



# JRNBENEFITS

Workplace Retirement Plan Solutions

Volume VI, Number I

Retirement Report

January 2008

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

## **Q4'07 Market Summary: Bumpy Ride Finishes the Year**

U.S. capital markets posted their worst quarterly return in years as investors focused on the real estate downturn, sub-prime mortgage issues and flattening/declining corporate profits. Combined, these issues far out-weighted the typically positive effects that accompany the Fed's lowering of the Fed Funds rate, which occurred twice in the fourth quarter. Of course, the Fed's actions were to help ease credit concerns and buffer the economy. Most capital markets finished the year on a positive note, due to the strong second quarter returns posted earlier in the year. One notable exception was domestic small cap equity, which finished negative for 2007 after being one of the best performing asset classes over the last few years. Large and growth oriented stocks cemented their emerging leadership by posting their third quarter of out-performance over their small-cap and value oriented counterparts. International equity continued to post strong returns, outpacing the broad U.S. stock market for the sixth consecutive year! Strong cash inflows and a declining U.S. dollar helped spur the out-performance in international equities. The U.S. fixed income markets posted mixed results, with high quality debt performing the best and lower quality debt suffering amid the sub-prime induced credit-crunch. The overall U.S. fixed income market, heavily weighted in high quality issues rose 7% (Lehman Brothers Aggregate), primarily attributable to a "flight-to-quality" rally in the fourth quarter, pushing overall year end yields lower.

2007 ended as a year in transition. New leadership in the stock market emerged and the positive momentum witnessed at the beginning of the year had clearly reversed by year end. The somewhat lucid state of the stock market in '04, '05 and '06 (reflecting a mostly positive trajectory) was now a thing of the past, as 2007 displayed higher market volatility, which was actually more in-line with historical risk statistics. The economic uncertainties surrounding the markets suggest that volatility will remain a continuing theme in 2008. As the housing slump, the credit-crunch and declining corporate profits weigh on domestic markets, the global economy will now have a chance to show it can shine without much help from the U.S., which has historically been a primary driver of global growth. Today, the U.S. market represents a much smaller piece of the overall global economy. By some measures, U.S. large cap companies now derive up to 40% of their revenue from overseas; an impressive and growing number. The route to investment success; however, remains the same in these volatile markets now more than ever: diversify, diversify and diversify. Diversification among the core asset classes will ensure that risk is mitigated while all but ensuring that the stars of 2008 will play a part in your portfolio's long-run success.

## **Plan Limits Reminder**

On October 18, 2007, the Internal Revenue Service announced cost of living adjustments applicable to dollar limitations for pension plans and other items for plan years beginning in 2008. For most of the limitations, the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. Two of the most common limitations, the 401(k) Elective Deferral limit and the Catch-Up Contribution limit, remain unchanged from their 2007 limits of \$15,500 and \$5,000 respectively. For more information on the limits for 2008, 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.

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<b>401(k) Plan Limits for Plan Year</b>	<b>2008</b>	<b>2007</b>
401(k) Elective Deferrals	\$15,500	\$15,500
Annual Defined Contribution Limit	\$46,000	\$45,000
Annual Compensation Limit	\$230,000	\$225,000
Catch-Up Contribution Limit	\$5,000	\$5,000
Definition of Highly Compensated Employee	For determining HCE's in 2008, EEs who earned more than \$105,000 in 2007	For determining HCE's in 2007, EEs who earned more than \$100,000 in 2006
Social Security Wage Base	\$102,000	\$97,500

### **Year-end Discrimination Testing – You Should Have Your Census Finished By Now!**

The end of the year has come and gone and if your plan is on a calendar plan year-end, your census data is due. Contact us if you are not sure when your plan year ends or if you are unsure who to send your census data to. Each year, your plan is required to complete non-discrimination testing, where the average contributions from your highly compensated employees are compared to the average contributions for your non-highly compensated employees. If the tests do not pass, your highly compensated employees may need to receive a taxable refund back from their account. You will need to submit employee census data in order for these tests to be completed. If you have not yet sent in your census data, please do so. If you have a safe harbor plan, you may be exempt from some discrimination testing. Remember: to ensure a timely calculation of any refunds you should submit your census data soon after the end of December ... Your highly compensated employees do not want to receive a taxable refund of their money after they have filed their taxes.

### **Automatic Enrollment Improves Plan Participation**

A concern that we routinely hear from clients is low participation. In many cases low participation can result in a failure of the plan's nondiscrimination tests. Often the test results end up creating refunds to highly compensated employees (as described in the above article). For plans that struggle from year to year in improving participation the one plan feature that can help is **Automatic Enrollment**. Automatic Enrollment is a plan feature where once an employee meets the plans eligibility criteria, they are automatically enrolled into the plan at a default salary deferral percentage and into a default investment option. Of course the employee can always change their deferral or investments, even if they opt out of the plan altogether.

To discuss how Automatic Enrollment can help improve participation in your plan, please contact us at JRN Benefits, Inc. at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Communication Corner: Highly Compensated Employee Refund Notice**

This month's sample participant communication memo is intended for the highly compensated employees (HCEs) in your plan that may be subject to a refund in 2008 due to failed ADP or ACP tests. Please copy and distribute the participant memo to your plan participants every month.



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## **Investment Commentary: Are we in a Bear Market?**

Global markets are currently experiencing heightened volatility. It is important to remember that capital markets are driven not only by underlying economic fundamentals, but by investor behavior (fear and greed) as well as perception. We are coming out of one of the longest periods of strong economic growth, which has resulted in an annualized return of over 17% for the global equity markets over the last five year period (MSCI World - ending 12/31/07). The current slowdown is rooted in concerns over today's issues such as sub-prime investments, housing, and slowing corporate profits. Historically; however, market cycles like these are common. While negative market returns certainly do not "feel good" to the average investor, a long-term outlook coupled with appropriate managers and monitoring should help investors meet their objectives.

Our Investment Due Diligence process emphasizes volatility and risk. Measures such as tracking error and up/down capture are used to illuminate that managers have and still are adhering to a sound management process in negative returning environments (like this one). While there is no guarantee that an investment option will remain positive over any time period, our objective remains consistent with maximizing relative returns (e.g., the fund will not be down as much as the "market," even though absolute returns may still be negative). In market cycle slowdowns, these measures may assist in reducing risk while maximizing return, which will benefit investors "staying put" over the long-term. Over a full market cycle, investors can benefit from a manager's ability in both the up and down markets.

