefit plans. Plan sponsors should consult with legal counsel for assistance with the documentation that is required to be provided to employees who return to employment.

For purposes of a 401(k) plan, participants have the right to make up any 401(k) salary deferral contributions that they would have been eligible to make during the military leave if they had remained actively employed by the plan sponsor. If the contributions that the participant was eligible to make during the military leave would have been matched, the plan sponsor will be required to match the make-up contributions. The salary deferral and any applicable matching contributions are considered to be contributions for the year to which they relate for purposes of testing and applicable limits instead of the year they are actually made by the participant.

### **Distribute notice to employees about the tax saver's credit**

Certain taxpayers may be eligible for a federal income tax credit, called the "saver's credit." (The tax credit expires for tax years after December 31, 2006.) The saver's credit reduces taxpayers' federal income taxes by the amount of any qualifying credit. The credit is based on a percentage of contributions (less any withdrawals during a specific period) made by taxpayers to employer-sponsored retirement plans and individual retirement accounts (IRAs). The taxpayer's filing status (single, married, married filing joint return, head of household) and "adjusted gross income" determine the percentage of the available credit that applies.

Taxpayers do not need to sign up for the saver's credit to take advantage of it. They only need to participate in their employer's sponsored retirement plan or an IRA and request the credit when they file their income tax return. Taxpayers may take into account any projected tax savers credit in computing the number of withholding allowances on their IRS Form W-4 (Employee's Withholding Allowance Certificate). This will enable them to reduce the amount of their federal income taxes that will be withheld during the year.

The IRS published a model notice: "Notice to Employees Regarding Saver's Credit," in Announcement 2001-106 that plan sponsors can give eligible participants. Plan administrators may wish to distribute the IRS model notice to eligible employees to provide them with an incentive to participate in either the employer's qualified plan or an IRA in order to take advantage of the tax saver's credit.

## **PARTICIPANT ELECTION REMINDERS**

### **Allow current, eligible participants to change their enrollment elections**

Eligible participants should determine whether they want to: 1) increase or decrease their 401(k) salary deferral contribution percentage; 2) allocate future contributions among the plan's available investment options; or 3) update beneficiary designation forms.

In addition, eligible participants who previously elected not to participate in the plan but now want to participate need to determine: 1) whether they want to make 401(k) salary deferral contributions; 2) the percentage of their eligible compensation that will be deferred; and 3) how the contributions will be allocated among the plan's available investment options. They also need to complete a beneficiary designation form. All of these decisions should be made using the employer's enrollment forms or available automated channels.

### **Limit participant deferral contribution percentages**

A participant deferral percentage is always limited to the lesser of the plan's maximum deferral contribution percentage or the Internal Revenue Code limit under section 402(g), which is \$15,000, for 2006. A plan by its terms may limit the deferral contribution percentage for newly eligible participants during the participants' initial year of plan participation based on their compensation for the entire plan year, or based on compensation from the participants' initial date of participation through the end of the plan year. Plan administrators should ensure that participants' deferral contribution percentages do not exceed the plan's maximum limit or the 402(g) limit.

### **Determine catch-up contribution eligible participants**

If a plan allows, participants who are age 50 or older before the close of the calendar year may be permitted to make salary deferral catch-up contributions even though they may terminate before the end of the calendar year. The catch-up contributions are in addition to the participant's regular deferral contributions and are limited to \$5,000 for 2006. Thereafter, the maximum amount will be indexed in \$500 increments. These contributions are not subject to the plan's maximum deferral percentage limit, annual deferral contribution limit (\$14,000 for 2005), actual deferral percentage test, or the annual additions limitation. Eligible participants should decide if they want to make these contributions to the plan.

## **SUMMARY**

Plan administrators are responsible for understanding the procedures and processes established for their plans and available to their participants. Plan administrators should review their plan documents to determine which administrative, participant communication, and participant election reminders apply and, take the appropriate action for their plan.

If you should have any questions regarding the information contained in the retirement report, please call us at (805) 563-5300 x14 or email your questions to [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).



# Retirement Report

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

Volume IV, Number II

JRN Benefits, Inc.

February 2006

## **The “Balanced” Fund: New Strategies For An Old Concept**

Balanced funds, traditionally known as funds with approximately half of their portfolio in stocks and the other half in bonds, have been around since the 1940's, providing investors with an efficient way of achieving a diversified portfolio with only one fund. Today, the balanced fund is still available as a way for investors to achieve diversification, but it has not kept pace with the more dynamic strategies and investment offerings that have since proliferated.

The early 1990's saw the beginning of the “new age” balanced fund, also known as the “Managed” or “Lifestyle” fund. The advent of these funds can be attributed to the widely accepted application of modern portfolio theory in portfolio construction, allowing exposure to less common asset classes such as international, mid-small cap equity, emerging markets, real estate and high yield (generally speaking, balanced funds consist of large cap stocks and investment grade bonds). Modern portfolio theory teaches that by increasing the number of allowable asset classes available for investment, and allocating to each according to an efficient frontier, one can achieve an “optimal” portfolio that will yield the highest expected return at its given risk level. Today's new balanced fund, the Managed fund, incorporates this type of approach, allowing investors opportunity for a greater return with more diversity and less risk. In most cases, these investment options are the best and most efficient vehicles for investors to attain their retirement goals. For more information on this topic, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## **Is a Deferred Compensation Plan For You?**

The annual ADP (Actual Deferral Percentage) test is being completed for 2005, which means some of you may have failed this test and will have to provide refunds to your highly compensated employees, thus limiting them on how much they can save for retirement. Often this can be frustrating to employees who need to save for retirement and/or who will have to re-file their tax returns. However, there is a solution many companies provide to their highly compensated key employees to offer them a means to save more. Non-Qualified Deferred Compensation (also referred to as Top Hat, Executive Excess plan, etc.) can be an excellent tool to not only reward valuable employees, but can be used to retain and recruit key talent. The plan participant makes an election to defer compensation on a pre-tax basis (lowering their taxable income). The income is deferred *prior* to being earned. Earnings accumulate “tax deferred” and there are no contribution limitations. So, the plan participant can defer up to 100% of his or her compensation.

Recently published in a Clark Consulting 2004 Annual Executive Benefit Survey of Current Trends, of the Fortune 1000 companies surveyed, 94% sponsor a Non-Qualified Deferred Compensation plan and 44% offer an employer company match within it. For companies who already have an established Non-Qualified plan, it is important to conduct an independent Due Diligence review every three to four years. With recent legislative changes, the plan should be up-to-date with the new laws to avoid any penalties sustained or losses to the plan assets. Contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information.

## **Understanding Plan Forfeitures**

A “forfeiture” is the benefit that a participant loses if he or she terminates employment before becoming eligible for full retirement benefits under the plan (e.g., the non-vested amount becomes the forfeiture). For example, assume a plan has a 6 year graded vesting schedule. If the participant had only 3 years of service, and they terminate their employment, they would be entitled to 40% of the dollar amount in the employer matching account; the remaining 60% should be placed in a forfeiture account for future use. (Note: Employee contributions and rollovers are not subject to a vesting schedule.) While forfeitures cannot be distributed back to the plan sponsor, they can be used to offset future employer contributions and/or pay plan expenses. Some plans may choose to reallocate their plan forfeitures to all participants instead of offsetting the contributions or fees. Other employers may choose to offset future contributions only. Contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information.

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### **EBSA Reports Hefty Enforcement Results**

The Employee Benefits Security Administration (EBSA) achieved \$1.7 billion in results from actions to enforce the Employee Retirement Income Security Act (ERISA) during fiscal year 2005. A Department of Labor (DoL) press release said this is the second highest annual result in the agency's history (the previous record was fiscal year 2004). Included in the \$1.7 billion is \$709 million in assets restored to plans and benefits recovered for individual workers – an increase of nearly 120% over FY 2004, according to the release. Also, EBSA's Benefits Advisors handled nearly 160,000 inquiries and recovered a record \$88.4 million in benefits on behalf of workers and their families through informal resolution of individual complaints.

