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RETIREMENT TIMES

NEWS AND UPDATES FOR RETIREMENT PLAN SPONSORS & FIDUCIARIES

DECEMBER 2020

POST-ELECTION INVESTMENT COMMENTARY

Stock markets abhor uncertainty. Currently, investment prognosticators are interpreting the election results to create a relatively "stagnant" legislative environment. This opinion is based primarily on the Senate remaining in Republican control with the presidency Democratic. The anticipated stagnation connotes a more predictable investment environment. Clearly, the stock market has recently responded overwhelmingly positive (as of 11/10/20), to the reduced potential of increased taxation along with the greater likelihood of additional COVID-19 aid and economic stimulus.

This leaves some investors with an instinctual response to grow their equity exposure. However, the biggest risk investors face at this time is changing their investment course and getting it wrong. It remains important to keep focus on the long-term horizon, which no one can predict with much accuracy. The potential future variables that can impact markets are limitless. The impact of the pandemic and potential ensuing lockdowns is clearly one significant unknown.

What is a prudent investor to do? Assuming you are appropriately diversified, remaining so may be your best response.

Those initiating portfolio changes now based on campaign rhetoric should consider that the proposed policy changes may not materialize in current proposed form. If some do, it is difficult to assess which policies may be implemented and how they may affect the markets both US and internationally.

Long-term investing success is a function of innovation, economic growth, interest rates, productivity, and factors we may not currently foresee. Maintaining an appropriately diversified, low cost investment strategy which is properly funded, may not be exciting or pacifying today, but it most likely will provide financial success in the long term.

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CYBERSECURITY ISSUES **FOR PLAN SPONSORS**

The Department of Labor is working on a guidance package addressing cybersecurity issues as they relate to plan sponsors and third-party providers.

Tim Hauser, Deputy Assistant Secretary for DOL's Employee Benefit Security Administration (EBSA) has indicated that we should expect more focus in the department's investigations of the adequacy of various cybersecurity programs to confirm that service providers plan sponsors hire are practicing effective cybersecurity practices.

Mr. Hauser also indicated that the forthcoming guidance would be informal, and not a formal notice and comment.

Plan Sponsor Considerations

The DOL expects there to be questions asked when hiring a TPA or record-keeper.

- What practices and policies do the service provider have to ensure their systems are secure?
- Does the service provider have regular third-party audits by an independent entity?
- How does the third-party validate their systems cybersecurity?
- Is there any history of cybersecurity incidents? If so, what is their track record?
- What did they learn from any prior incidents, and how have they improved their defensive processes?
- Do they indemnify their clients in event of security systems breaches that result in losses?
- Do they have insurance policies to make you whole and cover breaches, or do they have all sorts of waivers and exculpatory clauses in their contracts?

In the event a security breach is identified and an offender has achieved access to confidential information, the plan sponsor should produce a documented response, including notifying law enforcement, the FBI, the plan and their participants.

Once an official final guidance package is made available, we will share that information with you.

ANNUAL RETIREMENT PLAN **NOTICES**

It is that time when plan sponsors need to send annual notices to participants. The 401(k) safe harbor, qualified default investment alternative ("QDIA"), and automatic enrollment notices must all be sent to plan participants between 30-90 days before the beginning of the plan year (i.e., no later than December 2nd for calendar year end plans), and may be combined into a single document.

401(k) Safe Harbor

Plan sponsors of safe harbor matching contribution plans can retain the flexibility to reduce future contributions by issuing "maybe not" language in their annual 401(k) safe harbor notice.

Prior to this year, safe harbor non-elective contribution plans had to be in place as of the first day of the plan year and were subject to the safe harbor notice requirements. Effective beginning January 1, 2020, not only can a 401(k) plan be converted into a safe harbor non-elective plan at any time during the plan year or even during the following plan year, but the notice requirement has been eliminated. Generally, safe harbor plans can make a mid-year reduction or suspension of a safe harbor contribution, but only if the employer is either (1) operating at an economic loss, or (2) had already provided a "maybe not notice." As a result of the economic downturn created by COVID-19, the IRS issued temporary relief from this limitation on suspensions.

QDIA

If your plan contains a QDIA, you must provide an annual notice to all participants who were defaulted or may be defaulted into the QDIA in order to retain this fiduciary protection. Many plan sponsors send the notice to all plan participants.

Automatic Enrollment

If your plan contains an automatic enrollment feature, you must send an annual notice describing the automatic enrollment to all participants who have been or will be automatically enrolled and haven't made an affirmative election to change their deferral percentage.

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