Are we in a bear market? Only time will tell. Markets are off as much as 15% from their peak last October (as of mid-January), which by some definitions suggest we have experienced a "correction." With regard to a recession, we will only know one has happened with the benefit of hindsight (two negative quarters of GDP growth), and markets may recover well beforehand (remember, markets are "forward looking"). Our situation today, however, is not without some good news. The U.S. unemployment rate is below 5%, which is lower than its historical average (5.6% since 1950). Additionally, the global economy is stronger than ever before and the Fed's recent rate reductions will help buffer the economy as investor uncertainty persists. As a firm, we will continue to quantitatively evaluate and monitor those managers best positioned to maximize relative returns, while limiting volatility and risk. Focusing on the process and not the ups and downs of the market, should help create long-term success.

## **Individual Financial Consulting is Available**

JRN Benefits, Inc. is pleased to announce a dedicated financial consulting resource to assist your employees in creating a healthy personal savings program. Our Financial Consultant is available to assist with several areas to include (regardless of income level or position):

- IRA & 401(k) Rollover Options
- Retirement Needs Analysis
- Investment Consulting
- 401(k) Participant Service Inquiries

This new service can be tailored to your company's corporate culture and your employees, such as hosting onsite one-on-one education meetings, a series of educational seminars or simply as an on-going service.

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If you would like to schedule a meeting or request additional information about our Individual Financial Consulting service, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### Plan Sponsor Primer: 401(k) Committee Meetings

As consultants, we often receive questions from our clients regarding the content and timing of 401(k) Committee Meetings. Most committees wonder, "How frequently should we meet?" For most, semi-annual meetings are sufficient. Plans with minimal activity may be satisfied with one annual meeting, so long as meetings occur with adequate frequency to handle items critical to properly manage the plan.

The purpose of the 401(k) Committee is to oversee investment and administrative issues. Committees should be formalized via a written document (i.e., Committee Charter) which identifies the members and establishes specific roles and responsibilities. During the course of each Plan Year the following items should be considered by the Committee:

1. Review and monitor the plan's investments pursuant to procedures contained in the Investment Policy Statement, including selection and replacement when appropriate.
2. Review plan expenses. The plan should understand and determine reasonableness of plan expenses. Recent litigation in this area has reinforced the primacy of this issue for fiduciaries. A complete fee analysis and benchmarking of vendors should occur every three to five years.
3. Review plan services available and those currently being provided. This is a key component going hand in hand with the expense review. Quantity and quality of services provided should certainly be among the factors considered in addressing the appropriateness of expenses. Also, the breadth and scope of services are constantly expanding and the Committee should be aware of those services which may produce a value added impact on their plan.
4. Consider emerging trends, legislation, and external/internal factors which may impact the plan. Examples include the significant implications of the Pension Protection Act of 2006, Roth 401(k), asset allocation accounts (lifetime/lifecycle), automatic enrollment/escalation, etc.
5. Review plan demographics. Are plan provisions understood and being administered properly? How do these provisions compare to industry norms or "best practices" guidelines? Do plan fiduciaries understand and practice their roles and responsibilities accordingly?
6. Review participant demographics. Are participants in position to achieve a financially successful retirement experience? Specific items for fiduciary review are participation rates, average deferral rates, appropriate asset allocation/diversification and average account balances.
7. Review participant communication/education programs. Fiduciaries are required to ensure all participants have sufficient information to make informed investment decisions. Is there evidence this is currently the case? If not, what would be appropriate courses of action?

Be sure to pursue the above issues, and any others, with the appropriate degree of procedural prudence as required of ERISA fiduciaries. Investigate the issues, take the appropriate action and document the entire process. JRN Benefits, Inc. can assist you with this process. Please email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for more information or if you have additional questions.

### Communication Corner: Investing During Down Markets

This month's sample participant communication ties together with our headline piece about current downward market conditions. It provides, at the participant level, a basic definition of a recession and how to invest during one. Please copy and distribute the participant memo to your plan participants every month.



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

#### **Consultant Commentary: LaRue v. DeWolff Boberg & Associates, Inc.**

You may have heard about the Supreme Court's recent groundbreaking LaRue decision. In LaRue, the Supreme Court unanimously held that an individual may bring an action based on a breach of fiduciary duty under ERISA as *an individual* and not on behalf of the plan as a whole. The plan participant sued the plan fiduciary for failure to follow his investment direction, allegedly resulting in a loss of \$150,000 to his *individual* account. Previous precedent stated that ERISA only authorized claims affecting the entire plan rather than for individual recovery. The Supreme Court's opinion stated that such an interpretation was based on a landscape during which defined benefit plans were more common than individual account plans and concluded ERISA should be read to allow a fiduciary breach claim where the breach impairs the value of a participant's individual account. It is important to note the LaRue decision may result in an increase in lawsuits, but it does not increase the responsibilities or liability exposure of fiduciaries. Ultimately a plaintiff must still prove any fiduciary breach to prevail. An effective way to avoid a potential lawsuit is to diligently address and meet your fiduciary responsibilities. If you have any questions regarding the LaRue decision or its impact, please email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

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#### **Monitoring Asset Allocation Funds**

As a result of the safe harbor created by the Pension Protection Act of 2006, it is seldom one can review an investment industry newsletter or publication today that does not address the continuing quest for a universal and robust methodology for comparing asset allocation models. We would like to remind you that we offer an asset allocation monitoring tool, available through JRN Benefits, Inc. This asset allocation monitoring solution includes customized benchmarks and specially designed peer groups which we feel are necessary to determine if these funds are providing investors with additional value. JRN Benefits, Inc. works with approximately 50 vendors who each offer between 1 to 3 fund sets consisting of 5 to 10 individual options. These funds are scored on a scale of 0-10, similar to the existing *Scorecard*<sup>SM</sup> Methodology we use for all of the core asset classes. This is a practical, straightforward solution that we are proud to offer. For more information about monitoring asset allocation funds, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

#### **Cash Options within a 401(k): Money Market vs. Stable Value**

What is the difference between a Stable Value and a Money Market fund option within the 401(k) plan? Both options provide participants with a daily rate of income, credited in arrears, with a capital preservation objective. The rate of return earned by each is a function of the investments allowed and invested in by each strategy.

Money Market vehicles invest primarily in short-term government issues and commercial paper. These types of securities allow for high liquidity and very low risk, due to their short duration and maturities. Stable Value vehicles invest in diversified bond portfolios and investment contracts with slightly longer durations and maturities than Money Market options. The higher duration and credit exposure (typically not lower than AA investment grade) assumed in these portfolios offer participants a slightly higher return (at the same or marginally higher risk level) than Money Market options. They are less impacted by short-term rates and more impacted by general shifts in the yield curve and the values of their underlying securities. Historically, Stable Value options have out-performed Money Market options over long-term measured time periods. Over shorter-term time periods; however, Money Market funds have out-performed Stable Value in periods of (fast) rising short-term rates. Credit risk may also be a factor over short-term time periods, where a slightly higher volatility level in the Stable Value portfolio may impact its return. Generally speaking, the risk of losing capital in either is managed (and to a certain extent, limited, but not guaranteed), so the performance advantage of a Stable Value option makes it a more attractive option than the Money Market option.