### **“The Participant Experience”**

401(k) plans have now been around for more than 25 years. During this period we have learned valuable information about what has worked and what has not worked. As a result, we find ourselves (as plan sponsors and consultants) in a transitional period which portends dramatic and positive changes in plan management. Much of the intelligence we now have has come to us quite recently in the form of credible studies and analysis of case histories. This intelligence is leading us to some inescapable conclusions resulting in a rather seismic shift in how we will look at plan management from this point forward. From now on the prudent plan sponsor/fiduciary will focus on “the Participant Experience.” Like many really good concepts, this one embodies the beauty of simplicity and offers meaningful benefits to all who embrace it. Stay tuned to learn more about this exciting new focus, or if you have questions please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Prohibited Class Transaction Rules Update**

The Employee Benefits Security Administration (EBSA) has put out two amendments to class exemptions allowing plans to conduct transactions with a wide variety of financial institutions and insurers. Under the amendments to Prohibited Transaction Exemption (PTE) 75-1, a plan may engage in transactions with broker-dealers, reporting dealers and banks that are plan fiduciaries. This is true as long as the institutions and their affiliates do not have investment authority over or provide investment advice about the plan's assets involved in the transaction. EBSA also issued a similar change to (PTE) 84-24 for insurance agents and brokers, pension consultants and mutual fund principal underwriters to carry out transactions involving sales of insurance and mutual fund products and to receive related commissions. The Employee Retirement Income Security Act (ERISA) generally prohibits plans from entering into transactions with plan fiduciaries and other related parties unless an exemption applies.

### **Communication Corner: Rebalancing**

This month's sample employee communication piece reminds participants about the importance of rebalancing their investment portfolios. Please email us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for a copy that you can print and distribute to your employees.

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# Retirement Report

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

Volume IV, Number III

JRN Benefits, Inc.

March 2006

## **Mutual Fund Rating Systems: JRN Benefits, Inc. vs. Morningstar®**

The ongoing monitoring of investments is a regular and disciplined process. JRN Benefits, Inc. *Scorecard*<sup>SM</sup> System was developed to help plan sponsors meet this important fiduciary obligation and to enhance investment opportunities for plan participants. But how is our process different than the Morningstar Star Rating System? To summarize, our *Scorecard*<sup>SM</sup> System employs a complete approach that takes into account risk adjusted return characteristics, style analysis, peer group rankings and various qualitative factors. While the Morningstar rating measures risk/return characteristics, it fails to take into account several other important metrics. For example, portfolio manager tenure: A fund may have an attractive 5 year return, but also have an entirely new portfolio management team not responsible for that past performance. Our comprehensive and balanced approach affords fiduciaries an extremely powerful investment tool they can use to select and monitor funds; more importantly, it is easy to understand and can be dialed up or down to meet the plan sponsor's sophistication level.

## **What Kind Of "Experience" Are You Creating For Your Employees?**

For years plan fiduciaries have been measured and judged by whether their actions related to the retirement plan were in compliance with ERISA regulations. While that is still important, today fiduciaries are being asked about how participants interact with their retirement plan. This is known as the "participant experience" and examines how participants are using all aspects of the plan beginning with enrollment and progressing with how they manage their account throughout their career. Are your employees participating in the plan? Do they know how much they will need in retirement? Are they deferring enough to accumulate an adequate retirement nest egg? Are they investing in ways that are appropriate for their risk tolerance and time horizon? These are the types of questions that will ultimately define the success of your plan. One of our goals is to provide your Plan with Enrollment and Educational programs focused on enriching the "participant experience". For more information on Enrollment and Educational programs available to your Plan please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## **Department of Labor Investigations – How To Be Prepared**

Each year the Department of Labor (DOL) selects certain employee benefit plans for investigation. The investigations often focus on fulfillment of fiduciary responsibilities and may be triggered by employee complaints, information from Form 5500 filings, DOL random selection, or the DOL's targeting of compliance areas most often abused by employers and/or plan administrators. In particular, the DOL's Employee Benefits Security Administration (EBSA) identifies national enforcement projects that target delayed employee contributions, bankrupt/financially distressed plan sponsors, abandoned plans/missing participants, and ESOPs.

In 2004 the DOL began routinely auditing six years of plan transactions. Site visits became mandatory. The DOL interviews the plan's benefit manager with a standard audit questionnaire (approximately 25 pages in length) and requests the following plan documents for review during the site visit:

- Plan Documents – Master plan document, adoption agreement, and SPD
- Annual Requirements and Filings – Summary Annual Report, Forms 5500, IRS favorable determination letter, and Form 5330
- Contracts and Records – Fidelity bond, balance sheet and statement of assets/liabilities, investment portfolio, contribution reports, service provider contracts, insurance contracts, receipt/disbursement records, bank and investment statements, fiduciary liability insurance partnership and joint venture records, stock records, participant records, accountants opinion, minutes of trustee meetings

For additional information regarding DOL investigations please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

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### Important Decisions To Consider In Mergers And Acquisitions (Part I)

The company 401(k) plan is usually overlooked or not addressed when companies decide to purchase another company. If you plan properly, you can manage your liability and troubleshoot benefit issues upfront. The key is to know your options and make a decision prior to the purchase of the company. Generally speaking, in an asset purchase, the acquiring company has the option to also acquire the seller's retirement plan and assume the liability of that plan. If the plan is kept as is, there are certain coverage and nondiscrimination tests that are required to determine whether the benefits in the seller's plan and the buyer's plan are nondiscriminatory. In a stock purchase, the buyer automatically becomes responsible for the retirement plan on the effective date of the sale, unless the seller's plan is terminated prior to sale date through an executed board resolution. If the plan is kept as is, the same coverage and nondiscrimination tests will still apply as they do in an asset purchase.

The rules regarding 401(k) plans and company mergers are numerous and complex, hence, if you are currently faced with this challenge we strongly encourage you to contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com). Look for "Part II: Mergers and Acquisitions" in our April newsletter for more details on your M&A options.

### Dealing With Missing Participants

It's a common occurrence: a participant terminates employment with your company and moves to another address without providing you or your 401(k) service provider with a forwarding address yet their balance continues to remain in your plan. As a result, these "missing participants" increase annual administrative expenses. In addition, the Department of Labor (DOL) has made clear in guidance that as a plan fiduciary, you have a duty to attempt to locate these missing participants. You should adopt procedures for locating missing plan participants that utilize the following IRS, DOL and Congressional guidance:

- *Internal and Vendor Search.* Use all internal company and vendor resources to locate missing participants, including inquiries with related plans (i.e., health plans) and contacting designated beneficiaries for additional information.
- *Social Security Administration (SSA) Programs.* The SSA's death register should be searched to determine if the participant is still living. The SSA also offers a letter-forwarding program.
- *IRS Missing Participant Program.* The IRS also offers letter-forwarding programs (separate programs for less than 50 missing participants and over 49 missing participants).
- *Default Rollover.* The plan sponsor can choose to roll over the missing participant's account balance into an IRA. [The automatic rollover is only available for participant accounts not exceeding \$5,000, and may not be available for all plans.]
- *Private Locator Services.* Several private locator services are available to help plan sponsors locate missing participants. Although a more expensive alternative to the above, the end-result is easily justified.
- *Federally Insured Bank Accounts or State Escheat.* You may also transfer the account balance to an interest-bearing account in a federally insured bank in the name of the missing participant or to the state unclaimed property fund in the state of the missing participant's last known address or work location.
- *100% Income Tax Withholding.* As a last resort, some providers recommend withholding income taxes in the amount of 100% of the distribution.

### Communication Corner: It's Enrollment Time!

This month's sample employee communication encourages participants to enroll in the plan. Email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for a copy.



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

### **Q1'06 Market Summary: Off To A Good Start**

Equity markets posted strong returns over the first quarter, with many major market indices finishing close to their highest levels in nearly six years. U.S. small cap equity and international equity were two of the best performing asset classes for the quarter, continuing the trend witnessed in 2005. Rising yields over the quarter hurt bond markets, which was felt most by those investors out on the long end of the curve (as longer maturity debt was the worst performing area in the debt markets). U.S. fixed income was the worst performing asset class for the quarter, returning a negative 0.64% (Lehman Brothers Aggregate Bond Index). In his first Fed meeting as chairman, Ben Bernanke signaled to the markets that he was just as committed to fighting inflation as his predecessor Alan Greenspan. The Fed raised its benchmark rate to 4.75%, and signaled to the markets that an increase to 5% was likely at the next (June) meeting. Interestingly enough, the equity markets did not respond negatively to the news. The question of how far the Fed will go in its quest to keep inflation contained will remain a focal point for investors as the current bull market continues to head into its fourth year.

### **Taking A Closer Look At Inertia And Participant Behavior**

One of the nations most influential leaders recently retired, but he may not be out of work for long. Alan Greenspan has taken on a new challenge: to change the retirement savings habits of the country. According to Hewitt Associates 64% of companies offer a 401(k) plan, up from 35% just a decade ago. The problem is that many employees don't take advantage and save. "Despite continued efforts to educate employees on the importance of saving for retirement, many companies do not feel workers are stepping up to the challenge. [The] study of more than 220 large companies reveals that only 6% are confident their employees will take accountability for their own retirement future."

