Retirement Plan Newsletter

Quarterly Newsletter I Quarter Ending June 30, 2020

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Markets in Review

The financial markets went into overdrive as investors tried to predict the economic impact of both the coronavirus and the subsequent governmental fiscal and monetary response, especially as it relates to certain hard-hit industries like travel, retail, and restaurants. Despite all the negative headlines of increasing COVID-19 cases, rising unemployment, and social unrest during the quarter, the equity market, as measured by the S&P 500 Index, had its best quarter since 1998 as investors focused on global governmental stimulus, positive reports on the progress of a vaccine, re-opening of many state economies, and recovering retail sales and manufacturing data.

The equity market indices rebounded significantly in the second quarter with the tech-heavy NASDAQ returning 30% and the S&P 500 and Dow Jones Industrial Average posting gains of nearly 20%. Small- and mid-cap companies, as measured by the Russell 2000 Index and Russell Midcap Index, were up even more than the broad indices during the quarter, returning 25.4% and 24.6%, respectively.

Growth stocks continued to significantly outperform value stocks across all market capitalizations during the quarter as the technology and consumer discretionary sectors outpaced more value-oriented sectors like financials and industrials. While all S&P 500 sectors were in positive territory during the second quarter, performance varied significantly by sector, with consumer discretionary stocks leading the way with a 32.9% return and utility stocks lagging with a 2.7% return. Over the prior 12-month period there was a 72% return spread between the best and worst-performing sectors (Technology +36% and Energy -36%).

Foreign equity markets also posted strong returns in the second quarter with the Developed and Emerging Markets indexes up 16.3% and 18.1%, respectively.

The fiscal and monetary response to the coronavirus was swift and had a positive impact on the fixed income markets during the quarter with the Barclays Aggregate Bond Index up almost 3%. While investors fled to safety and piled into Treasuries in the first quarter, risk appetites returned in the second quarter as the Federal Reserve's aggressive monetary policies fueled a rally in corporate and high yield bonds.

First quarter GDP fell 5.0% and the advance estimate of second quarter GDP shows U.S. economic growth falling by 32.9% due to falling consumer spending, states contending with a resurgence in COVID cases, and many travel restrictions remaining. Two consecutive quarters of negative GDP growth officially qualifies as an economic recession. This will mark the first recession since 2008/2009.

The U.S. unemployment rate dropped to 11.1% in June 2020, falling from an all-time high of 14.7% reached in April. Recent studies show that over 60% of those on unemployment benefits are making more than they were pre-COVID as a result of expanded benefits, so the numbers are likely skewed as many have chosen not to look for work or are waiting to be called back to their previous employer as the economy reopens.

During the second quarter, the Consumer Price Index grew at 0.6%, down from 1.5% the previous quarter. Increases in food prices were offset by declining energy prices. Apparel and transportation service prices declined by 7% over the past year while medical care services prices experienced the largest increase at 6%.

Sources for quoted statistics: U.S. Bureau of Labor Statistics, Federal Reserve, and Wall Street Journal.

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Electronic Delivery Could Save Billions

On May 21, 2020, the U.S. Department of Labor and the Employee Benefits Security Administration (EBSA) announced the publication of a final rule that will allow employers to communicate the required retirement plan disclosures and other plan information electronically. The rule finishes a 2018 DOL initiative aimed at reducing administrative burdens and costs associated with the delivery of retirement plan disclosures. EBSA projects that electronic delivery could save retirement plan sponsors an estimated $3.2 billion over the next 10 years by eliminating significant materials, printing, and mailing costs associated with furnishing printed disclosures. As businesses face economic and logistical challenges due to the COVID-19 National Emergency, the rule brings much needed relief to plan sponsors and service providers while making disclosures more readily accessible and useful for America's workers.

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New Voluntary Safe Harbor

The final rule, which was effective July 26, 2020, establishes a voluntary safe harbor for retirement plan administrators who elect to use electronic media to furnish retirement plan disclosures to "covered individuals." For plan sponsors interested in taking advantage of the new safe harbor, there are three rules to which they must comply:

1. The safe harbor only applies to retirement plan disclosures and does not include any document that must be furnished only if it is requested.