### **Documentation and Consequences of Hardship Withdrawals**

Some 401(k) plans allow for hardship withdrawals, providing the hardship meets specific reasons as defined by the IRS. Typically there are six events that qualify as a "financial hardship." These include:

- Purchase of a primary (owner-occupied) residence
- Un-reimbursed medical expenses
- College tuition (for participant or immediate family members)
- Payment to prevent eviction or foreclosure
- Payment for burial expenses
- One time natural disaster

Once you have determined the financial hardship request meets one of the above criteria, there are still two important items that must be obtained prior to granting the withdrawal. First, the participant must provide documentation of the event. The documentation could include escrow instructions, unpaid bills (medical, tuition, burial expenses, etc.), estimates for repairs due to natural disaster or copies of pending foreclosure notices. Secondly, the participant must acknowledge they have exhausted all other sources to pay for this event. This may include the availability of plan loans, bank or home equity loans and even credit card advances.

Finally, remember there are consequences for taking a financial hardship. Amounts withdrawn are subject to federal and state income taxes and a 10% federal excise (penalty) tax. As a result, the net proceeds of the hardship can easily be cut by 30-40% or more due to taxes and penalties. If that wasn't enough, the participant must also be suspended from contributing to the plan for a period of six months following the hardship.

If you have any questions about your plan's hardship withdrawal provision, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com). *Please also refer to the attached participant memo as referenced below in the 'Communication Corner' section of this newsletter.*

### **Communication Corner: Financial Hardship Withdrawals**

This month's sample participant communication memo covers the basic Q&A's of financial hardship withdrawals, including the consequences of taking this distribution option. If your plan allows for hardship withdrawals, please copy and distribute the participant memo to your plan participants.

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

### Q1'08 Market Summary: Turbulent Times Cause Unrest in the Markets

Global equity markets sunk over the first quarter, ending with some of the worst quarterly returns seen over the past 10 years. Fixed income securities proved to be the brightest spot in the markets, posting positive returns amid the equity market fallout. U.S. fixed income markets returned a positive 2.2% for the quarter, as measured by the Lehman Brothers Aggregate Bond Index, in contrast to the negative 9.4% return posted by the S&P 500. International markets failed to remain immune from the fallout, posting a negative 8.8% return for the quarter. All styles and markets across the globe felt the impact from the credit crunch (and U.S. housing slowdown). Credit concerns and large write-offs by prominent financial companies fueled the decline. The uncertainty as to when these write-offs and losses would cease also caused the market to decline. One positive over the quarter was the Fed's actions to buffer the economy.

During the last month of the quarter, the Fed met and lowered the Fed Funds rate by 50 basis points, to 2.25%. This alone, however, was not enough to cushion the blow to the economy, inflicted by the credit crunch. The most notable event came late in the quarter when the Fed stepped in to "rescue" Bear Sterns (at one point the 5<sup>th</sup> largest U.S. investment bank), which was a culprit of its large and leveraged positions in risky mortgage related securities. The Fed ultimately provided liquidity and guarantees to JP Morgan Chase, so that they could acquire Bear Sterns before it fell into bankruptcy. The JP Morgan Chase deal provided stability to Bear Sterns creditors and clients, so creditors could be paid off in an orderly fashion and Bear Stern's separate businesses could continue to be viable (with, hopefully, a stronger financial institution). The Fed's signaling and show of support helped ease fears surrounding the problems that have ensued from the credit crunch. This, and time (allowing banks and investment firms to write-off past excesses and reorganize) should help provide a base for future growth and more stabilized markets. The housing market will also play a role, but it is still to be determined how large of a role it will play. In the meantime, lower market valuations provide participants a great time to "buy low."

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

The payment of expenses by an ERISA plan (401(k), defined benefit plan, money purchase plan, etc.) 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.



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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 incumbent upon fiduciaries to request full disclosure of fees and expenses, how they breakdown with services provided and for a full explanation of who will be the recipient of the 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. If you desire more information in regards to plan expenses or need help in determining how to identify proper plan expenses, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Retirement Confidence Drops According to EBRI Survey**

The Employee Benefit Research Institute (EBRI) recently released their 2008 Retirement Confidence Survey, finding that overall the confidence workers have about their future and specifically about retirement planning dropped to an 18 year low. Following are some of the noted results published in the survey:

- Percentage of workers who were very confident about having enough money to retire comfortably dropped from 27% in 2007 to just 18% in 2008.
- Percentage of retirees who were confident with their financial assets also dropped from 41% to just 29%.
- The largest drops in confidence occurred with the youngest workers and those with the lowest income.
- Household income under \$35,000 saw their confidence drop from 14% to 5%.
- Household income from \$35,000 to \$74,999 dropped from 25% to 13%.

On the positive side, the survey found almost half of the workers surveyed (47%) have completed a retirement needs calculation. This was an increase from the low of 29% over 10 years ago. Certainly much of the drops in confidence can be attributed to the economy in general and specifically to the volatility of the markets. If you are hearing concerns from your employees remember we are here to help. Email [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com) for assistance.

### **Are Your Participants Making Sound Investment Decisions?**

According to Dalbar, Inc., over a 20 year period ending 12/31/06, the S&P 500 earned an 11.8% average rate of return. Inflation was 3%. The average investor's return was 4.3%. The cause of investor inability to attain performance levels equal to the S&P 500 (and instead barely beat inflation) may be the result of one, some, or all of the following imprudent investment decisions: they invest too conservatively or too aggressively, they fail to rebalance an originally properly constructed portfolio or they may neglect to diversify appropriately. How can you, as a fiduciary, identify these mistakes? During each Investment Due Diligence meeting we will not only review your investment menu's analytics, but also the amount of plan assets held in each investment as of a snapshot date. If a majority of assets are invested in age- or risk-based asset allocation funds it may indicate a greater likelihood that your participants are investing appropriately. However, this is completely dependent upon their understanding of your Plan's asset allocation model objectives and your participants' use of these models. If a significant percentage of your Plan's assets are invested in a stable value-type investment (i.e., money

market, guaranteed account) this may indicate that participants are not investing prudently. As always, further analysis should be undertaken to examine whether these generalities ring true for your particular participant population.

Alternatively, if your participant population is made up of sophisticated investors who are confident constructing a diverse portfolio, then you should be comforted. That said, as a fiduciary, remain mindful of challenges that may face your participants in constructing a proper asset allocation. Endeavor to assist them by removing hurdles and providing them with tools that may prove helpful in this undertaking. For more information on this topic, please contact us at [401khelp@jrnbenefits.com](mailto:401khelp@jrnbenefits.com).