Inertia may be partly to blame. A report by Shlomo Benartzi, associate professor at UCLA, claims a major hurdle for employees is "lack of investor action and innate behavioral factors." The study points to participants' difficulty in the asset allocation of their investments, and states that while the vast majority of employees have every intention of saving, they fail to do so because the "plan design" itself is inadequate. Among the ideas that would strengthen plan design enough to make a significant impact on participation is Automatic Enrollment – a concept strongly supported by Alan Greenspan as one solution to help aid the country's retirement dilemma. Less than 20% of companies currently utilize Automatic Enrollment (although sharply on the rise); many studies show increases in participation as great as 30% when implemented. For more information please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Pass or Fail? Corrective Actions To Remedy Your Test Results**

Each year you receive a "pass" or "fail" regarding required non-discrimination testing (the Actual Deferral Percentage test and the Actual Contribution Percentage test). The ADP/ACP tests govern the amounts of deferrals and/or matching contributions that highly compensated employees (HCEs) are allowed to make or receive in relation to those of non-highly compensated employees (NHCEs). If you received a "fail" do not panic. As long as an IRS-prescribed corrective action is undertaken the Plan's health is not in jeopardy. Correction can be made by either 1) refunds of excess contributions (plus earnings thereon) to HCEs, 2) by employer qualified non-elective contributions (QNECs) or qualified matching contributions (QMACs) to NHCEs under the plan (note: the bottom-up QNEC technique is no longer available), or 3) by recharacterizing excess contributions. The most common corrective method is the refund of excess contributions to HCEs following IRS procedures. Refunds must be distributed within 2½ months following the end of the plan's test year (March 15 for calendar year plans) in order to avoid a 10% excise tax imposed on the employer. For additional information or help with corrective actions please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Important Decisions To Consider In Mergers And Acquisitions (Part II)

The company 401(k) plan is usually overlooked or not addressed when companies decide to purchase another company. With proper planning, you can manage your liability with respect to the selling company's plan. In last month's *Retirement Report*, we reviewed the differences between an asset purchase and a stock purchase; following are some key features of each option.

1. Terminate the seller's plan (stock purchase only) – Account balances may be distributed to participants as taxable income, or they may choose to roll their balances into the buyer's plan. Upon plan termination, all participant accounts become 100% vested in employer contributions. The buyer may choose to have the seller file for a determination letter on the terminated plan.
2. Merge the seller's plan into the buyer's plan (stock or asset purchase) – The buyer's plan must preserve certain protected benefits that will carry over from the seller's plan. Account balances are "merged" into the buyer's plan and participants do not have the option to take a taxable distribution. Vesting in employer contributions can generally remain the same. The buyer is also acquiring all the seller-plan's liabilities and must take care in doing their due diligence in regards to the seller-plan once it is merged.
3. Freeze the seller's plan (stock purchase) – The buyer can "freeze" the plan and no new deposits are made into the account. Reporting of 5500's is still required (as well as certain non-discrimination testing). Vesting in employer contributions can generally remain the same.
4. Continue the plan as is (stock or asset purchase) – For a stock purchase the buyer can choose to keep the plan as is, but certain non-discrimination testing is required if the acquired company is part of a control group and the buyer has another plan. This option is also available for an asset purchase if the buyer acquires the plan as part of the sale.

The rules regarding 401(k) plans and company mergers are numerous and complex. If you are currently faced with this challenge we strongly encourage you to contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Investment Trends: Re-thinking Default Accounts

A "default account" is the investment option used when a participant fails to provide direction for his or her account. Chosen by the plan fiduciaries, the default account has historically been a conservative option such as a money market or stable value investment. In accordance with ERISA, plan fiduciaries must prudently invest the money on behalf of their employees; therefore, it should be assumed that the participant may never adjust their investment beyond the default account. As a result, the current trend is to replace default accounts with professionally managed or lifestyle portfolios. These options offer a wider amount of diversification as they contain a variety of asset classes along with some international exposure. What's more, these options are typically rebalanced on a regular basis. The majority of managed or lifestyle options are risk based, so their allocation remains constant with a certain equity vs. fixed income weighting. The most sophisticated are based on a targeted year when a participant would be expected to retire, automatically re-adjusting to a more conservative portfolio as that date approaches. The bottom line is that managed/lifestyle portfolios are widely considered to be a more prudent option for an investor than a money market or stable value-type investment. Contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information on changing your default account.

### Communication Corner: Making The Most Of Your 401(k)

This month's sample employee memo looks at some common "Do's" and "Don'ts" when it comes to saving for retirement. Email us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for a copy you can print and distribute to employees.



# JRN BENEFITS

Workplace Retirement Plan Solutions

Volume IV, Number V

Retirement Report

May 2006

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

### **Participant Retirement Planning Report Card: “Incomplete”**

Several large, independent surveys have recently been published which reflect negatively on participants' retirement planning results. The 16th Annual Retirement Confidence Survey, conducted by the Employee Benefits Research Institute, is certainly no exception. Following are a few excerpts from the survey:

- 68% of current workers say they and their spouses have accumulated less than \$50,000 in retirement savings.
- The median amount saved in a 401(k) plan by people between 50 - 65 years old is \$53,400.
- 24% of workers say they are confident in their retirement prospects (down from 25% the year before despite education attempts by many plans).
- 59% of workers say they hope to have a retirement standard of living equal to or greater than their working years.
- 58% of workers say they have not yet calculated how much they will need to retire comfortably.

What does it all mean? Is there fiduciary liability exposure within these disappointing results? Some prominent ERISA attorneys are suggesting that fiduciaries have a responsibility to make material efforts to correct a problem that may exist in their plan (as supported by the above statistics). If you share this concern and would like to discuss potential solutions, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Stable Value Investments In 401(k) Plans**

For the conservative investor (or those nearing retirement) a stable value fund can be an appealing investment. These funds generally offer returns that are a few percentage points higher than your average money-market fund, with just marginally more risk. This is because stable value funds typically invest in longer duration investment vehicles. A stable value fund is different from a Guaranteed Interest Contract (or GIC), which is a contract between an insurance firm and a company's retirement plan guaranteeing investors a fixed rate of return. Today, the majority of stable value assets are invested in “synthetic GICs,” also known as wrapped bonds. These are high-quality, short- to intermediate-term bonds that are bound by insurance wrappers. If a stable-value portfolio falls below the rate of return set by the wrapper, the insurer pays the difference, keeping the fund stable. If the portfolio gains beyond the wrapper's set return, the fund pays the insurer the difference. Wrapped bonds currently comprise about 60% of the assets of the average stable value fund. The risk involved in investing in a stable fund (vs. an individual GIC) is minimal. But note, despite their attractive nature, stable value funds are not for everyone. Younger investors should consider investing in options with greater return potential (in order to avoid the risk of underperformance) due to their ability to tolerate more risk. For more information on the short-term investment options offered to your plan, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Investment Advice: Do You Need It?**

Have you or your participants ever asked, “How should I invest my money?” In the past, some plan sponsors believed offering investment advice would expose them to additional liability, when in reality plan sponsors face greater risk by not offering investment advice to plan participants. For employees to have a financially secure retirement, they need to directly engage in an active planning and saving process. While education is still important in developing employee understanding and participation, advice strategies help develop appropriate asset allocation and diversification – two critical elements to any successful retirement outcome. According to the Profit Sharing Council of America, nearly half of all plans offer some type of investment advice to participants. Utilization rates vary by plan size as well as delivery method (e.g., one-on-one consulting, online tools). Please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information on this topic.

### Trends In Company Match Contributions

A company match is an important incentive for attracting qualified employees, increasing participation levels, and most importantly, helping employees achieve a necessary asset level for retirement. Some recent statistics reveal:

- Most companies, 77.9%, offer a matching contribution for their employees according to the 2004 DC Survey on PLANSPONSOR.com. With the value that employees place on benefits, your retirement plan can become one of your most important recruitment tools for attracting high quality employees.
- Plan participation may increase. According to the Pension Research Council, plans with no match average about 64% participation, whereas those that offer a match tend to see an increase in participation of 5% to 14%, depending on the match formula.
- The most common match rate is \$.50 per \$1.00, which is used by 45.8% of plans. The most common match limit is up to the first 6% of participant contributions, which is used by 29.6% of plans according to the PSCA's 48th Annual Survey of Profit Sharing and 401(k) Plans.
- The eligibility for a company match tends to be one of two options with 35.8% of plans having immediate eligibility and 36.2% of plans having a one year eligibility according to the PSCA, 401(k) and Profit Sharing Plan Eligibility Survey 2005.

