



Benefits Observer

President's Message

Spring is here! It is a time of renewal and hope. Right? This optimistic view may be hard for many to see with the ongoing volatile stock market, mortgage credit crisis, soaring oil prices, weak dollar, high inflation, sluggish jobs data and fears of a recession. Over the past several months, a majority of workers have witnessed a significant reduction in the value of their employer-sponsored retirement plan, such as a 401(k). Phil and I submitted a letter to the editor of the Capital District Business Review (April 11 – 17 edition) to address the pitfalls and opportunities of a down market. (Please contact us if you are interested in a copy of this letter to the editor.)

Market downturns should remind all of us that retirement planning – for ourselves, our clients and our employees – takes a big commitment and a little bit of hard work. We realize that most of you already have made a pledge to secure retirement futures by sponsoring retirement plans or by providing specialized retirement plan services. We truly appreciate your efforts in helping to fund the extended retirement periods (longer than our grandparents due to the increase in life expectancies).

Lawrence & Pearson Associates remains committed to the common goal of successful retirement planning by supporting our client plan sponsors and the financial, investment, legal and tax advisors who represent them. Please feel free to put the experience of our dedicated team of retirement plan specialists to work for you by contacting us with any of your retirement plan needs or concerns. We look forward to hearing from you.

A handwritten signature in black ink that reads "Scott".

S. Scott Lusher

S. Scott Lusher is a Pension Consultant with more than twenty-eight (28) years of experience. He can be reached at (518) 374-5726 or ssl@lawrence-pearson.com

E-Mail Delivery of Newsletter

You can now sign up to receive our quarterly newsletter by e-mail. The e-mail delivery is a fast, simple and paperless alternative method for you to receive the Benefits Observer from us.

To sign up, simply e-mail a request to pig@lawrence-pearson.com.

U.S. Court rules Employees can sue Employers over 401(k) Plan losses

On February 20th, the U.S. Supreme Court unanimously upheld the right of James LaRue to sue his former employer, DeWolff, Boberg & Associates, after he lost \$150,000 in his 401(k) plan. Mr. LaRue claims his losses were due to his employer's failure to follow his instructions to switch to safer investments on at least two occasions.

This ruling is significant in terms of individual participant's rights. Previously, plan participants could only sue through class action law suits. It will now be easier for workers to sue their employer and other retirement plan fiduciaries (investment advisors, financial institutions, etc.) for any alleged mishandling of their 401(k) account.

Here are things employer plan sponsors can do to protect themselves:

1. consult with retirement plan specialists, such as a third-party administrator (TPA)
2. establish procedures for the plan administrator to follow, especially for disputes, complaints and appeals
3. form a 401(k) plan committee to periodically review the plan and any significant disputes, complaints or appeals
4. create a written 401(k) plan Investment Policy Statement (IPS)
5. review 401(k) plan investment options, asset classes and asset class categories
6. select a qualified default investment alternative (QDIA)
7. ensure that 401(k) plan information is easily accessible and communicated to all employees
8. arrange employee meetings at least every 12 months to review the 401(k) plan
9. invite an investment advisor to attend employee meetings or to meet with each employee one-on-one
10. promote the available technology (web tools, voice recognition systems, etc.) to help participants transfer between investment options and rebalance their portfolio
11. review language in any service provider, hold harmless and/or indemnification agreements
12. conduct a request for proposal (RFP) process on the 401(k) plan every 3 to 5 years to solicit competitive bids from service providers (often leads to better service, features, options and fees)
13. consider purchasing fiduciary liability insurance coverage to protect against any additional risk

Important Updates

Plan Restatement Coming Soon: On March 14, the IRS issued Announcement 2008-23, which stated that opinion and advisory letters for pre-approved (i.e. prototype and volume submitter) defined contribution plans would start being issued March 31.

Employers using Lawrence & Pearson Associates' pre-approved Prototype and Volume Submitter plan documents should be aware that the documents were timely filed to comply with the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and other plan qualification changes. The EGTRRA approved plan document must be adopted no later than April 30, 2010.

As a result, we will soon begin our plan amendment and restatement process. The fee associated with the amendment and restatement will depend primarily on the type of plan document used. Certain plans may also be subject to IRS User Fees in addition to our fees. More detailed information will be mailed to the applicable plan sponsors in the upcoming months.

Definitive Rules on Contribution Due Dates: On February 29, the Department of Labor (DOL) proposed a new 7-day safe harbor regulation for small plans (fewer than 100 participants), as it pertains to when participant contributions must be deposited.

Under this proposed rule, participant contributions must be deposited by the 7th business day after receipt or withholding.

Under the existing rule, participant contributions must be deposited as soon as it is reasonably possible to do so but no later than the 15th business day of the month following the payday.

Retirement Related News

Below are recently released retirement-related news items for your information:

Rising Retiree Health Care Costs: On March 5, Fidelity released its annual health care cost estimate which indicated that a 65-year-old couple retiring in 2008 will need approximately \$225,000 to cover medical costs in retirement.

Social Security Outlook: On March 25, the Social Security Board of Trustees released its annual report on the financial health of the Social Security Trust Funds. The 2008 Trustees Report project that the Social Security program costs are anticipated to exceed tax revenues in 2017 and the trust fund will be exhausted in 2041.

Roth 401(k) on the Rise: On March 31, Charles Schwab released new data that showed an increase in the number of plan sponsors making the Roth 401(k) available to employees. At the end of 2007, 35% of 401(k) plans administered by Charles Schwab were offering the Roth 401(k). This is a significant increase from 26 percent at the end of 2006. The Profit Sharing/401(k) Council of America 2007 Roth 401(k) survey indicates that the industry average is around 22%.

401(k) Fee Disclosure Bill: On April 16, the House Education and Labor Committee passed a new version of the 401(k) Fair Disclosure for Retirement Security Act (H.R. 3185). The legislation is to help ensure that American workers have clear and complete information about fees that "could be cutting deeply into their 401(k) balances". The bill also includes a controversial provision mandating that plan sponsors include an index fund in their investment lineup. We will provide you with more information in future newsletters.

Please contact Phil Glackin, Pension Analyst, at (518) 374-5726 or pjg@lawrence-pearson.com to discuss any information or to request more details on topics in this newsletter.



S. Scott Lusher, President
Lawrence & Pearson Associates
1576 State Street
Schenectady, NY 12304-1528
Phone: (518) 374-5726
Fax: (518) 374-5769

Look for us on the web:
www.lawrence-pearson.com

LPA Benefits Observer v 08-02

Sign up for e-mail
delivery of our
newsletter.
Details inside!