

# Retirement Report

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

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## Q3'08 Market Review: Global Markets Pummeled, and 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 at 6/30. 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%. The day that perhaps will be best remembered over the quarter happened on September 29, 2008, near the end of the quarter, which was the Dow Jones Industrial Average's biggest point drop in history (to date), a date that will be 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, by most measures, 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) 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 for the 2008 plan 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 your plan consultant or email [bwright@twgservices.com](mailto:bwright@twgservices.com).

401(k) Plan Limits for Plan Year	2009	2008
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

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### **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 who 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 your plan consultant or email [bwright@twgservices.com](mailto:bwright@twgservices.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, or need plan design review assistance, please contact your 401(k) Advisors plan consultant or email [bwright@twgservices.com](mailto:bwright@twgservices.com).

### **Communication Corner: Five Steps to Take in Turbulent Times**

This month's sample participant communication memo reminds participants to be proactive in times of volatile markets. Email [bwright@twgservices.com](mailto:bwright@twgservices.com) for a copy you can print and distribute to employees.