If you have questions about adding or enhancing a company match to your plan, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Hardship Withdrawals 101

401(k) plans may be designed to permit distributions to a participant in the event of a "financial hardship." The Internal Revenue Code provides strict rules regarding the provision of hardship withdrawals: 1) The participant must have an immediate and heavy financial need; 2) The withdrawal must be necessary to satisfy that need; and 3) Only the amount actually needed for the hardship may be withdrawn and it may not exceed the value of the participant's not-yet-distributed deferrals. Amounts withdrawn on account of hardship will be subject to regular income tax; a participant may not make deferrals for six months following the hardship withdrawal.

The Internal Revenue Service has provided safe harbor protection for six situations considered hardships:

1. Un-reimbursed medical expenses (participant, spouse, dependents).
2. Purchase of the participant's principal residence.
3. Payment of tuition and related education expenses (including room and board) for 12 months for post-secondary education (participant, spouse, dependents, and post-dependent children).
4. Payment to prevent eviction from home or foreclosure on the mortgage of your primary residence.
5. Payment of funeral expenses (parents, spouse, children, dependents) (first effective as of January 1, 2006).
6. Repair expenses for damages to principal residence incurred as a result of catastrophic events (i.e., hurricanes, floods) (first effective as of January 1, 2006).

For additional information about hardship withdrawals, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Communication Corner: Borrowing Against Your 401(k)

This month's sample employee memo outlines a few important (and costly) drawbacks of borrowing money against your retirement savings. We encourage you to copy and distribute the memo to all plan participants. Please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) with questions.



# JRN BENEFITS

Workplace Retirement Plan Solutions

Volume IV, Number VI

Retirement Report

June 2006

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

## **Investment Commentary: Specialty Funds and 401(k) Plan Implications**

Specialty funds generally refer to funds that invest in focused or relatively small market segments in the global market place. Some of the more common specialty funds 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 large loss is possible in a very short period of time. The worst one month return since its inception was -28.91%, which was almost twice that of the worst monthly return for the S&P 500 index (-14.46%) across the same time period (10/1989-3/2006). Science and technology fund investors witnessed this same volatility just 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 82.39%, 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 the additional responsibility of educating 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. For more information on this topic, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## **Complying with ERISA 404(c)**

According to ERISA, 404(c) plans require that participants: Have the opportunity to choose from a broad range of investment alternatives (which are adequately diversified); may direct the investment of their accounts with a frequency which is appropriate; and can obtain sufficient information to make informed investment decisions. The plan sponsor must provide written notification to participants of intent to comply with 404(c), and be able to provide the following:

- Information about investment instructions (including contact information of the fiduciary responsible for carrying out participant investment instructions);
- Notification of voting and tender rights;
- Information about each investment alternative; and
- A description of transaction fees and investment expenses.

Section 404(c) of ERISA says that by complying with the 404(c) requirements plan fiduciaries will not be liable for losses that result from the investment decisions made by participants. Conversely, if plan fiduciaries do not comply with 404(c), they could be liable for losses due to poor investment decisions made by plan participants. To comply with some of the important requirements of 404(c), we encourage our clients to review and execute a formal 404(c) Policy Statement and Employee Notice at least annually. This also includes distributing a copy to all employees. If you have questions about whether your plan complies with ERISA 404(c), please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Department of Labor's Voluntary Fiduciary Correction Program (VFCP)

The Department of Labor provides a program (the VFCP) designed to encourage employers to voluntarily comply with ERISA through self-correction for violations of the law. The DOL will provide a "no-action" letter to employers who successfully complete the program. A no-action letter provides that the DOL will not impose civil penalties, and may also result in the plan sponsor avoiding excise taxes for prohibited transactions.

Any fiduciary that may be liable for certain listed transactions (19 listed violations), who is not currently "under investigation" by the DOL, IRS, or other governmental entity, is eligible to apply for relief under the program. The listed covered transactions include violations such as the late deposit of deferrals, various loan-related failures, improper sales or exchanges of plan assets with parties in interest, and payment of improper expenses by the plan trust. It is important to note that the explicit correction instructions provided by the program must be followed; no other corrective action will be allowed.

Although the DOL website provides instructions and an online calculator (<http://www.dol.gov/ebsa/calculator/main.html>), the actual corrective actions as well as the application process may be quite complicated. If your plan has experienced a violation, or you believe that your plan may have experienced a violation, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Filing Your Form 5500

If you have a 401(k) plan, then chances are your plan is required to file an annual Form 5500. The Form 5500 is an informational return that is sent to the Employee Benefits Security Administration (EBSA – Department of Labor Processing Division) and reports financial information for your retirement plan for the year. Since it is an informational return, there are no taxes due. The good news is that most retirement plan vendors provide you with a signature-ready 5500 for you to sign and send directly to EBSA. **If your plan is on a calendar year-end (ending 12/31) your Form 5500 must be postmarked no later than July 31, 2006.** You may file an extension of the return using the Form 5558 (which extends the filing date to October 15). However, if you file the extension, it also must be postmarked no later than July 31. Check with your plan vendor if you have not received your 5500 or an extension to defer the filing date to October.

### New Expectations, New Solutions: Helping Participants Save for Retirement

The latest "401(k) paradox" is that although 401(k) plans were designed to provide employees with significant control and choice, plan sponsors and fiduciaries now may need to make decisions that force participants to make better choices. For example, employers now have the ability to create an environment in which employees will automatically become participants once they meet the eligibility guidelines (age and service) outlined in the plan document. To opt out, the employee simply notifies the employer of their intent. The default percentage deducted from employee pay is usually 3 percent to 7 percent. Recently this percentage has been increasing in recognition of the fact that, for most employees, a contribution of less than 6 percent may not be an adequate nest egg. Additionally, an automatic enrollment solution requires a 401(k) plan to establish a default investment account. The primary investment opportunities are: Balanced, Managed or Lifetime (with managed account characteristics). Although plan sponsors cannot force employees to "do the right thing," the highest level of protection afforded to fiduciaries under ERISA will occur if they have developed processes and taken reasonable and necessary steps to help participants achieve financial security. Please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information on this topic.

### Communication Corner: Five Tips for Increasing Your Retirement Plan Dollars

This month's sample participant communication memo outlines five ways to grow your nest egg. **We encourage you to copy and distribute the memo to all plan participants.** Please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) with questions.



# JRN BENEFITS

Workplace Retirement Plan Solutions

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July 2006

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

## **Q2'06 Market Summary: Markets Decline Amid Uncertainty**

After ending the first quarter at some of the highest levels seen in years, global markets gave back much of the gains in the second quarter to end at levels seen earlier in the year. Both equity and bond markets lost ground over the quarter as inflation worries persisted and rates continued to inch higher. The most volatile and risky asset classes saw the worst returns. U.S. small cap equity, one of the best performing segments over the last few quarters and years, posted some of the largest losses over the second quarter. Rising yields continued to hurt bond markets, albeit to a lesser extent, and only short duration fixed income investments avoided the negative returns seen over the quarter by many fixed income investments. In the non-core asset classes, emerging markets, a very risky and volatile asset class, experienced some of the worst returns, down over 4% (MSCI Emerging Markets).

While many expect the Fed to be nearing the end of its raising (interest) cycle, inflation signals continued to point higher, leaving the door open to more increases. Overseas, the European Central Bank raised rates a quarter percent in June, and is expected to proceed with more rate increases by the end of the year. Even Japan, which has not raised rates in over a decade, positioned itself for a rate increase. Together, Central Banks are doing their best to reign in inflation. At the same time, indicators show the global economy is slowing, an unwelcome combination that has investors worried that rates may choke off whatever growth remains.

## **A Safe Harbor 401(k) Plan = No Discrimination Testing!**

One of the side effects of many 401(k) plans is that some participants are often limited to what they can contribute to their account due to discrimination testing requirements and subsequent refunds. There is a solution that can help a Plan to avoid the negative impacts of discrimination testing – it's called a Safe Harbor 401(k) Plan. In order to qualify for this type of plan design, an employer is required to make a "Safe Harbor" or a minimum contribution. There are two types of contributions available: Nonelective and Qualified Matching.