### **Communication Corner: Market Comebacks**

This month's sample participant communication memo charts market behavior over a 28-year period, showing how positive returns are more common than not. Please copy and distribute the participant memo to your plan participants every month.

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

### Complying With ERISA 404(c)

According to ERISA, plans intending to comply with 404(c) must provide 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 that is appropriate and can obtain sufficient information to make informed investment decisions. The plan sponsor must provide annual 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.

Compliance with section 404(c) of ERISA protects plan fiduciaries from liability for losses that result from the investment decisions made by participants. Conversely, failure to comply with 404(c) could result in liability 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 and send the Notice at least annually to all employees. We assist you by providing you with a boiler plate template you can use for your plan. Please contact [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com) for assistance.

### What To Do With Missing Participants

Many employers discover that finding missing participants can be very difficult. However, plan sponsors are required to take reasonable means to locate them. One option available is using the IRS's Letter Forwarding Program. For requests with fewer than 50 missing participants, the IRS's Disclosure Office can forward letters from you to missing individuals if you provide a cover letter describing the request and the missing participant names, social security numbers and last known addresses. For requests involving less than 50 recipients there is no charge. Each request should be sent to the attention of the Disclosure Officer at the IRS's district office nearest you. Additional instructions are on the IRS website. Requests involving 50 or more missing participants are processed separately. There is a charge for this service and the mailing address is:

Internal Revenue Service  
Director, Office of Governmental Liaison & Disclosure  
CL:GLD, Room 1603  
ATTN: Disclosure Officer  
1111 Constitution Ave., NW  
Washington, DC 20224



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Another option to locate missing participants is The National Registry. This is a website where you can register the names of missing plan participants who have unclaimed retirement funds. You can find out more at [www.unclaimedretirementbenefits.com](http://www.unclaimedretirementbenefits.com).

### Communication Strategies to Boost Participation

Effective employee communication is critical to the success of any retirement plan. We suggest offering regular 401(k) meetings to promote participation and understanding of investments and asset allocation. Below are five methods to make the most of those meetings.

1. *Make meetings mandatory.* This is particularly important from a fiduciary perspective. With everyone in attendance, you are meeting part of your fiduciary responsibility to offer ongoing education regarding the retirement plan. Make sure there is a sign in sheet.
2. *Make it personal.* Every employee has two questions when they join a plan: "How will this impact my paycheck?" and "Where should I invest?" A paycheck calculator is a great way to show a real life example of how their take home pay will be impacted by participation. Also, explaining how lifestyle funds such as target date portfolios can provide a convenient "do it for me" type of solution, should help address the where-to-invest question.
3. *Use props.* Show participants the holdings of some of the funds so they can better associate with the fund. Most enrollment kits contain fund fact sheets that do this. Also showing them a sample account statement will provide some assurance of how they will learn about their account in the future.
4. *Get management buy-in.* Having a Senior Manager speak at meetings just to illustrate how important the plan is will have employees taking notice. It's also helpful for Management to express the importance of any employer contributions to the plan.
5. *Measure it.* Compare your plan to industry benchmarks. Remember your retirement plan is a recruitment tool and it's important to know how your plan stacks up.

For more ideas on improving the effectiveness of your employee communication program, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### Process, Process, Process

Investment monitoring is one of the fiduciary's most important responsibilities. Having the expertise and tools in place to help fulfill these responsibilities is a great place to start, but there are three more: *process, process, process*. Many times Committees (fiduciaries) labor over investment decisions: "What if the new fund we are considering does not perform to our expectations? What if this fund we are about to remove from our menu improves its performance in the near future?" We acknowledge these as valid questions and remind our clients that the answer, from a fiduciary perspective, is the same. As long as you routinely follow a sound investment monitoring and review process of analyzing investments and your decisions follow the results of this process (also documented in your Investment Policy Statement), it is the process that not only helps ensure sound investment options for participants, but also help limit adverse fiduciary liability consequences as a result of those actions. For further guidance on this topic please contact us at [401khelp@hubinternational.com](mailto: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 copy and distribute the participant memo to your plan participants every month.



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

### The DC Plan Challenge: Better Returns

As the retirement industry shifts from defined benefit (DB) plans to defined contribution (DC) plans, the burden of asset management falls to the plan participant. DB plans have typically hired and relied on outside expertise to help allocate and manage the plan's assets, which has subsequently led to better plan returns for DB plans as compared to their DC plan counterparts.

According to a recent study conducted by Watson Wyatt, DB plans experienced a 14% improved cumulative performance over DC plans for each dollar invested over the period from 1995-2006. Even in bull markets, the study found DB plans had higher returns of approximately 1% each year (from 2003-2006). Jeffrey Elvander, Chief Investment Officer, 401(k) Advisors commented: "While the study may be general in its scope and conclusions, the results highlight the challenge confronting DC plan participants, many with little to no expertise in managing diversified portfolios, in their efforts to maximize returns and assets for retirement."

Recently, the retirement plan industry has experienced an influx of more investment products that help address a DC plan participant's need for an overall portfolio solution. These portfolios are typically referred to as "age-based" or "risk-based" funds. Recent legislation has helped endorse these investments as the default option within a DC plan. Elvander commented: "The greater selection and higher caliber investment solutions in the managed portfolio space should help decrease the performance gap between DB and DC plans; however, this will be dependent on acceptance and utilization by plan participants. While the Pension Protection Act goes a long way in helping to close this gap, only in combination of extensive education or investment advice and total-portfolio solutions and investment offerings will the DB/DC gap be a thing of the past." For more information on this topic, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### Extended Deadline for Correcting ADP and ACP Test Failures

Each year, EACA (Eligible Automatic Contribution Arrangement) plans are required to complete non-discrimination testing, where the average contributions of highly compensated employees are compared to the average contributions for non-highly compensated employees. The IRS only allows highly compensated employees to contribute a minimal amount above what the non-highly compensated employees have contributed. If the tests fail, highly compensated employees may receive a taxable refund back from their account.

Effective for 401(k) plan years beginning after December 31, 2007, a later deadline for making corrective distributions (refunds) of excess contributions from failed ADP Tests (employee contributions) and excess aggregate contributions from failed ACP Tests (employer matching) applies. Plan sponsors will not have to pay the 10% excise tax on these excesses if the plan makes the corrective distributions by the last day of the sixth month following the end of the plan year (June 30 for most plans). In addition, excess amounts and related earnings paid out within this six month period will be taxable in the year distributed, regardless of the amount distributed. Please note that the new six month deadline is only available to plans using EACA.