2. Covered individuals must provide an electronic delivery address such as an email address or smartphone number. An employer assigned email address, such as a company email address, may be treated as provided by the individual if the email address has a separate employment related purpose.

3. The initial notification of electronic delivery must be on paper. For those plans that would like to rely on the new safe harbor, the plan administrator must distribute a paper notice to covered individuals advising them of the intended electronic delivery and providing an opportunity for the individual to opt out.

"EBSA projects that electronic delivery could save retirement plan sponsors an estimated $3.2 billion over the next 10 years" — Employee Benefits Security Administration, 2020

The rule allows two methods for delivering retirement plan disclosures electronically:

1. **Website posting.** Referred to as the Notice and Access model, administrators may post participant disclosures on a website if an appropriate Notice of Internet Availability (NOIA) is furnished to the electronic addresses of covered individuals. These documents must remain on a website until superseded by a subsequent version but never for less than one year. The NOIA must include a description of the covered document(s), the electronic address (or hyperlink to the address) where the individual can access the document, and a required statement that advises individuals of their right to opt out of electronic delivery and to receive free paper copies along with the administrator's or a designated representative's phone number. The NOIA must generally be provided each time a new covered document is available for review on the website. However, the final rule permits an annual NOIA to include information about multiple covered documents instead of requiring that plan sponsors provide multiple NOIAs throughout the year.

2. **Email delivery**. Alternatively, administrators may send required disclosures directly to the email addresses of plan participants. Required documents must be sent to participants' email addresses no later than the date by which the document must be furnished under ERISA.

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Documents Eligible for Electronic Delivery

Under the final rule, documents that may be provided electronically include:

- Annual disclosure notices such as safe harbor, Qualified Default Investment Alternative (QDIA), Fee Disclosures, and automatic enrollment.
- Summary Plan Descriptions (SPDs)
- Summaries of Material Modifications (SMMs)
- Summary Annual Reports (SARs)
- Notice of blackout period for participant investment direction
- Notices relating to Qualified Domestic Relations Orders (QDROs) Individual benefit statements required by the Pension Protection Act

IMPORTANT: The rules do not apply to any document that must be furnished only if it is requested.

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Covered Individuals

The final rule allows the use of electronic media to furnish retirement plan disclosures to "covered individuals." Covered individuals include plan participants (employees or former employees covered by the plan), beneficiaries (e.g., spouses and dependents covered by the plan), and other persons entitled to documents under Title I of ERISA who have provided the plan administrator or other appropriate designee with an email address or smartphone number. Electronic addresses previously provided to the plan administrator may be used without verifying the address if such reliance is in good faith and otherwise complies with the new safe harbor rule.

Covered individuals must be able to globally opt out of electronic delivery and receive paper copies at no cost to the individual. For administrative ease, the plan sponsor may continue to provide electronic copies in tandem with paper delivery. When a participant who has elected electronic delivery terminates employment, administrators must "take measures reasonably calculated to ensure the continued accuracy and availability" of electronic addresses used to deliver required documents, or take steps to obtain new, valid electronic addresses from plan participants."

Additionally, the plan administrator must have a system for identifying bounce backs or delivery attempts to a covered individual that have been returned as "undeliverable." If a bounce back is received, the plan administrator must promptly take reasonable steps to cure the problem by sending the NOIA or email to a secondary electronic address on file, obtaining a new valid and operable electronic address, or treating the covered individual as having globally opted out of electronic disclosures and distributing paper notices from that point forward.

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Pre-existing Electronic Delivery Rule

The new safe harbor is an additional option for electronic disclosure and does not replace the prior DOL e-disclosure rule that allowed for electronic delivery to those employees that were "wired at work." The new safe harbor rule only applies to retirement plans (and is voluntary) and not employee welfare benefit plans, such as plans providing group health or disability benefits.

"A 2019 survey found that 90% of U.S. adults use the internet, representing a substantial increase from 2000 when 52% of U.S. adults reported using the internet." — Pew Research Center, "10% of Americans don't use the internet."