A Nonelective Contribution is an automatic contribution to every eligible employee, regardless of whether they contribute to the plan. The required minimum for this Nonelective Contribution is 3%. A Qualified Matching Contribution works much like a typical matching contribution and requires that the eligible employees are contributing to the plan to receive the match. The Qualified Matching Contribution can be either 100% of each employee's deferrals up to 4% of pay, or 100% of the first 3% and 50% on deferrals from 3 to 5%.

All Safe Harbor contributions must be 100% vested. This plan design can only be adopted at the beginning of the plan year and employees need to receive a notice about it at least 30 days in advance (so it's important to plan now if you wish to adopt this option). To learn if a Safe Harbor feature is appropriate for your plan, contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## **Consultant Commentary: Plan Sponsor Forum – Plan Designs 2006**

From June 28-30<sup>th</sup> *Plan Sponsor Magazine* gathered a strong cross-section of plan vendors, advisors and sponsors in Chicago to discuss popular plan design issues and trends in the 401(k) and qualified plan industry. Three themes dominated the event: automatic plan features, evolution of 401(k) plans and their participants, and fiduciary concerns.

Possibly the most dominant theme of the week was support (and the evolving need) for automatic features in 401(k) plans. The industry's cry for automatic features such as automatic enrollment, asset allocation model funds and automatic deferral increases ("step-up") was supported by the ongoing demise of defined benefit plans, the inability of many participants to adequately plan for their own retirement, as well as the general failure of participant educational campaigns.

In regards to education campaigns, plan sponsors are discovering that younger employees have become less investment savvy, more conservative demographic. Vendors are recognizing this change in participant attitudes and both vendors and sponsors are looking to adapt their plan's educational approaches through the use of technology, media, and entertainment-styled products geared toward capturing shorter attention spans. In addition, phased retirement for pending retirees has become a hot topic of developing plan design for employers hoping to use their retirement plans to leverage their older employees' experience and knowledge.

Finally, no plan design forum would be complete without the healthy discussion of fiduciary responsibility. The prudence of bundled vs. unbundled services, the potential pitfalls of providing company stock as an investment option in the plan, and various investment and fee due diligence discussions rounded out the lively discourse.

If any of these items are of interest to you, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Communication Corner: Understanding Asset Classes**

This month's sample participant communication memo provides a brief description of asset classes and introduces the concept of the "risk / reward" spectrum. **Please copy this and distribute it to your plan participants.** A follow-up piece on diversification will be featured next month to complement this piece. Please feel free to email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for further assistance.



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

## **Pension Protection Act of 2006 (PPA)**

On Thursday, August 17, 2006, President Bush signed into law the Pension Protection Act of 2006 (PPA). The PPA addresses numerous funding issues for single and multiemployer plans, new disclosure rules, and interest rate assumptions. This report addresses a few areas including investment advice, defined contribution plan changes, pension portability, and diversification.

### **EGTRRA Limits Made Permanent**

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) substantially increased pension and individual retirement account (IRA) contribution limits through 2010, and made other improvements in pensions and retirement savings through enhanced vesting, portability, and reduced regulatory burdens. The PPA makes a number of these improvements permanent (i.e., they no longer expire in 2010), including:

- maximum amounts employees may contribute to tax-favored retirement plans and IRAs (including providing for “catch-up contributions” for those age 50 and older);
- the dollar limit on maximum allocations for an individual under a defined contribution plan (including employer, employee pretax, and employee after-tax contributions);
- the maximum annual benefit an individual may receive from a defined benefit plan;
- the maximum amount of compensation that may be considered by the plan in calculating benefits and satisfying various regulatory requirements; and
- the availability of Roth 401(k) accounts under 401(k) plans

### **Investment Advice**

The PPA amends both ERISA and the Internal Revenue Code to provide relief to plan sponsors that appoint **qualified fiduciary advisers** for individual account plans with participant-directed investments. If statutory requirements are met, sponsors are not liable for advice given by fiduciary advisers or for investment performance based on that advice. Fiduciary advisers include banks, insurance companies, broker dealers, registered investment advisers, and their employees and representatives. Advice must be given pursuant to an “eligible investment advice arrangement,” which is an arrangement under which either (i) fees received by the adviser do not vary on the basis of investment options selected, or (ii) the adviser uses a computer model that is certified by an eligible investment expert (i.e., someone without a material affiliation or contractual relationship with the adviser who also satisfies any additional requirements the Department of Labor [DOL] may specify from time to time). The computer model must apply generally accepted investment theories that use relevant individualized participant information (retirement age, life expectancy, risk tolerance), must not be biased in favor of investments offered by the adviser or its affiliates, and must take into account all investment options available under the plan. An independent auditor (i.e., unrelated to the adviser or any provider of investment options under the plan) must certify annually that the model is appropriate, the only advice given must be pursuant to the computer model, and all transactions must result solely from participant decisions. In addition:

- Before investment advice is given, the adviser must provide notice to participants that discloses, among other things:
  - the role of all parties involved in developing the program or selecting investments options under the plan;
  - that the financial adviser is a fiduciary;
  - past performance of the investment options;
  - any fees or other compensation received by the fiduciary adviser;
  - how any participant information will be used; and
  - that participants may arrange for their own advice from another adviser.

- Presentation of the information must be written clearly and in a manner that is easily understood by participants and beneficiaries. The DOL will issue a model form of disclosures.
- Compensation received by the fiduciary adviser or its affiliates in connection with an investment transaction must be reasonable, and the terms of the transaction must be at least as favorable as an arms-length transaction.
- The relief is effective for advice given after December 31, 2006.

While the relief available to plan sponsors is both welcome and significant, it is not complete. The sponsor will still be responsible for the prudent selection and periodic monitoring of the investment adviser but will not be responsible to monitor the specific investment advice given by the fiduciary adviser.

### **Other Defined Contribution Plan Changes**

**Safe Harbor Default Investment Option:** Within six months, the DOL must issue final regulations that provide a safe harbor for default investments. This relief will be particularly welcome for 401(k) plans that provide automatic enrollment. Although the DOL regulations will not identify specific safe harbor investment vehicles, the legislative history of the PPA suggests strongly that any safe harbor should be consistent with long-term capital appreciation, long-term capital preservation, or both. Participants will be required to receive an annual notice explaining how their accounts will be invested absent their affirmative investment direction, and must be given a reasonable period to make investment elections after the notice is received and before the beginning of the plan year. These new rules will be effective for plan years beginning after December 31, 2006.

**Fiduciary safe harbors for mapping investments and blackout periods:** The first of these new fiduciary safe harbors applies to a “qualified change in investment options” in which an account is reallocated to new investment options with characteristics, including risk and rate of return, that are similar to the characteristics of the corresponding investment options that were available before the reallocation. The safe harbor requires notice to participants comparing the old and new investment options and explaining that, absent a participant investment direction to the contrary, the participant’s account will be invested in new options with characteristics reasonably similar to the old options. The safe harbor applies if the prior investment was a result of participant direction.

The second new fiduciary safe harbor relieves plan fiduciaries of liability for losses during blackout periods if the ERISA notice requirements for blackouts are followed.

These new rules generally apply to plan years beginning after December 31, 2007.

**Automatic enrollment:** The PPA provides a new safe harbor under which a 401(k) plan with a “qualified automatic contribution arrangement” automatically meets the actual deferral percentage (ADP) test, actual contribution percentage (ACP) test, and top-heavy rules.

Requirements for the safe harbor:

- The default/automatic deferral percentage for the first year must be at least 3% of compensation;
- The default percentage must increase from 3%–6% of compensation over four years with a maximum of 10% of compensation;
- Either (1) 100% match on deferrals up to 1% of compensation and 50% match on deferrals between 1% and 6% of compensation, or (2) non-elective contribution equal to 3% of compensation;
- Employer contributions must vest within two years;
- Automatic enrollment may be limited to newly eligible employees; and
- Participant must receive initial and annual notices.

Employers now have three options for meeting the 401(k)/(m) nondiscrimination tests:

1. Perform regular discrimination testing, taking corrective action if the plan fails;
2. Institute automatic enrollment and comply with the new safe harbor; or

3. Comply with the old safe harbor ((i) matching contributions of 100% of deferrals up to 3% of compensation and 50% of deferrals between 3% and 5% of compensation or (ii) non-elective contributions of 3% of compensation).