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## IRS & DOL Updates (Part I)

Both IRS and Department of Labor (DOL) representatives attended and spoke at the American Bar Association's Tax Section May Meeting held in Washington DC. Although all representatives carefully expressed their thoughts as their own and not as official representations of their respective regulatory agencies, their words provide both practitioners and plan sponsors with insight into opinions regarding multiple issues. The following are a few of the topics covered:

- Plan audits – all opened for a reason (DOL)
  - 75% of cases opened had monetary results and 188 criminal cases resulted in 115 indictments (DOL)
  - Use of rollovers for start-up businesses was a target for investigation (DOL)
  - “Compliance checks” that will be conducted by the Employee Plans Compliance Unit are not technically audits, but may grow into some (IRS)
  - “Reasonable” contracts (as dictated by pending regulations for ERISA section 408(b)) are a present focus (DOL)
  - Untimely remittance of contributions still a focus of investigation (DOL)
- An “abandoned plan program” for assets held by a custodian with no direction from participants or trustees in regards to investment is provided (DOL)
- 403(b) favorable determination letter process currently being designed (IRS)

If you have any interest in any topics listed above, or would like to learn more how the IRS/DOL's opinions may impact your plan, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com). Part II of this article will be published in our July edition.

## Advantages of Investing in Turbulent Markets

Are your participants contacting you about the drops in account value? Are they asking to stop contributing to the plan altogether? We frequently receive calls 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."

Remember if you plan on investing \$5,000 into your 401(k) plan in 2008, you might ask yourself when would be the best time to do so? The answer is nobody really knows for sure. Over time, 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. If you have questions on this topic, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

## Communication Corner: Dollar Cost Averaging

This month's sample participant memo introduces the concept of Dollar Cost Averaging. Now is a great time to remind your participants to “stay the course” during down markets! Please distribute the participant memo to your plan participants every month.

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

### Q2'08 Market Review: From Bull to Bear

Enigmatic of the latest market cycle, the second quarter started on a positive note, only to end lower in almost all cases. Some asset classes finished positive for the quarter, but they would not wipe out the losses witnessed over the last year. The broad U.S. equity market dropped 1.7% (Russell 3000) over the quarter, due to poor economic conditions and inflationary concerns. Value stocks posted the worst returns, as financial stocks in that style suffered from an unprecedented barrage of write downs due to mortgage related issues. Even the U.S. fixed income markets, which had posted strong positive returns just a quarter earlier, dropped 1% (Lehman US Aggregate Bond Index), evident of the widespread inflationary expectations. International equity markets were not immune to the problems in the U.S. or the more global concerns about inflation. Once a bastion of better returns (relative to the U.S. market), international markets experienced a negative 1.9% (MSCI EAFE).

Notable over the quarter was the fact that most equity markets were close to, if not already at or beyond, a negative 20% from the market's peak in October 2007, the high point for most equity markets. Technically, a 20% decline marks the beginning of a bear market, which is indicative of widespread pessimism in the marketplace. With oil topping \$140 a barrel during the quarter, inflationary concerns helped spark the equity market sell-off. In addition, the credit crunch continued on as large financial companies continued to struggle with write downs and problem loans. The up-tick in home sales volume, unfortunately, did not help increase sales prices over the quarter, but was, nonetheless, a good sign. The Federal Reserve Board (Fed) met over the quarter and held rates steady at 2%, with language that left investors anticipating higher rates down the road. While a tighter monetary policy would help stave off inflationary pressures, it would likely hurt capital market returns. As markets transition to a bear market, it is anyone's guess as to the duration. The good news is come our next transition, by definition, it will be back to a bull.

### EBSA Issues New Participant Disclosure Regulations

Federal regulators this month unveiled the long-awaited final portion of their three-part plan disclosures regulatory package that calls for sponsors of employee-directed plans to supply participants with basic plan information including investment returns and expenses. The latest proposed rule from the Employee Benefits Security Administration (EBSA) mandates that required disclosures be provided generally when a participant becomes eligible and every year thereafter. The proposal requires plan fiduciaries to disclose basic information about the plan; such as available investment options, how participants can give investment instructions and a description of fees and expenses. In addition, plan fiduciaries must disclose to participants, on a quarterly basis, the actual dollar amount charged to the participant's account during the preceding quarter for specified administrative expenses. When finalized, the regulation will be effective for plan years beginning on or after January 1, 2009. According to Bradford P. Campbell, assistant secretary for the Labor Department's EBSA, the agency is proposing conforming changes to its regulation under 404(c) of the Employee Retirement Income Security Act (ERISA) to standardize disclosure requirements across various types of participant-directed plans. EBSA said the disclosure responsibility is higher because 401(k)-type plans give so much responsibility to participants to make their own decisions.

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## IRS & DOL Updates (Part II)

Last month we provided some insight into issues discussed by employees of both the IRS and Department of Labor (DOL) at the American Bar Association's Tax Section May Meeting in Washington, DC. Please recall these individuals carefully expressed their statements as their own and not official representations of their respective regulatory agencies. As promised in last month's article, this Part II of the IRS & DOL Update provides a few more of the topics covered:

- Fee disclosure regulations (DOL)
  - Annual reporting on 5500 changes
  - Reasonable contract (ERISA section 408(b)(2)) regulations
  - Participant level disclosure requirements
- Timely remittance of contribution safeharbor for plans with 100 or less participants (7 days) (DOL)
- Update of electronic disclosure/notice regulations (DOL)
- Voluntary Compliance Program (IRS)
  - Filings up 39% in 2007 – additional 21% increase to date in 2008
  - Cases processed to completion within 173 days (much more expedient)
  - More self-correction actions to be added in an upcoming revenue procedure
- Rollovers to Roth IRAs from 401(k) plans to be addressed (IRS)
- Guidance regarding rollovers from U.S. 401(a) plans to Puerto Rican qualified plans is being designed (IRS)
- Allowance of automatic plan features for some, but not all, employees (IRS)
- QACA rules require participants previously enrolled at a percentage lower than 3% to be increased to 3% (unless they opt out) during the first plan year for the safeharbor to apply (IRS)

If you have any interest in any of the topics listed above, or would like to learn more how the IRS/DOL's opinions may impact your plan, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

## Why go it Alone? Participant Investment Advice

Charles Schwab recently conducted an analysis of the 401(k) plans for which they provide services. The purpose of the study was to determine if participants who were provided with investment advice realized a greater return than participants who made their own decisions with no professional assistance. The study found that investors who used professional investment advice experienced greater returns than those who do not access professional advice. For the 2006 calendar year participants who used an independent investment advisor to help make investment decisions earned an average return of 14.1%, while those who did not realized an 11.1% return. This lends credence to the premise that the average participant can benefit from investment advice given by an independent professional. If one were to hypothetically calculate that difference over a 30-year period (assuming no further contributions are made) the person who received the advice would have more than double in their account than the person who did not. While no one expects returns in any one year to recur for 30 years, it is certainly possible that the person utilizing the professional investment advice is likely to enjoy a greater account balance as a result. Apparently, the regulators have reached this same conclusion as the Pension Protection Act of 2006 offers certain safe harbor for plans that offer investment advice (subject to specific procedures). For more information on this topic, contact [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

## 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. Please distribute the participant memo to your plan participants every month.

