



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

Investment Commentary: Check Emotion at the Door

Markets have rebounded, yet again, from their recent and record setting lows. Through Thursday, March 26th, the S&P 500 was down only 7.8% for the year, a much welcomed improvement from the approximately negative sub-20% witnessed only weeks ago. Recent government intervention and improved housing statistics have both been positive indicators, certainly helping the markets with their recent recovery. While all of this has been good news, let us all be mindful that the economy is still working out excesses and addressing troubled assets all while deleveraging at the same time. Unfortunately, volatility levels remain high, which means that for the near term, we will likely see big swings in the market, both up and down, as new information comes to light. While we do not like to focus too much on short term movements, it is important to note only to the degree that it shapes investor and participant behavior. When emotions rule the day, rarely does the value of any given investment reflect its fair value. As legendary investor Benjamin Graham once said: "In the short-run, the stock market is a voting machine, in the long-run, it is a weighting machine." What this means is that in the short-run, the stock market responds to people's emotions. In the long-run, the market's fair value will play out and eventually be reflected.

Amid the poor market returns, the good news is that 401(k) participants are largely staying calm and behaving normally according to a 2008 Investment Company Institute survey (<http://www.ici.org/401k/>). While their survey did point to a small decline in participants who stopped contributing (3.7% over all of 2008) to their 401(k), 14.4% were involved in changing their existing asset allocation, which shows that a great deal more participants are taking actions other than to completely stop making contributions. The evidence is positive, but can only get better by fiduciaries continuing to do the right things. Certainly these are tough times; however, these are the times when it is most important for participants and plan sponsors not to let emotions rule the day.

Legislative Update: Required Minimum Distributions

The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) provides special relief due to the economic crisis. One relief granted to defined contribution plans (and IRAs) is the suspension of required minimum distributions (RMDs) specific only for the 2009 calendar year. Note: Distributions due for 2008 that were deferred to 2009 (up to April 1), are still required to be taken. This 2009 RMD elimination does not apply to defined benefit plans.

Generally, RMDs are not eligible for rollover. However, participants who take a distribution that would otherwise be applied to their 2009 RMD may roll this distribution over to an IRA or another qualified plan. Normally, distributions eligible for rollover are subject to 20% mandatory federal income tax withholding. Under the new act, these distributions will be subject to elective tax withholding instead of the mandatory withholding. This means affected participants who take such distributions in 2009 have 60 days after receipt to roll them over. To roll over their entire distribution, participants may want to elect 0% tax withholding. When a participant dies prior to their required

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beginning date for the RMD, the death benefit payable to a designated beneficiary must be paid out over the lifetime of the beneficiary or by the end of the fifth year following the year of death. (The plan document specifies which rule applies.) The law provides that 2009 is disregarded in determining RMD payments. This means that under the five-year rule, the payout period extends to the end of the sixth year following the year of death.

This RMD relief is only temporary. Required distributions will again be due for calendar year 2010. For more information please contact us at 401khelp@hubinternational.com.

DOL Puts Investment Advice Regs on Hold Again

The Department of Labor (DOL) has pushed back the effective date on investment advice regulations until May 22, 2009, so that President Obama's new DOL appointees can reevaluate the policy implications of the rules. The regulations, which were made public on January 21, 2009 and were to take effect on March 23, would have allowed 401(k) participants and IRA holders to receive investment advice by a computer model certified as unbiased and through a fiduciary adviser compensated on a "level-fee" basis. We will keep you apprised of new developments as they occur.

Have a Retirement Committee But No Charter?

As retirement plan consultants we strongly encourage our clients to formally establish a 401(k) Committee. The establishment of a Committee may be formalized by adopting a 401(k) Committee Charter. This Committee Charter helps to protect the Board of Directors by delegating certain identified fiduciary responsibilities to the Committee. It protects the Committee members by defining the specific duties for which they are responsible. Furthermore, it protects the participants as it provides for orderly and prudent governance of the plan designed for the exclusive best interests of the participants and their beneficiaries, as stated in ERISA Section 404(a).

We can assist the process of adopting a Committee Charter by providing our sample Committee Charter document and helping select the appropriate provisions. Consider the following discussion points:

- Determine the purpose of the Committee (investment related, administrative issues, or both).
- Determine how Committee members are selected (who should/should not be members)?
- Is there an ideal number of Committee members?
- What topics should the Committee cover (e.g. review investments, review IPS, identify ongoing participant needs/education, review plan design provisions, review plan/participant demographics vs. objectives, consider trends and legislation which may impact the plan, review and benchmark fees).

Current stock market turmoil combined with our litigious society is generating concern on the part of many fiduciaries regarding their potential exposure. Taking a casual approach to plan governance, without a formalized Committee Charter, will not help insulate the company or the plan fiduciaries from participants' complaints or lawsuits. We are fully prepared to assist you with any questions you may have. Please email 401khelp@hubinternational.com for more information.

Communication Corner: Navigating Financial Fear in Economic Downturns

This month's sample participant communication memo reviews a few quick tips for employees to follow in times of financial crisis. Please continue to distribute these participant memos to your plan participants every month.