Additional rules for plans that adopt automatic enrollment, whether or not they also use the safe harbor:

- Plans may allow participants to opt out during the first 90 days and receive a distribution of automatic deferrals already made;
- Corrective distributions for failure to satisfy ADP or ACP tests may be made within 6 months (extended from 2.5 months) after the close of the plan year without liability for 10% excise tax, and such amounts are included in income in the year of distribution;
- ERISA preempts state laws that directly or indirectly prohibit automatic enrollment provisions, effective August 17, 2006; and
- Except for the preemption rule, rules are generally effective for plan years beginning after December 31, 2007.

***Miscellaneous defined contribution plan changes:***

- Corrective distributions for failure to satisfy ADP or ACP tests are taxable in the year of distribution and need not include gap period income if distributed within the period prescribed to avoid the 10% excise tax. These rules generally apply for plan years beginning after December 31, 2007.
- Employer contributions made for plan years beginning after December 31, 2006 must vest under a three-year cliff vesting schedule or a six-year graded vesting schedule, as is currently required for matching contributions.

**Portability**

For distributions after December 31, 2006, PPA enhances the portability of retirement benefits by expanding rollover options to permit:

- direct rollovers to Roth IRAs from qualified plans, tax sheltered annuities, or governmental 457 plans;
- rollovers to an IRA by non-spouse beneficiaries from qualified plans, tax-sheltered annuities, or governmental 457 plans; and
- rollovers of after tax contributions from a qualified plan to a tax sheltered annuity.

**Plans with Employer Securities**

For plan years beginning after December 3, 2006, defined contribution plans must allow participants to diversify amounts invested in publicly traded employer securities. These new requirements do not apply to ESOPs.

Under the new rules:

- Employees have an immediate right to diversify employee contributions and elective deferrals, and a right after three years of vesting service to diversify employer non-elective contributions and company match;
- Plans must provide at least three diversified investment options other than employer securities or employer real property;
- Participants must be given notice no later than 30 days prior to effective date of any new diversification rights; and
- Diversification for employer non-elective and matching contributions under existing plans is subject to a three-year phase-in period.

If you have any questions or would like further information about the PPA please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).



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

## **Managed Account Investment Due Diligence**

Managed accounts are defined as asset allocation models, which are either risk tolerance or age-based, and are offered by vendors as single choice investment solutions. While these options have been available (and popular) for many years they are now coming under additional scrutiny. One area of interest has to do with the methodologies utilized in the design and selection of the underlying investments comprising these models. Another aspect deals with the growing fiduciary concern regarding the necessary monitoring of these models.

Since asset allocation models typically employ the appropriate criteria such as risk adjusted diversification, asset allocation, rebalancing, and Modern Portfolio Theory, they are expected to provide benefit to the non-sophisticated investor to whom these techniques are foreign. A 2005 Hewitt Study, as reported in *USA Today* on Jan 13, 2006, indicated that "...people that used lifecycle funds [managed accounts] in 2005 made 50% more than those who managed their 401(k) investments themselves."

While few in our industry doubt that these funds are beneficial to many participants, the contemporary informed fiduciary will require more facts.

- What is the proper allocation for the various risk/age-based models?
- What specific criteria are used in selecting the underlying investments?
- Is the entity selecting these investments independent and unbiased?
- How do we know if the best available funds are being utilized?
- How are these models being monitored?
- What benchmarks are appropriate?
- What happens if a model underperforms?
- What replacement options are available?

It is believed by industry experts that these lines of inquiry (such as the above) will eventually lead to higher quality products with more meaningful monitoring tools. Additional disclosure and transparency should also occur, as more and more product offerings will address these significant issues. As your dedicated retirement plan consultant, we are ready to help you address these important issues. Contact us for more information or email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## **Fiduciary Liability Insurance**

Fiduciary Liability insurance is optional insurance to provide protection for the plan from losses due to breaches related to investment decisions or plan operation. This type of insurance needs to be very specific to 401(k) fiduciaries and is typically not included in Employee Benefits Liability (excludes ERISA plans), General Liability (excludes ERISA plans), or Directors & Officers Liability (excludes fiduciary breaches) policies. After conducting an extensive search of available Fiduciary Insurance contracts, we have determined that even those that do intend to apply to the specific needs of the 401(k) fiduciary contain unacceptable restrictions (for example, some will reimburse for legal fees, but not awards). As a result, we began constructing a specially designed model policy with one of the nation's top insurers to provide a contract which incorporates the features our clients expect, along with a favorable rate that reflects the preferred risk our clients represent as a result of the comprehensive fiduciary support services which we provide. Though we are not soliciting this coverage, we want our clients to know of its existence and how to access it if they so choose. Please email us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) to learn more.

### **Plan Expenses: Can the Plan Pay?**

ERISA's "exclusive benefit rule" provides that a plan's assets must be used for the provision of benefits to participants/beneficiaries and for defraying reasonable expenses of plan administration. Certain payments, such as recordkeeping, fit easily within the exclusive benefit rule. Using plan assets for other expenses may be less obvious. First and foremost the plan's governing documents (the plan document and trust) must permit payment of plan expenses. The expenses must be in some way related and necessary to the administration of the plan. As required by ERISA the expenses should benefit the participants/beneficiaries (any supplemental benefit received by the plan sponsor is irrelevant). And finally, the expenses must be reasonable in nature.

Discretionary activities relating to the adoption, rather than the administration, of a plan are employer or "settlor" functions. Expenses related to settlor functions may not be paid from a plan's trust. Examples of settlor expenses include decision-making or consulting costs for the establishment, redesign, merger/spin-off, or termination of a plan. Ultimately the ability to pay expenses from a plan trust is a "facts and circumstances" determination that needs to be made by plan fiduciaries. Because it is possible that the DOL may challenge such determinations, it is important that fiduciaries consult ERISA counsel prior to paying questionable expenses from a plan trust and document the decision and reasoning.

If you desire more information in regards to plan expenses or help in determining how to identify proper plan expenses please email us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Survey Says: Participation on the Rise, but Employees Still Not Prepared for Retirement**

Despite increases in 401(k) plan participation, many employees are financially unprepared for retirement, according to the 2005-2006 Annual 401(k) Benchmarking Survey conducted by Deloitte Consulting, the International Foundation of Employee Benefit Plans and the International Society of Certified Employee Benefit Specialists. The survey also uncovered notable spikes in time-based lifestyle funds, auto-enrollment and step-up programs. The survey of 830 plan sponsors nationwide revealed that plans with more than 70 percent participation by eligible employees rose to 67 percent versus 63 percent from last year's survey. "While the increase in participation is promising, the lack of employee preparedness for retirement is alarming and suggests that there's still plenty of room for improvement in plan design and communication."

One of the most rapidly growing new 401(k) investment options for respondents is the "time-based lifestyle funds," which target plan participants according to their expected retirement date. Approximately 44 percent of respondents reported offering this type of investment option, up from 28 percent from the prior year. Nearly half (49 percent) of surveyed plan sponsors now allow employees to participate in the plan immediately upon being hired; 23 percent reported automatically enrolling new employees, versus 14 percent a year earlier. Efforts to boost employee deferrals via "step-up" programs are also gaining popularity; 16 percent of respondents reported now offering step-up programs, versus only 5 percent last year.

If you have questions, please email us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Communication Corner: The Case Against Market Timing**

This month's sample participant communication memo discusses Market Timing and why this particular investment strategy is discouraged. Email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for assistance.



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Workplace Retirement Plan Solutions

Volume IV, Number X

Retirement Report

October 2006

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

## **Q3'06 Market Commentary: Equity Markets At A Record Pace**

In the sports world, the old adage that “records are meant to be broken” could also very well translate to today’s financial markets. All attention was on the Dow Jones Industrial Average (DJIA) as the index came within 44 points of its record set back in January of 2000, ending the quarter at 11679.07. The third quarter witnessed a powerful upward surge in stock prices after a lackluster second quarter, with domestic (U.S.) large cap stocks the primary contributors, regaining their prominence among equity investors and posting some of the best returns among the core asset classes. Large cap stocks, as measured by the S&P 500, returned 5.2% for the quarter, more than doubling the returns posted over the first half of the year. Domestic mid and small cap stocks, a smaller segment of the U.S. equity market, sat out of the rally, experiencing flat to negative returns for the quarter. International equities, darlings over the last few quarters and years, experienced positive but more tempered returns. Fixed income markets finally got some relief, as rates declined over the quarter, reversing negative year-to-date returns. Domestic core fixed income, as measured by the Lehman Aggregate Bond Index, returned a robust 3.4% for the quarter.