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

### Regulatory Update: Proposed Fiduciary Disclosure Rules

Last month 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 (such as in a 401(k) plan). Included in the disclosure items are fees and expenses, designated investment alternatives and all other 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.)

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. If you have any questions regarding how these proposed regulations may impact your plan please contact us at 401khelp@hubinternational.com.

### Record Retention: What Should I Keep and For How Long?

Have you ever wondered how long you should maintain various plan records? Are you running out of storage space for your existing records? When it comes to document storage remember that your number one goal should be to have materials preserved in a format that allows for quick and easy retrieval. It's appropriate to store plan records electronically whenever possible.

First, all Plan Documents should never be discarded and they should be stored for the life of the plan. This would include items such as the Basic Plan Document, Adoption Agreement, Amendments and Summary Plan Descriptions (SPDs). Second are the Annual Filing Items, including the 5500 and all the supporting materials for contributions, testing, plan audit, Summary Annual Reports, and distribution records. These items should be maintained for at least six years. Finally, all Participant Records should be maintained to determine the amount of benefits accrued by each participant. Enrollment forms, beneficiary forms, and distribution forms should be maintained at least six years after the participant's termination. Also, loan records should be maintained for six years after the loan is paid off. More and more these types of records can be maintained by your plan vendor, so it's encouraged to use their services whenever possible. If you have any questions about record retention, please contact us at 401khelp@hubinternational.com.

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### September 5<sup>th</sup> is National 401(k) Day

The Profit Sharing/401(k) Council of America (PSCA) is once again sponsoring a national 401(k) Day, spotlighting the importance of employer-sponsored profit sharing and 401(k) plans. In 2008, 401(k) Day is officially September 5th, the Friday after Labor Day. Visit [www.401kday.org](http://www.401kday.org) for more information and to access posters, payroll stuffers and other interactive tools you can use to promote the celebration with your employees.

### 15 Things Every Worker Should Know About Their Retirement Plan

When it comes to knowing about and understanding their retirement plan, many employees are in the dark. They often possess little or no knowledge of the plan which often impacts their perception of this important benefit. As a plan sponsor, you can address this by being sure all of your employees are able to answer these 15 questions below. If they can, they will have a basic working knowledge of your retirement plan and have taken the first step toward better awareness and appreciation. Please refer to the "Communication Corner" section of this month's newsletter to download a corresponding participant memo covering this topic.

1. When can I join the plan?
2. Can I transfer money from a previous employer's plan or an IRA? And, when can I do this transfer?
3. How much can I deposit to the plan each pay period?
4. Does the company "match" my deposits and if so, what is the match and when is it deposited to my account?
5. Are employer deposits subject to a vesting schedule and if so, what is it?
6. What are the investment options available to me and how do I get more information about them?
7. How often can I reallocate the money in my account between investment options?
8. Can I access my account via the Internet and if so, how?
9. How often will I get a statement that reflects the current status of my account?
10. Are loans allowed from the plan?
11. Are hardship withdrawals allowed from the plan?
12. Does the plan offer any type of educational material or advice service to help me properly invest my account?
13. Does the plan allow me to make catch-up contributions when I'm age 50 or older?
14. What happens to my money if I quit working for this company?
15. Who do I contact if I have questions about the plan?

If you would like more information about educating your participants on the features and benefits of your retirement plan, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### Survey Says: Automatic Enrollment on the Rise

An automatic enrollment feature is now used by 42% of employers in their 401(k) plans, compared with 23% of plan sponsors in 2005-2006, according to a recent 401(k) survey. In addition, 82% of those plans with automatic enrollment reported increased participation rates. Another 26% of the employers surveyed in 2008 are considering adding an automatic enrollment feature. More than two-thirds (68%) of the plans with automatic enrollment use a 3% default deferral percentage, with 16% of plans using a default deferral percentage of 2% or less. The plans surveyed use one of five default investment options: lifecycle funds (63% of plans), a balanced fund (15%), a lifestyle fund (9%), a principal preservation fund such as a stable value fund or a money market fund (8%), and other types of funds (5%). The *401(k) Benchmarking Survey; 2008 Edition*, which included 436 employers, was jointly conducted by Deloitte Consulting LLP, the International Foundation of Employee Benefit Plans, and the International Society of Certified Employee Benefit Specialists (ISCEBS). For more information on Automatic Enrollment please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### Communication Corner

This month's sample employee memo corresponds to our feature article, "15 Things Every Worker Should Know About Their Retirement Plan." Please distribute the participant memo to your plan participants every month.

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

### Market Update: Implications Surrounding the Turmoil on Wall Street

Recent turmoil on Wall Street has left the markets in a state of crisis, leaving some of the industry's largest financial stalwarts beaten up and in some cases, left for dead. As the credit crunch and liquidity crisis begins its second year, the U.S. Government made clear over the past weekend that the support it had given to other firms such as Bear Stearns, Fannie Mae and Freddie Mac, may be fleeting. Lehman Brothers, in a bid to win the Government's support to stay afloat, failed, and on Monday, September 15<sup>th</sup> filed for Chapter 7 bankruptcy.

Accordingly, September 15<sup>th</sup> saw the largest one-day point drop for the U.S. market since September 11<sup>th</sup>, 2001. Tuesday, the 16<sup>th</sup>, saw a change of events when the U.S. Government decided to rescue AIG, suggesting that maybe, this firm was "too big to fail." Regardless, the financial markets are now mired in a state of panic. Other financial institutions may face similar situations if they are not successful in raising additional capital, or in being acquired by a partner with capital sufficient to withstand the current environment. Merrill Lynch, for example, found a partner in Bank of America. Leveraged positions built up over the past 10 years are now in trouble amid a poor housing market and lack of liquidity and the current de-leveraging phase has, is and will be very painful.

The current environment has not only been challenging for financial institutions and investment managers trying to navigate the turbulent markets, but also for plan sponsors and participants who rely on their retirement plan(s) as the main vehicle for their retirement savings. The prudent course of action for the plan sponsors is to continue monitoring the underlying investments and strategies used in the Plan. Are they appropriate? Are they managing risk? Monitoring the current crisis and its resulting impact to the investments offered in the plan is a serious fiduciary role.