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IRS Issues Additional Pandemic Relief

On June 29, 2020, the IRS issued Notice 2020-52 in response to the COVID-19 pandemic providing welcome relief to plan sponsors who are considering suspending safe harbor contributions and also to those who may already have regardless of whether the employer is suffering an economic loss. The notice is significant in that it permits employers who sponsor 401(k) plans to reduce or suspend their safe harbor contributions and redirect those funds to other, more urgent needs. However, plan sponsors must act quickly to take advantage of the relief by adopting the appropriate amendments and issuing participant notices by August 31, 2020.

As a general rule, regulations require a plan's safe harbor provisions to remain in effect for an entire 12-month plan year and prohibit mid-year plan amendments to those provisions that would reduce or suspend contributions. However, there are two exceptions:

1. If the employer is operating at an economic loss, or

2. If the plan's safe harbor notice (due 30 days prior to the beginning of the plan year) includes a statement that the plan may be amended during the plan year to suspend or reduce safe harbor contributions (sometimes referred to as a "safe harbor maybe" notice).

In either event, a supplemental notice must be provided to all participants at least 30 days in advance of the effective date of the reduction/suspension. The plan then becomes subject to the normal non-discrimination testing for the year.

Notice 2020-52 provides guidance in three main areas. First, it provides relief related to COVID-19, allowing plan sponsors to adopt mid-year amendments between March 13, 2020 and August 31, 2020 to eliminate safe harbor matching contributions or mid-year nonelective contributions for the remainder of the year and be deemed to have satisfied the threshold for "operating at an economic loss" or providing the "safe harbor maybe" notice. The amendment must be adopted no later than the date that the reduction/suspension occurred. It is important to note that this special relief regarding the suspension of safe harbor contributions does not eliminate the requirement that the plan will become subject to non-discrimination testing for the entire plan year.

Secondly, it provides helpful clarification that sponsors can eliminate safe harbor 401(k) contributions for highly compensated employees (HCEs) only and retain the plan's safe harbor status provided that the safe harbor 401(k) contributions continue to be made for non-highly compensated employees (NHCEs). A revised safe harbor notice should be delivered to the affected HCEs.

Finally, the Notice provides temporary relief to the 30-day advance notice requirement for suspensions or reductions to safe harbor nonelective contributions as long as the updated safe harbor notice is provided no later than August 31, 2020 and the plan amendment is adopted prior to the effective date of the suspension. Plan sponsors should keep in mind that the IRS continues to require at least 30 days advance notice for mid-year suspensions or reductions to safe harbor matching contributions; whether or not these contributions are provided can influence the employee's decision to make elective deferrals.

"A 2018 study concluded that 93% of households owning defined contribution accounts had access to, and used, the internet in 2016." — Peter Swire and DeBrae Kennedy-May, "Delivering ERISA Disclosure for Defined Contribution Plans:

Why the Time has Come to Prefer Electronic Delivery – 2018 Update," (April 2018)

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Upcoming Compliance Deadlines

September 2020

15th: Required contribution to Money Purchase Pension and Target Benefit Pension.

Contribution deadline for deducting 2019 employer contributions for those sponsors who filed a tax extension for Partnership or S-Corporation returns for the March 15, 2020 deadline.

Single employer DB plans were provided relief under the CARES Act to extend any required contributions due during 2020 (both quarterly and year-end contributions) to January 1,

30th: Deadline for certification of the Annual Funding Target Attainment Percentage (AFTAP) for DB plans for the 2020 plan year.

October 2020

1st: 401(k) Plan Safe Harbor Notice (must be provided between October 1 and December 1 for plans with a 12/31 plan year-end).

15th: Extended due date for the filing of Form 5500, Form 5558, Form 5330, and Form 8955.

Due date for filing 2020 PBGC Comprehensive Premium Filing.

Contribution deadline for deducting 2019 employer contributions for those sponsors who filed a tax extension for C-Corporation or Sole-Proprietor returns for the April 15, 2020 deadline.

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