Undoubtedly, the Fed’s decision to pause rate hikes after 17 straight meetings of increases helped provide the spark for the rally over the quarter. While the Fed positioned the pause as temporary, stating that “some inflation risks remain,” many market pundits predicted that the next rate move would be down. This widely held view was evidenced in the bond market, as fixed income yields, after reaching highs in late June (5.25% for the 10-year Treasury), forged lower over the quarter, ending the quarter at 4.64%. Lower rate expectations were fueled by the decrease in commodity prices, most notably oil. The economic backdrop, however, remained mixed, as economic activity slowed and housing prices edged lower. The extent to which these forces will impact the economy and markets remains a question, but it is likely that they will determine if the market can continue its record pace.

## **Fiduciary Compliance 101**

As a fiduciary for your company’s retirement plan, are you taking the necessary steps to ensure compliance and avoid liability? If you can answer YES to the following questions, consider yourself in the right direction:

- Have you identified your plan fiduciaries, and are they clear about the extent of their responsibilities?
- If participants make their own investment decisions, have you provided sufficient information for them to exercise control in making those decisions?
- Are you aware of the schedule to deposit participants’ contributions in the plan, and have you made sure it complies with the law?
- Have you benchmarked your plan against comparable service providers to ensure fees are relevant to services received?
- Have you reviewed your plan document in light of current plan operations and made necessary updates? After amending the plan, have you provided participants with an updated SPD or SMM?

We are prepared to help you meet your fiduciary obligations and guide you through the compliance process. Email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for assistance in this area.

## **Safe Harbor 401(k) Plan Notice**

Adopting a safe-harbor 401(k) plan design permits an employer to avoid discrimination testing which compares the average employee contributions from the non-highly compensated group (NHCE) to the average contributions from the highly compensated group (HCE). Safe harbor plans may only be adopted at the beginning of the plan year and a 30 day notice must be given to employees. The next big deadline for Safe Harbor election is the end of November! For more information please email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## Submitting Participant Contributions In A Timely Manner

The Department of Labor (DOL) is once again investigating 401(k) plans for compliance with its plan asset regulations. Unfortunately, many employers may be operating under the mistaken belief that compliance only requires that deposits be made by the 15<sup>th</sup> business day following the month for which 401(k) deposits were withheld. Employers may wish to review their procedures prior to a DOL investigation and, should they determine that they are not in compliance, consider reimbursing participants for the lost earnings in accordance with the DOL's internal position as well as its Voluntary Fiduciary Corrections Program.

Current DOL regulations provide that employee contributions to a 401(k) plan become plan assets as of the earliest date on which such contributions could reasonably be segregated from the employer's general assets (the "general rule"), but in no event later than the 15<sup>th</sup> business day of the month following the month in which the contributions are received by the employer or, in the case of amounts withheld from wages, would otherwise have been payable to the participant (the "maximum period"). While the regulations, and in particular, the examples contained therein, can be interpreted as containing the expectation that a small employer with a single payroll system should be able to segregate 401(k) deposits from its general assets much quicker than a larger employer with several payroll centers, the regulations provide virtually no meaningful guidance as to how an employer is in fact to determine its compliance date under the general rule. As a result, an employer, particularly a small employer, may be unprepared for DOL's interpretation of the rules as they apply to the employer's plan in the event of a DOL investigation. For more information, please email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## "401(k) Plans: What's Next?"

The "participant experience" has become an increasingly important part of the 401(k) fiduciary landscape. To best serve the participant experience, fiduciaries must use a prudent process to determine circumstances that may be relevant to their plan. The five steps that can assist fiduciaries in this determination are:

- Determining retirement income adequacy - Rather than worrying about what presently exists in the account, the plan should be more concerned about what needs to be contained in the account come retirement and work backwards as to what is needed to make the retirement a reality.
- Prudent selection and monitoring of a broad range of investments suitable and appropriate for a plan's participants.
- Discovering the cause of imprudent investing and implement corrective measures such as additional education, advice, targeted communications, and managed accounts - Although plan sponsors may avail themselves of the protections afforded by ERISA section 404(c), fiduciaries continue to maintain responsibilities regarding imprudent participant investing.
- Attempting to increase plan participation and deferral percentages.
- Undertaking a gap analysis - Are the deferrals of the plan adequate for the participants' retirement?

These steps are good kickoff points for fiduciary discussions regarding the future of their plans. If you desire more information, please email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

## Communication Corner: Financial Hardship Withdrawals

This month's sample participant communication memo covers the basic Q&A's of Financial Hardships including the consequences of taking this distribution option. Email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for assistance.



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## Qualified Plan Limits for 2007

On October 18, 2006, the Internal Revenue Service announced cost of living adjustments applicable to dollar limitations for pension plans and other items for the Tax Year 2007.

Section 415 of the Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans. It also requires that the Commissioner annually adjust these limits for cost-of-living increases. Many of the pension plan limitations will change for 2007. For most of the limitations, the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. For example, the limitation under Section 402(g)(1) on the exclusion for elective deferrals described in Section 402(g)(3) is increased from \$15,000 to \$15,500.

For more information on the limits for 2007, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### About JRN Benefits, Inc.....

- **JRN Benefits, Inc.** is a group of dedicated specialists focused solely on delivering comprehensive consulting, investment advisory and plan administration services to businesses that offer tax-qualified retirement and 401(k) savings plans and non-qualified executive compensation plans to their employees.
- **What distinguishes us** from other service providers is the breadth of our specialized knowledge. Our professional staff includes a nationally recognized ERISA attorney. Our plan consultants and administrators have earned professional designations from national organizations, such as the American Society of Pension Professionals and Actuaries (ASPPA). Our investment consultants are licensed with the National Association of Securities Dealers and the California Department of Insurance. We are a Registered Investment Advisor.

*For more information on our services, please visit [www.jrnbenefits.com](http://www.jrnbenefits.com).*

401(k) Plan Limits for Plan Year	2007	2006
401(k) Elective Deferrals	\$15,500	\$15,000
Annual Defined Contribution Limit	\$45,000	\$44,000
Annual Compensation Limit	\$225,000	\$220,000
Catch-Up Contribution Limit	\$5,000	\$5,000
Definition of Highly Compensated Employee	For determining HCE's in 2007, EEs who earned more than \$100,000 in 2006	For determining HCE's in 2006, EEs who earned more than \$95,000 in 2005
Social Security Wage Base	\$97,500	\$94,200

## Is Your Plan in Compliance?

One of the most important duties as a fiduciary is to comply with ERISA 404(a). Most fiduciaries are familiar with 404(c), which provides protection from participant-directed investment decisions, but 404(a) are specific fiduciary duties that deal with your plan's investments and whether you are following the terms of the plan document. These duties include having an Investment Policy Statement, regularly monitoring the investment options through a structured Due Diligence process and documenting meetings and plan changes.

Over the years JRN Benefits, Inc. has worked with hundreds of clients and auditors to address plan compliance issues, and have identified several common areas where fiduciaries sometimes stumble. If your plan is in compliance, you should be able to answer "Yes" to each of the following questions:

- ✓ Do you have an executed Investment Policy Statement?
- ✓ Have you provided a 404(c) disclosure notice to your employees?
- ✓ Have you executed any plan or investment changes as a result of a plan trustee meeting?
- ✓ Are you monitoring the 402(g) limit for deferrals?
- ✓ Have you completed the annual 5500 and filed it with the IRS?

Remember that plan compliance is an important fiduciary matter, so taking the time today can save potential headaches tomorrow. JRN Benefits, Inc. assists with the above issues through our annual plan review, sample documentation and fiduciary checklist. Contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information.