For plan participants, a new course of action is only warranted if it is the right one. Evaluating one's own situation, diversification among asset classes, having the right mix and high enough default rates, is recommended, and leads to the positive actions a participant can make. Bailing out of the markets and the 401(k) is the wrong action, which can be detrimental to future long-run retirement savings. Timing the market has proved to be futile and with current market conditions as they are, there is no clear direction as to where we are headed and for how long. With losses now over 20% from the market's peak last October, we are technically in a bear market. The good news is that as the bear market draws on it gives participants time to "get in" while markets are low.

The U.S. market, in particular, is dynamic and resilient in moving on from crisis after crisis throughout the history of its existence. While the Great Depression may be too long ago for most to remember, it wasn't long ago we endured September 11<sup>th</sup> and the dot-com bubble. The implications surrounding the current turmoil should call on the plan sponsor and participant to focus on what they should otherwise be doing on a regular basis. Be mindful of the situation, but diligent about the process.

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## Survey Says: Single Women Falling Behind the Retirement Savings Curve

According to the Ninth Annual Transamerica Retirement Survey many single women are ill-prepared and unlikely to achieve a financially secure retirement if they don't take action now. The survey reports that single women estimate needing a median amount of \$500,000 by the time they reach retirement – an amount nearly two-thirds of respondents admitted was simply a guess. More than one-third report that they have saved less than \$25,000 for retirement, while only one in 10 reports having saved more than \$100,000. Only 6% completed a worksheet or calculation, or received their estimate from a financial adviser.

The survey found that single women most frequently cite 401(k) plans and IRAs as their expected primary source of income in retirement, yet only 69% of single women who work full time report that their current employer offers them a 401(k) plan. The majority of single women cite either “just getting by” (33%) or “paying off debt” (30%) as their greatest financial priority while only 17% cite “saving for retirement,” Transamerica said.

## Fiduciary Obligations 101

In accordance with ERISA and related Labor regulations and guidance, plan sponsors and other fiduciaries must exercise an appropriate level of care and diligence given the scope of the plan and act for the exclusive benefit of plan participants and beneficiaries, rather than for their own or another party's gain. Responsibilities of fiduciaries include:

- selecting and monitoring any service providers to the plan;
- reporting plan information to the government and to participants;
- adhering to the plan documents, including an investment policy statement;
- identifying parties-in-interest to the plan and taking steps to monitor transactions with them;
- selecting and monitoring investment options the plan will offer and diversifying plan investments; and
- ensuring that the services provided to their plan are necessary and that the cost of those services is reasonable.

ERISA allows plan sponsors to hire companies that will provide services necessary to operate their 401(k) plan if certain conditions are met. In general, ERISA prohibits parties-in-interest; such as service providers, plan fiduciaries, the employer, the union, owners, officers and relatives of parties-in-interest from doing business with the plan, but provides various exemptions to these prohibited transactions.

For more information on understanding your basic fiduciary responsibilities and for more on prohibited transactions, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

## Communication Corner: “Staying the Course”

This month's sample employee memo corresponds to our feature article about recent market turmoil on Wall Street. Participants are encouraged to remain diversified and not panic in these times of crises. Please distribute the participant memo to your plan participants every month.



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

#### **Q3'08 Market Review: Global Markets Pummeled & Cash Becomes King:**

Immediately into the third quarter, major market indices turned negative, decidedly 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<sup>th</sup>, 2008 will be best remembered as the Dow Jones Industrial Average's biggest point drop in history (to date), a date that will now be etched in history as one of the largest market drops ever. International markets, of course, sold off (over the quarter) in a much more dramatic fashion. Uncertainty and fear had found its way into the marketplace by the end of the third quarter. The lack of a quick Government response and questions surrounding the "bail-out" left investors without the assurances needed to stem what became an increasingly negative view that anything other than cash (or gold) was safe.

The events throughout the third quarter and those currently unfolding are unprecedented. The impacts are being felt on a global scale, as our global economy is more connected than it has ever been before. In addition, the U.S. financial system is undergoing a substantial restructuring that will help reshape its future. At the heart of the problem were the leveraged positions built up by banks and other financial institutions over the past 10 years, all predicated on a housing market that many felt would not falter. In addition, the credit crunch that has evolved over the last year has many banks unwilling to lend to each other, a problem that will need to be solved to help restart the capital markets.

While the Great Depression may be too long ago for most to remember, it wasn't long ago we experienced September 11<sup>th</sup> 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.

#### **Plan Limits for 2009:**

On October 16, 2008, the IRS announced the cost-of-living adjustments (COLA) applicable to dollar limitations for pension plans and other items for plan years beginning in 2009. Many of the limits change for 2009 because the COLA index met statutory thresholds triggering adjustment. Two of the most commonly discussed limitations, the 402(g)

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deferral limit (the maximum amount any participant may defer in a 401(k) plan) and catch-up contribution limit (for participants aged 50+) have increased (after having remained unchanged from the previous year). The deferral limit is increased from \$15,500 to \$16,500 and the catch-up contribution was increased from \$5,000 to \$5,500. For more information on the limits for 2009, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

<b>401(k) Plan Limits for Plan Year</b>	<b>2009</b>	<b>2008</b>
401(k) Elective Deferrals	\$16,500	\$15,500
Annual Defined Contribution Limit	\$49,000	\$46,000
Annual Compensation Limit	\$245,000	\$230,000
Catch-Up Contribution Limit	\$5,500	\$5,000
Definition of Highly Compensated Employee	For determining HCE's in 2009, EEs who earned more than \$105,000 in 2008	For determining HCE's in 2008, EEs who earned more than 100,000 in 2007
Social Security Wage Base	\$106,800	\$102,000

**Federal Regulators Issue Guidance on Investing in Socially Responsive Investments (SRI):**

On October 17<sup>th</sup> the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) issued guidance that reaffirmed their position that the goal for investments in Employee Retirement Income Security Act (ERISA) plans must be to generate maximum returns and not for any factor other than the economic interest of the plan. Remember that fiduciaries are required to act "solely in the interests of participants and beneficiaries." The Department of Labor (DOL) indicated that "before selecting an economically targeted investment, fiduciaries must have first concluded that the alternative options are truly equal, taking into account a quantitative and qualitative analysis of the economic impact on the plan." Furthermore the DOL indicated that they believe that "fiduciaries that rely on factors outside the economic interests of the plan in making investment choices and subsequently find their decision challenged will rarely be able to demonstrate compliance with ERISA absent a written record demonstrating that a contemporaneous economic analysis showed that the investment alternatives were of equal value."

