ARE YOU MEETING YOUR FIDUCIARY RESPONSIBILITIES?

RETIREMENT REPORT

News and updates for plan sponsors and fiduciaries of defined contribution plans

Qualified plan governance: Is your fiduciary house in order?

As we enter the new year, many qualified retirement plan sponsors use this time as an opportunity to examine current fiduciary structure and processes to ensure all is in order.

Whether or not your organization's retirement plans have been recently audited by the Department of Labor or Internal Revenue Service, it is advisable to be sure your plans will hold up under such audit or plan participant scrutiny, and that the proper protections for the company and its designated fiduciaries are in place.

When reviewing your current fiduciary structure, policies and procedures, we suggest the following considerations:

1. If none exists, establish a formal internal committee to include appropriate representative leadership members.
2. Conduct fiduciary training to educate committee members on their responsibilities under Employee Retirement Income Security Act (ERISA) and attendant, personal fiduciary liability.
3. Examine, assess and modify current processes—and be in a position to address and answer the following questions:
   - Does a written committee charter exist? If so, does it need to be updated to reflect the current structure, governance, membership, etc.?
   - Has each committee member signed a written acceptance of responsibilities?
   - Are regular committee meetings held to review plan investments and administration?
   - How are decisions made and documented?
   - Are minutes kept to document and memorialize committee meetings, attendance, votes, actions, etc.?
   - Have previous authorized actions been executed (e.g., investment changes)?
   - Does the plan have a written investment policy? It is not required by ERISA, but having and following one is considered the best practice.
4. Confirm all required, and related, plan documentation exists and can be easily accessed:
   - Plan document and amendments (fully-executed)
   - Summary Plan Description (SPD)/Summary of Material Modifications (SMM)
   - ERISA §404(c) disclosures and general compliance
   - ERISA §404a-5 participant fee disclosures
   - Favorable IRS determination letter
   - Service provider agreements/ERISA §408(b)(2) fee disclosures
   - Service provider selection/monitoring process and outcomes
   - Parties in interest
   - Compliance testing results, and corrective action, if applicable

- Government audit results, and corrective action, if applicable
- Self-audit results, and corrective action, if applicable

Our belief is that with this review made and necessary corrective steps taken, plan fiduciaries will take comfort in knowing their collective fiduciary house is in order and will pass muster under government review, and plan participants will be assured that the committee's decisions and commensurate actions are being made with their interests in mind.

If you have questions about, or need assistance with, achieving this result, please contact your plan consultant.

The six categories of fiduciaries

A plan may have one or more fiduciaries. Each of the fiduciaries may have different responsibilities and many individuals or committees serve in multiple fiduciary roles. Here is a simplified list, along with brief definitions, of each category of fiduciary:

- **Named fiduciary.** This party should be named in the plan document and is considered the plan's primary decision maker. This fiduciary may be either an employee of the sponsor, or an independent party, that, absent delegation otherwise, has the duty to control, manage and administer the plan. Every plan must have a named fiduciary. It is not uncommon for the named fiduciary to also serve as plan administrator and trustee for a plan.
- **Plan administrator.** Not to be confused with pension administrator or a hired third-party administrator (TPA), this fiduciary is responsible for the plan's government filings, making required disclosures to participants, hiring service providers and fulfilling other responsibilities set forth in the plan document.
- **Trustee.** The person(s) recognized as having exclusive authority and discretion over the management and control of plan assets.
- **Investment manager.** A fiduciary with full discretionary powers for selecting, monitoring and replacing plan investment options, as defined by ERISA section 3(38).
- **Investment advisor.** A limited scope ERISA 3(21) advisor who does not have explicit discretionary control over plan assets, but may exercise a certain level of influence over the operation of the plan by way of providing investment advice and monitoring services. This fiduciary must still meet the fiduciary standards set forth in ERISA.
- **Other fiduciaries.** Other individuals, including members of various plan-related committees appointed by the named fiduciary, as well as others whose actions may dictate fiduciary status, may fall within the definitions of fiduciary under ERISA. Thus it is important to not only monitor those individuals who are explicitly named as fiduciaries in writing, but also those that have a high likelihood of undertaking fiduciary actions on behalf of the plan.

In all cases, the plan sponsor retains the authority to remove and replace any fiduciary, even if he or she has delegated day-to-day responsibilities to others. As a result, the sponsor/named fiduciary retains the responsibility to monitor any persons to which he or she has delegated responsibilities on an ongoing basis.