### Survey Says ... Automatic Enrollment on the Rise

The Profit Sharing/401k Council of America's (PSCA) 49th Annual Survey of Profit Sharing and 401(k) Plans found that 16.9% of 401(k) plans utilized automatic enrollment in 2005, up from 10.5% in 2004 and 8.4% in 2003. The survey found automatic enrollment is most common in large plans – with 34.3% of plans with 5,000 or more participants utilizing automatic enrollment, compared to only 3.5% of plans with fewer than 50 participants. In spite of this, employee participation in 401(k) plans was only up slightly from the prior survey (77.7% versus 77%). Average pre-tax participant deferrals were unchanged at 5.4% of pay for non-highly compensated workers (as defined by the ADP tests); pre-tax deferrals for highly compensated workers averaged 6.9% of pay. In plans permitting participant contributions, the most common formula for company contributions was a fixed match only, present in 31.9% of plans (including plans with safe harbor matches). The survey also found that plans offered an average of 19 funds in 2005, up from 18 funds in 2004 and 17 funds in 2003. [*The survey included 1,106 plans with more than six million participants and more than \$500 billion in plan assets. Visit [www.psc.org](http://www.psc.org) to learn more.*]

### The Pension Protection Act of 2006 – A Fiduciary Perspective

The Pension Protection Act of 2006 (PPA) has created several opportunities for plan sponsors and fiduciaries to recognize the need to better prepare participants for retirement. It has been identified that, as a pension supplement, 401(k) plans have been successful. However, as a primary retirement plan (due to the demise of Defined Benefit plans and the questionable future of Social Security), 401(k) plans have failed. Specific issues identified, which evidence the failure of 401(k) plans as primary retirement plans and the solutions encouraged in the PPA, are as follows:

- ◆ **PROBLEM:** Nationwide plan participation rates are approximately 70%.
- ◇ **SOLUTION:** Automatic Enrollment has been successful in bringing participation rates in the 90% range.
- ◆ **PROBLEM:** Nationwide the average participant contribution level is less than 7%.
- ◇ **SOLUTION:** Automatic Annual Escalation will increase each participant's deferral percentage each year until they reach a predetermined level (i.e., 10%), which, combined with a significant employer match, will approach the projected necessary savings percentage.
- ◆ **PROBLEM:** Nationwide the majority of participants have not done a good job managing their plan assets. Average annual gains achieved by the typical participant hover just above the cost of living.
- ◇ **SOLUTION:** The PPA offers a Safe Harbor to fiduciaries who offer participant investment advice in accordance with certain stipulated procedures and rules. Investment advice (as opposed to group meetings) offered in a one-on-one environment (as opposed to a web-based program) is the only method which produces consistent and meaningful results.

The Act also encourages implementing a Safe Harbor plan design which would eliminate most testing issues, allowing highly compensated participants to defer the full dollar maximum amount annually.

The contemporary "Best Practices" fiduciary should consider how their decisions (concerning the above issues) are helping participants successfully prepare for a financially secure retirement. For more information contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Communication Corner: 2007 Plan Limits Employee Notice

This month's sample participant communication memo outlines the 2007 plan dollar limit changes. Email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for assistance.



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## **HAPPY HOLIDAYS FROM JRN BENEFITS, INC!**

*As your dedicated retirement plan consultant, we are pleased to provide you with comprehensive services and solutions to protect plan fiduciaries, enhance investment opportunities, and improve overall plan value. This month, we'd like to share a few favorite newsletter "picks" featured during this past year. Please contact us if you have any questions or feedback; we look forward to serving you in 2007! ~John R. Nelson, President*

## **The Pension Protection Act Of 2006 [August 2006]**

The pension reform bill (H.R. 4), which passed by the House at the end of July, "represents the most sweeping change to America's pension law in more than 30 years." The bill encompasses a number of massive changes for plan sponsors, although the final status remains uncertain. Included among those changes, the bill encourages employers to automatically enroll workers in defined contribution pension plans and creates a safe-harbor to do so; allows fiduciary advisers of a plan to give investment advice to participants and beneficiaries; creates a prohibited transaction exemption for investment advice provided to plans through a computer model that is certified by an independent third party; amends the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code to establish new minimum funding standards for single-employer and multi-employer defined benefit pension plans; requires single-employer plans that are fully funded to pay variable-rate premiums to the Pension Benefit Guaranty Corporation (PBGC); requires plan administrators to comply with new strengthened disclosure rules; makes permanent the IRA and pension provisions enacted under EGTRRA; permanently indexes (to inflation) the "Saver's Credit" (which is set to expire at the end of this year); and sets forth rules that govern whether plans fail to meet requirements that prohibit age discrimination in defined benefit pension plans.

## **Investment Trends: Re-thinking Default Accounts [April 2006]**

A "default account" is the investment option used when a participant fails to provide direction for his or her account. Chosen by the plan fiduciaries, the default account has historically been a conservative option such as a money market or stable value investment. In accordance with ERISA, plan fiduciaries must prudently invest the money on behalf of their employees; therefore, it should be assumed that the participant may never adjust their investment beyond the default account. As a result, the current trend is to replace default accounts with professionally managed or lifestyle portfolios. These options offer a wider amount of diversification as they contain a variety of asset classes along with some international exposure. What's more, these options are typically rebalanced on a regular basis. The majority of managed or lifestyle options are risk based, so their allocation remains constant with a certain equity vs. fixed income weighting. The most sophisticated are based on a targeted year when a participant would be expected to retire, automatically re-adjusting to a more conservative portfolio as that date approaches. Contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information on changing your default account.

## **What Kind Of "Experience" Are You Creating For Your Employees? [March 2006]**

For years plan fiduciaries have been measured and judged by whether their actions related to the retirement plan were in compliance with ERISA regulations. While that is still important, today fiduciaries are being asked about how participants interact with their retirement plan. This is known as the "participant experience" and examines how participants are using all aspects of the plan beginning with enrollment and progressing with how they manage their account throughout their career. Are your employees participating in the plan? Do they know how much they will need in retirement? Are they deferring enough to accumulate an adequate retirement nest

## **About JRN Benefits, Inc.**

JRN Benefits, Inc. is a group of dedicated specialists focused solely on delivering comprehensive consulting, investment advisory and plan administration services to businesses that offer tax-qualified retirement and 401(k) savings plans and non-qualified executive compensation plans to their employees.

**What distinguishes us** from other service providers is the breadth of our specialized knowledge. Our professional staff includes a nationally recognized ERISA attorney. Our plan consultants and administrators have earned professional designations from national organizations, such as the American Society of Pension Professionals and Actuaries (ASPPA). Our investment consultants are licensed with the National Association of Securities Dealers and the California Department of Insurance. We are a Registered Investment Advisor.

*For more information on our services, please visit [www.jrnbenefits.com](http://www.jrnbenefits.com).*

egg? Are they investing in ways that are appropriate for their risk tolerance and time horizon? These are the types of questions that will ultimately define the success of your plan. At JRN Benefits, Inc. one of our goals is to enhance the participant experience utilizing quantifiable metrics.

### **Complying With ERISA 404(c) [June 2006]**

According to ERISA, 404(c) plans require that participants: Have the opportunity to choose from a broad range of investment alternatives (which are adequately diversified); may direct the investment of their accounts with a frequency which is appropriate; and can obtain sufficient information to make informed investment decisions. The plan sponsor must provide written notification to participants with its intent to comply with 404(c), and be able to provide the following:

- Information about investment instructions (including contact information of the fiduciary responsible for carrying out participant investment instructions);
- Notification of voting and tender rights;
- Information about each investment alternative; and
- A description of transaction fees and investment expenses.

Section 404(c) of ERISA says that, by complying with the 404(c) requirements, plan fiduciaries will not be liable for losses that result from the investment decisions made by participants. Conversely, if plan fiduciaries do not comply with 404(c), they could be liable for losses due to poor investment decisions made by plan participants. To comply with some of the important requirements of 404(c), we encourage our clients to review and execute a formal 404(c) Policy Statement and Employee Notice at least annually. This also includes distributing a copy to all employees. Please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for a template or for further assistance.

### **Success Strategies to Boost Participation [January 2006]**

There is no better time than the present to discuss plan success strategies with us, beginning with ways to increase participation! Below are a few methods we recommend to help plan sponsors meet this important objective.

- Consider Automatic Enrollment
- Offer Individual Investment Advice or one-on-one meetings
- Add lifestyle investment options that provide asset allocation models for various life stages and retirement horizons
- Implement a targeted Education Campaign to groups with lowest participation
- Loosen age, service or entry requirements
- Accelerate the plan's vesting schedule
- Remove pay exclusions such as overtime or bonuses
- Remove plan limits on salary deferral election changes – adjust take-home pay to meet expected and unexpected expenses

For more ideas on increasing participation in your plan, or to implement one of the above strategies, contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Communication Corner: Year In Review!**

This year's topics included the following: 01 HCE Refund Notice; 02 Rebalancing; 03 Basic Enrollment; 04 Making The Most of Your 401(k); 05 Borrowing Against Your 401(k); 06 Five Tips For Increasing Savings; 07 Understanding Asset Classes; 08 Asset Allocation and Diversification; 09 Market Timing; 10 Hardship Withdrawals; and 11 Plan Limits for 2007.

If you would like copies of any of the material mentioned above, contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) or you can print copies from our website at [www.jrnbenefits.com](http://www.jrnbenefits.com).