The guidance specifically addressed plans whose investment policy favors plan investment in companies meeting certain environmental (green) criteria. "The plan's fiduciaries may not simply consider investments solely in green companies. They must consider all investments that meet the plan's prudent financial criteria. The fiduciaries may apply the investment policy to eliminate a company from consideration only if they appropriately determine that other available investments provide equal or better returns at the same or lower risks and would play the same role in the plan's portfolio." In the end, merely having a fund because of its Socially Responsive philosophy is not a valid reason for inclusion in a qualified plan. ERISA "does not permit fiduciaries to make investment decisions on the basis of any factor other than the economic interest of the plan." If you have questions or would like more information on this topic please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

**Are You Ready For An Audit?**

Several events can trigger an audit, such as employee complaints or self-reporting under the annual submission of the Form 5500. Often times an audit is a random event, which is why you should always be prepared! Listed below are several key items typically requested in an initial letter sent by the IRS or the DOL in connection with a 401(k) plan audit. These items should be readily accessible by the plan administrator at all times the plan is in operation.

- Plan document and all amendments
- Summary plan description
- Investment policy statement
- Copy of the most recent determination letter
- Copies of Forms 5500 and 5500-C
- Plan's correspondence files (including meeting minutes)
- Plan's investment analyses
- ADP and ACP testing results
- Most recent account statements for participants and beneficiaries

- Contribution summary reports (i.e., evidence of receipt of these monies by the plan's trust)
- Loan application, amortization/repayment schedule (for all loans)

If you have questions about preparing for an audit, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

**Communication Corner: Five Tips to Follow in Turbulent Times:**

This month's sample participant communication memo reminds participants to be proactive in times of volatile markets. Please distribute the participant memo to your plan participants every month.



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

### **Fiduciary Responsibility in Today's Financial Climate**

During the current financial market turmoil many plan fiduciaries seem unsure of the depth of their responsibilities to the plan and its participants. In reality, a considered response should incorporate three ingredients: a review of investments offered, proactive employee communications and adherence to a prudent process of managing investment decisions.

In reviewing investment options, the fiduciary is well served to confirm to what extent investments presently offered to participants include exposure to distressed obligations and/or failing institutions and insurers. Most retirement plan vendors have already produced marketing materials which address this issue and can be distributed to participants. Obtaining this type of documentation from your vendor will support your due diligence efforts and can be used as part of prudent employee communication. Additionally, you should be prepared to address participant questions (see the article below, "Communicating with Employees in Down Markets"). Today's financial climate presents an excellent opportunity to remind participants about the importance of diversification, rebalancing, dollar cost averaging and emphasizing the long-term nature of retirement savings.

With regard to managing investment decisions, a fiduciary demonstrates prudence by the documented process they follow for making decisions for the selection, removal and replacement of investment options. Documentation of the process and outcomes are paramount. When the process is followed properly it can serve as a substantial defensive tool against potential liability. Now is also a good time to review the protections of being in compliance with ERISA Sections 404(a) and 404(c), both which can shield fiduciaries from liability for participant investment decisions. In summary, following a prudent process, including the ingredients described above, during such a difficult time can provide meaningful advantages to plan fiduciaries and participants alike. Remember, we are here to assist you every step of the way; please don't hesitate to contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com) with your questions or concerns.

### **Communicating with Employees in Down Markets**

Without doubt, many of your plan participants are concerned about their investments; it is understandable that human reaction to dramatic market drops is to reduce or liquidate one's exposure. But it is this type of behavior that you want to discourage among your plan participants! Commonly asked questions include: "How should I invest my money?", "Is there anything that's safe?", "Why should I continue to save when I keep losing money?" and "Is my money insured by the government?"

**JRNBENEFITS**

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As a plan fiduciary, you have a responsibility to the plan and its participants, regardless of market ups and downs. Most importantly, you should not instill panic in your employees, but remind them to stay the course and avoid bad behavior such as market timing. Missing out on just a handful of the best-performing days in the market may leave investors at a significant performance disadvantage compared to investors who remain fully invested for the long term. Although unnerving at times, some of the sharpest market declines were followed by steep rebounds. Remind participants to review their portfolio, stay diversified and rebalance regularly (putting all their money in cash is *not* the solution to this market crisis). Meeting with a financial professional is another good step toward creating a healthy financial picture. The bottom line is that your participants should stay invested (and focused) for the long-term.

### LaRue Withdraws Claim

You may recall the Supreme Court's groundbreaking LaRue decision from February of this year. As a reminder, in LaRue, the Supreme Court unanimously held that an individual may bring an action based on a breach of fiduciary duty under ERISA *as an individual*, and not on behalf of the plan as a whole. Precedent stated that ERISA only authorized claims affecting the entire plan rather than allowing for individual recovery. The Supreme Court read ERISA to allow a fiduciary breach claim where the breach impairs the value of a participant's individual account. In late October the U.S. District Court for the District of South Carolina signed an order stating that LaRue "decided that it is not financially feasible to continue to pursue this claim." As a result LaRue withdrew his claim and the District Court's order dismissed the case "with prejudice," which means that a case based upon the same facts and allegations cannot be re-filed.

It is also important to note that the LaRue withdrawal does not change the landmark Supreme Court ruling. Please remember that though the ruling may result in an increase in lawsuits, the ruling does not increase the responsibilities or liability exposure of fiduciaries. Ultimately a plaintiff must still prove any fiduciary breach to prevail. If anything, the Supreme Court decision makes the fiduciary's attention to detail all the more important. The most effective way to avoid a lawsuit is to continue to meet your fiduciary responsibilities. Your continued partnership with your consultant allows us to assist you in that endeavor! If you have any questions regarding the LaRue decision or its impact to plan fiduciaries please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### Survey Says: If You Match, They Will Save

According to a new report by Charles Schwab, from 2004 to 2007 employees at companies with retirement plans serviced by Schwab were most likely to choose the plan's "match ceiling" (the amount of salary employees need to defer into their plan in order to receive the maximum employer matching contribution) as their deferral level in order to maximize the employer contributions they can receive. The link causes sponsors to consider carefully their match formulas to help employees boost savings, according to the report. Considering two formulas – a 100% match up to 3% of an employee's compensation and a 50% match up to 6% of an employee's compensation – the second formula would encourage an employee to defer an additional 3% into the plan to receive the maximum employer match, while the maximum cost of the match to the employer remains the same, Schwab points out. "Employers who are focused on increasing their employees' savings rates should consider adjusting their match formula, because we know that the employer match amount is one of the most important factors in driving an employee's savings rate," said Dean Kohmann, vice president of Charles Schwab retirement plan services, in a press release. The most common employer match formula according to Schwab data is 50% of an employee's deferred salary up to 6% of compensation.

### Communication Corner: 2009 Plan Limits

This month's sample participant communication memo outlines the 2009 plan dollar limit changes. Please distribute the participant memo to your plan participants every month.