



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

Happy New Year!

It is my pleasure to extend you the greetings of a blessed new year. In spite of the economic difficulties that the country is facing, there is always hope as we come together with family and friends to welcome a new beginning. As I look forward to a new year and the hope it brings, I look back as well on our achievements in 2008 and the degree to which we accomplished our primary goals—protecting you as a fiduciary and helping your plan participants prepare for retirement. Congratulations for all that you accomplished in 2008. This month's *Retirement Report* highlights "excerpts" from issues published in 2008. We look forward to serving you in 2009! ~ John Nelson

Global Markets Pummeled & Cash Becomes King ~ October 2008

Immediately into the third quarter, major market indices turned negative, whereby putting markets into bear market territory after just scratching the surface second quarter. While the quarter saw many ups and downs amid increased volatility, it was the international markets that experienced some of the worst performance. The U.S. Equity market, represented by the Russell 3000, posted a negative loss of 8.7%, while the International Equity markets, represented by the MSCI EAFE index, posted a much larger loss of 20.5%. September 29, 2008 will be best remembered as the Dow Jones Industrial Average's biggest point drop in history, a date that will now be etched in history as one of the largest market drops ever.

While the Great Depression may be too long ago for most to remember, it wasn't long ago we experienced September 11th and the dot-com bubble. Market declines, in fact, have become quite common in our not so long ago history. The current events should persuade the Plan Sponsor and participant to focus on what they should have otherwise been doing all along and on a regular basis. It is crucial that we all be mindful of the situation, but diligent about the process (and that we stick with that process through thick and thin). Plan Sponsors and participants need to continue to act in their own best interests while Wall Street recovers from yet another crisis.

Regulatory Update: Proposed Fiduciary Disclosure Rules ~ August 2008

In July the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) issued proposed regulations regarding required fiduciary disclosures. The goal of the regulations is to ensure that participants and beneficiaries are made aware of their rights and responsibilities with respect to managing their individual plan accounts (i.e., a 401(k) plan). Included in the disclosure items are fees and expenses, designated investment alternatives and additional information deemed necessary for a participant/beneficiary to make an informed decision. Plan-related disclosure can be broken down into the following three categories:

1. General plan information (investment instruction, voting/tender rights, etc.)
2. Administrative expenses of the plan (legal, accounting, recordkeeping, etc.)
3. Individual expense of the participant (loans, QDROs, etc.)

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Investment-related disclosures are also required. These disclosures must take a form that allows participants and beneficiaries to view the designated investment alternatives in a comparative format. Also, the Appendix of the proposed regulations contains a model notice that may be used to meet fiduciary requirements of the comparative format disclosure. These requirements are set to become effective for plan years beginning on or after January 1, 2009. *[As of the publication date of the January Retirement Report, the regulations have yet to be approved. We will keep you apprised of developments as they occur.]*

Allowable Plan Expenses: Can the Plan Pay? ~ April 2008

The payment of expenses by an ERISA plan (e.g., 401(k), defined benefit plan, money purchase plan) out of plan assets is subject to ERISA's fiduciary rules. The "exclusive benefit rule" requires a plan's assets be used exclusively for providing benefits. ERISA also imposes upon fiduciaries the duty to defray reasonable expenses of plan administration. Certain expenses (recordkeeping, compliance work, etc.) easily fall objectively within the parameters of this standard, but other expenses may be more subjective in nature. General principles of allowable expenses include the following:

- The expenses must be necessary for the administration of the plan.
- The plan's document and trust agreement must permit use of plan assets for payment of expenses.
- The expenses must be reasonable in nature and must be incurred primarily for the benefit of participants/beneficiaries.
- The expense cannot be the result of a transaction that is a prohibited transaction under ERISA, or it must qualify under an exemption from the prohibited transaction rules.

In light of today's plan fee environment, it is critical that fiduciaries request full disclosure of fees and expenses, how they breakdown with services provided, as well as a request for full explanation of who will be the recipient of fees. 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.

Advantages of Investing in Turbulent Markets ~ June 2008

Are your participants contacting you about the drops in account value? Are they asking to stop contributing to the plan altogether? We at Hub International receive calls every week from worried participants concerned about the declining value of their accounts. These conversations revolve around the merits of investing in different types of funds offered in their retirement plan. We also discuss the dynamics of investing in these turbulent markets, in many cases introducing the concept of Dollar Cost Averaging.

It is encouraging to invest in a 401(k) when the economy is strong and funds are growing; there is often a sense from participants they want to join the ride. On the other hand, it is during the times when the markets drop that can really be of value to participants building for a future retirement. When the markets are down, so are the prices of many mutual funds. If participants continue deferring the same amount into the 401(k) the money often purchases more shares of a fund than it could have when the prices are climbing. This goes back to the basic goal of investing, "buy low and sell high." Overtime, by spreading out purchases and taking advantage of markets like today, this allows you to purchase more shares when the prices are lower and fewer when the prices are higher. In effect your investment dollar goes further during these times.

Communication Corner: Sample Memos Available

Each month this section of our newsletter features sample memos that plan sponsors can print and distribute to employees. Topics from 2008 included; *Making the Most of your 401(k)*, *The Case Against Loans*, *Dollar Cost Averaging* and *Tips for Investing in Turbulent Times*. Please continue to distribute these participant memos to your plan participants every month.