



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

Legislative Update: House Panel Approves 401(k) Transparency Bill

The House Education and Labor Committee approved the 401(k) Fair Disclosure and Pension Security Act of 2009 (the "Act"), introduced by Representative George Miller, on June 24th. The bill merges a bill introduced by Representative Rob Andrews that was focused on individual investment advice with the Act's targeted 401(k) fee disclosure for participants.

If the bill passes, plan sponsors will be required to provide information regarding each investment option such as their historical risk, returns and fees. Fees would have to be disclosed to participants on a quarterly basis. In addition, in order to be protected under ERISA section 404(c) the legislation would require a plan to provide at least one low-cost index fund within their investment menu. This requirement does not presently exist for 404(c) protection.

Also, included in the bill are more stringent requirements for providing individual investment advice. More specifically, the bill intends to remove potential conflicts of interest. However, many within the industry as well as members of Congress and representatives of the Department of Labor oppose this component of the bill claiming that it may preclude individuals and organizations best suited to providing individual investment advice.

While we are confident that the bill will pass, we are less certain which of the provisions will be included in its final form. As always, we will keep you up to date regarding your responsibilities. If you have any questions, please do not hesitate to contact us at 401khelp@hubinternational.com.

Survey Says: Economy Drives Confidence to Record Lows

The Employee Benefit Research Institute recently released their 2009 Retirement Confidence Survey. According to the survey, only 13% of workers say they are very confident about having enough money for a comfortable retirement, which is the lowest level in 13 years. As for Retirees, only 20% reported that they were very confident in having a financially secure retirement.

The leading cause of the drop in confidence is economic uncertainty, followed by inflation and cost of living. Negative experiences such as job losses, wage reductions, loss in retirement accounts and increased debt also contributed to the loss in confidence. Also, only about 25% of workers felt they would have enough money to cover basic health care expenses in retirement.

The results of this survey have led 28% of workers to indicate that they expect to extend the age at which they wish to retire. Most are delaying the date with the intention to increase their retirement assets. 72% of workers plan to work while retired to supplement their retirement income.

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Finally, workers are responding to this loss in confidence in several ways:

- 43% are changing the way they invest in their Retirement Plan;
- 25% are actually saving more; and
- 25% are seeking advice from an investment professional.

If you have any questions about the steps you can take for your employees to address these concerns, contact us at 401khelp@hubinternational.com.

How to Respond to Participant Requests for Information

Specific guidance is provided by ERISA on how to respond appropriately to participant requests for plan related documents and information. The many court cases on this topic should act as a reminder to fiduciaries to take each participant request seriously. For this reason fiduciaries are strongly encouraged, as with most other fiduciary obligations, to follow procedural prudence. This entails understanding your responsibilities, establishing a process for responding to participant requests and documenting the activity.

Whenever a participant requests plan-related documents, it is essential that your delivery of them be prompt and complete. Failure to do so can involve substantial monetary penalties. When questions arise as to your responsibility to provide a participant with specific documents or information requested, contact us for assistance at 401khelp@hubinternational.com.

Employee Benefits Security Administration (DOL) Investigations

The Employee Benefits Security Administration (EBSA) is an enforcement arm of the Department of Labor (DOL) that investigates the most basic and fundamental aspects of qualified plan administration. An EBSA investigation is typically triggered by participant complaint(s), tips from other regulatory agencies (IRS, SEC, etc.) or information gleaned from 5500s.

It is important to note that an EBSA investigation does not necessarily mean that evidence of a violation exists, but rather that some fact led the EBSA to gather further information. The EBSA typically focuses their investigation on one (or more) of the following:

- Missing plan assets
- Significant drop in assets
- Investment performance and monitoring
- Required participant disclosures
- Title I of ERISA reporting
- Whether fiduciaries are prudently meeting their prescribed functions
- Whether assets are being used improperly

The DOL encourages plan sponsors to voluntarily correct violations. To that end they provide two non-investigation compliance programs, the Voluntary Fiduciary Compliance Program (VFCP) and Delinquent Filer Compliance Program (DFCP). (Note: If a plan sponsor is currently under investigation they may not use either of these programs.) For more information, please contact us at 401khelp@hubinternational.com.

Communication Corner: Borrowing Against Your 401(k)

This month's sample participant communication memo outlines a few important (and costly) drawbacks of borrowing money against your retirement savings. Please continue to distribute these participant memos to your plan participants every month.