Should a retirement plan implement a fee policy statement?

For the client who may be concerned about fiduciary compliance, a fee policy statement may give comfort. Like all other fiduciary actions, the value of this statement is a function of how well it is written (not too loose nor too tight) and how consistently a plan sponsor actually describes and practices the process documented. So, a fee policy statement can potentially create problems in addition to mitigating them.

Having said this, assuming the plan is being managed prudently, by conducting a comprehensive live bid every three to four years (or sooner if circumstances warrant), along with an annual "second opinion" based on national normative data (as in our annual fiduciary plan review), and the plan sponsor responds appropriately to the conclusions and maintains documentation, this should provide sufficient documentation to mitigate liability.

The recent attention to this issue is good in that, if interpreted properly, it will raise awareness. On the other hand, it also may create a bias for action which may not be beneficial.

A written fee policy is not required and may not be necessary. It is sufficient to state in the Investment Policy Statement (IPS) that the fiduciaries will take the necessary steps to ensure fees are reasonable. A detailed fee policy may set fiduciaries up for failure and limit their flexibility in determining how fees will be structured.

Plan fiduciaries should have a complete understanding of how much a plan is paying in total and to whom, and they should benchmark the plan periodically to ensure the fees are competitive. If the investments are sharing revenue, the fiduciaries should decide that this is appropriate and should understand who is receiving this revenue. All of this should be documented through reports and meeting minutes.

MARKET NOTES: FOR THE MONTH ENDED DECEMBER 2015

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Capital market returns were mostly negative for the month of December, leaving the final overall results for 2015 mixed. Domestic equity performance was differentiated by capitalization and style, as large stocks outperformed small, and growth stocks outperformed value. Domestic fixed income was mostly positive for the year, despite rising rate concerns.

Among the strongest asset classes in 2015 were international small cap stocks (up 9.6 percent), large cap growth stocks (up 5.7 percent) and domestic REITs (up 4.5 percent).

Commodities, emerging market equities and emerging market bonds were the poorest performing asset classes for the year, sliding 24.7 percent, 14.9 percent and 14.9 percent, respectively.

The year ended with a December that was eventful for the economy, with important decisions made with respect to monetary policy and a new government spending bill.

Fed pulls the trigger on interest rates

As was widely expected, the Federal Open Market Committee (FOMC) voted to raise the federal funds rate (FFR) during meetings in December. The increase ended a seven-year span of a FFR near zero and marked the first increase in almost 10 years.

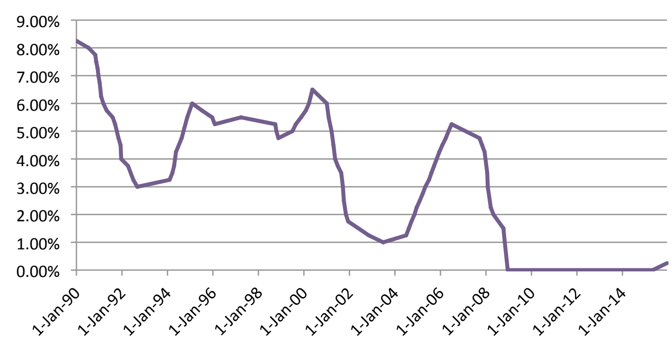
Increasing anticipation over the last several months has likely made the FOMC decision appear more momentous than it really is. As illustrated in the chart on page 4, the 25 basis points (bps) bump was very small in relative terms, and monetary policy remains historically accommodative.

In addition, transparency from the FOMC and the resulting market expectations allowed for short term bond prices to begin reflecting the rate adjustment before it was formally announced. As illustrated in the following chart on page 4, the one-month treasury yield increased as the FOMC meeting approached from zero percent in mid-October to .21 percent on the day of the announcement.

	December 2015
Russell 1000 (U.S. Large Cap Stocks)	-1.8%
Russell 2000 (U.S. Small Cap Stocks)	-5.0%
MSCI EAFE (Developed International Stocks)	-1.3%
MSCI Emerging Markets (Emerging Markets Stocks)	-2.2%
Bloomberg Commodity Index	-3.1%
S&P Global REIT Index (Real Estate Investment Trusts)	0.9%
Barclays U.S. Aggregate (Broad Domestic Bond Market)	-0.3%
Barclays Muni 5 Yr (Tax Exempt Fixed Income)	0.2%
JP Morgan GBI Global ex U.S. Hedged (International Fixed Income)	-0.2%
JP Morgan GBI EM Diversified (Emerging Markets Fixed Income)	-2.2%

Source: Morningstar Direct

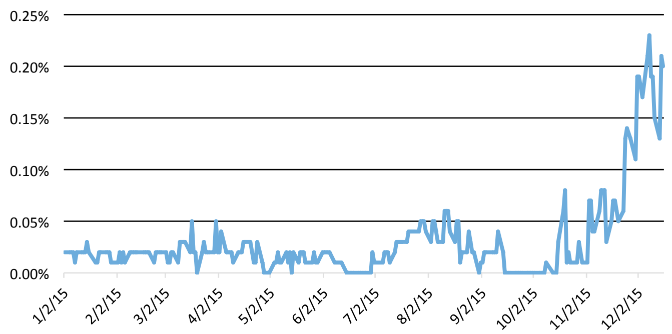
Federal funds target rate: January 1990 – December 2015



Source: FedPrimeRate.com. The target rate was set to a range of 0-0.25 percent on Dec. 16, 2008, then increased to a range of 0.25-0.50 percent on Dec. 16. 2015.

The shortest end of the yield curve has the most sensitivity to the FFR, while longer-term rates are determined more by factors such as inflation and supply and demand.

1 month T-bill yield: Jan. 2–Dec. 16, 2015



Source: U.S. Department of the Treasury

You can learn more about the December increase in rates and the resulting implications by reading our piece, [We have liftoff!]

Congress agrees on budget deal

Congress avoided a government shutdown in December by passing a spending bill that finances the government through September of 2016. The bill, which has now also been signed by President Obama, includes several measures that affect the U.S. economy. In addition to an increase in the spending budget, highlights include more than 50 expiring tax breaks that have now been extended or made permanent, and an end to the 40-year-old ban on the export of U.S. oil.

Among the tax break extensions are a two-year delay of the "Cadillac tax" on high-cost health insurance, a two-year suspension of the excise tax on medical devices and the suspension of a separate tax on health insurers for one year.

The deal also makes permanent an array of tax breaks for individuals, including but not limited to:

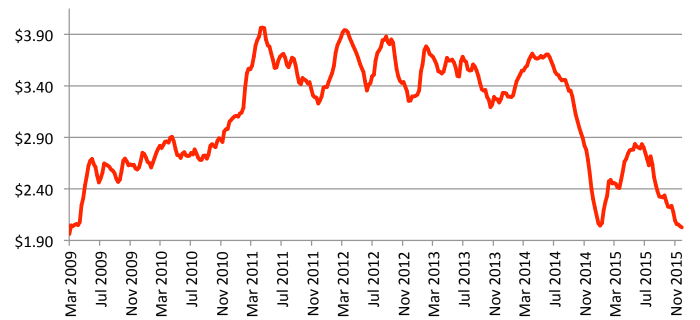
- Permanent expansion of the child tax credit, earned income tax credit and tuition tax credit
- Permanent extension of state and local sales tax deductions
- Permanent extension of ability to transfer money directly from IRAs to charities
- Extensions through 2017 of about 30 tax breaks

Source: The Wall Street Journal

The effects that oil exports will have on the U.S. economy are yet to be determined, and opinions on the matter have been largely divided along political party lines.

Interestingly, lifting the restriction comes as the price of gasoline dipped below $2 per gallon nationally this month, marking the lowest price since 2009. Allowing oil companies to export could potentially decrease domestic supply, and begin applying upward pressure on oil and gas prices.

Average U.S. regular gasoline, dollars per gallon: March 2009–December 2015



Source: U.S. Energy Information Administration

If domestic oil exports do in fact result in an increase in prices, bond investors may be pleased; higher prices for commodities, such as oil, can boost the inflation premium built into intermediate and long-term bonds, increasing yields.

As always, please contact your RSM US Wealth Management advisor with any questions or comments.

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Avery has been in the finance industry since 2002, with experience in financial planning, advisory services and investment research. Dan joined RSM from Culp, Elliott & Carpenter, PLLC (CEC), a tax and estate planning law firm in Charlotte, where he launched a financial advisory practice. Before CEC, Dan was a financial planner with Plante Moran Financial Advisors, a prominent Registered Investment Advisor firm found mainly in the Midwest.

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NL-NT-WMS-ALL-0116-Q1 2016 Retirement Report