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# EBSA ACHIEVES \$1.36 BILLION IN TOTAL MONETARY RESULTS IN FISCAL YEAR 2009

EMPLOYEE BENEFITS SECURITY ADMINISTRATION, A DIVISION OF THE DEPARTMENT OF LABOR IS RESPONSIBLE FOR ENFORCEMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT. OVERVIEW OF RESULTS APPEARS ON PAGE ONE.

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In retirement program management, the rewards for staying **Ahead Of The Curve** have the potential to have a profound impact on your employees' financial success. Epstein Financial Services' goal is to assist in maintaining your retirement program at the forefront of the latest industry developments, regulatory requirements and fiduciary best practices.

Managing retirement program details on behalf of our clients allows them to focus on their primary goal of a successful and thriving business.

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## EBSA ACHIEVES \$1.36 BILLION ... FOLLOWING IS A SUMMARY OF THE MONETARY RESULTS FOR THE 2009 FISCAL YEAR

TOTAL RESULTS	PROHIBITED TRANSACTIONS CORRECTED/ PLAN ASSETS PROTECTED	PLAN ASSETS RESTORED/ PARTICIPANT BENEFITS RECOVERED	VOLUNTARY FIDUCIARY CORRECTION PROGRAM
<b>\$1.36 B</b>	<b>\$881.6 M</b>	<b>\$407.6 M</b>	<b>\$73.6 M</b>

As the monetary results demonstrate, EBSA takes their ERISA enforcement role quite seriously. While ERISA is an extensive regulation, it is helpful to keep several fundamental concepts in mind when determining your ability to demonstrate your plan is in compliance:


**Exclusive Benefit:** The plan is assumed to be managed for the exclusive benefit of the participants. Participants alone initiated 365,000 inquiries with EBSA in 2009 resulting in \$124.5 million in monetary recoveries and 970 investigations opened.

**Prudent Man Rule:** ERISA Section 404(a)(1) has raised the bar for a plan fiduciary to a higher standard: the "Prudent Expert Rule."

"A plan fiduciary is assumed to discharge their duties ... with the care, skill, prudence, and diligence ... acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

Benchmarking the variables of your plan to industry standards is absolutely critical.

**Documentation/Process:** Adhering to a disciplined and systematic process in benchmarking the key variables of your plan is essential. In the event of a DOL audit, documenting your process will assist in not becoming an EBSA statistic.

On a more positive note, managing your plan in recognition of ERISA and fiduciary standards will translate to being certain you are optimizing the value of your corporate retirement program. As illustrated in the graphic on page 3, "Significant Rewards." 

# HISTORICAL STOCK MARKET PERFORMANCE DURING AND AFTER BEAR MARKET 1929-2009

## WHERE DO WE STAND IN THE RECOVERY?

As discussed in our last issue, the market has provided quite a ride. The 57% freefall experienced in the 2007-2009 bear market was the most severe since the 1930s. However, the 65% recovery through the end of 2009 was also the strongest recovery since the Depression era. History suggests there may be additional opportunity on the upside. On average, the period of the bear market and the two years following the market bottom have generated an average return of 4%. Through December of '09 we stood at -29%. To achieve an average recovery would indicate there is potential upside of approximately 20%. We entered the second year of the recovery March 10. ↗

BEAR MARKETS	BEAR MARKET RETURN	RETURN IN FIRST YEAR OF NEW BULL MARKET	RETURN IN FIRST 2 YEARS OF NEW BULL MARKET	1-YEAR ROUND-TRIP (BEAR & FIRST YEAR OF NEW BULL)	2-YEAR ROUND-TRIP (BEAR & FIRST 2 YEARS OF NEW BULL)
1929-1932	-86%	169%	124%	-63%	-69%
1937-1942	-60%	54%	59%	-39%	-36%
1946-1949	-30%	42%	59%	0%	12%
1956-1957	-22%	31%	44%	3%	13%
1961-1962	-28%	33%	56%	-4%	13%
1966-1966	-22%	33%	42%	4%	10%
1968-1970	-36%	44%	60%	-8%	2%
1973-1974	-48%	38%	67%	-29%	-13%
1976-1978	-19%	13%	25%	-9%	1%
1980-1982	-27%	58%	62%	15%	18%
1987-1987	-34%	23%	57%	-18%	4%
1990-1990	-20%	29%	38%	3%	10%
2000-2002	-49%	34%	45%	-32%	-26%
<b>2007-2009</b>	<b>-57%</b>	<b>65%*</b>	<b>?</b>	<b>-29%*</b>	<b>?</b>
<b>Average</b>	<b>-37%</b>	<b>46%</b>	<b>57%</b>	<b>-14%</b>	<b>-5%</b>
<b>Median</b>	<b>-30%</b>	<b>34%</b>	<b>57%</b>	<b>-8%</b>	<b>4%</b>

\*Reflects March 9 to December 31, 2009. Bold denotes bear market returns that are most similar in magnitude (-48% to -60%) to 2007-2009 bear market. Bull and bear markets defined as a 20% or more increase or decrease in the S&P 500 Index. Source: ISI, Bloomberg, FMRCO (MARE) as of 12/31/09.

## INCREASED DISCLOSURE REQUIREMENTS 2009 FORM 5500

For the first time, Schedule C of Form 5500 will require the disclosure of "indirect fees" paid to service providers. Included in the definition of indirect payments are 12b-1 fees paid by a mutual fund to a consultant, registered investment advisor or broker-dealer. The new reporting requirements will apply to plans with 100 or more employees eligible to contribute and when the compensation received equals or exceeds \$5,000.

While the ability to track and report indirect payments can be difficult, there is an opportunity to simplify the requirements relative to 12b-1 fees paid to your advisor. A majority of plan sponsors will most likely want to classify and treat these payments as "eligible indirect" payments. The ability to reduce these potentially complex requirements to a "check-the-box" response on Schedule C can be accomplished with the assistance of your advisor. In order to classify the payments as "eligible indirect" your advisor will need to provide you with a written disclosure of:

- The existence of the indirect compensation;
- The services provided for the indirect compensation or the purpose of the payment of the compensation;
- The amount (or estimate) of the compensation or a description of the formula used to calculate or determine the compensation;
- The identity of the party or parties paying and receiving the compensation.

continued on page 3

Increased Disclosure Requirements 2009 Form 5500 continued from page 2

Absent advisor disclosures, payments will be characterized as "other indirect payments" and the plan sponsor will need to:

- Contact the broker-dealer to assimilate the information necessary to report the actual payments.
- Report any service provider (which would include a broker-dealer) that fails, upon request, to supply the

information necessary to complete the Schedule C.

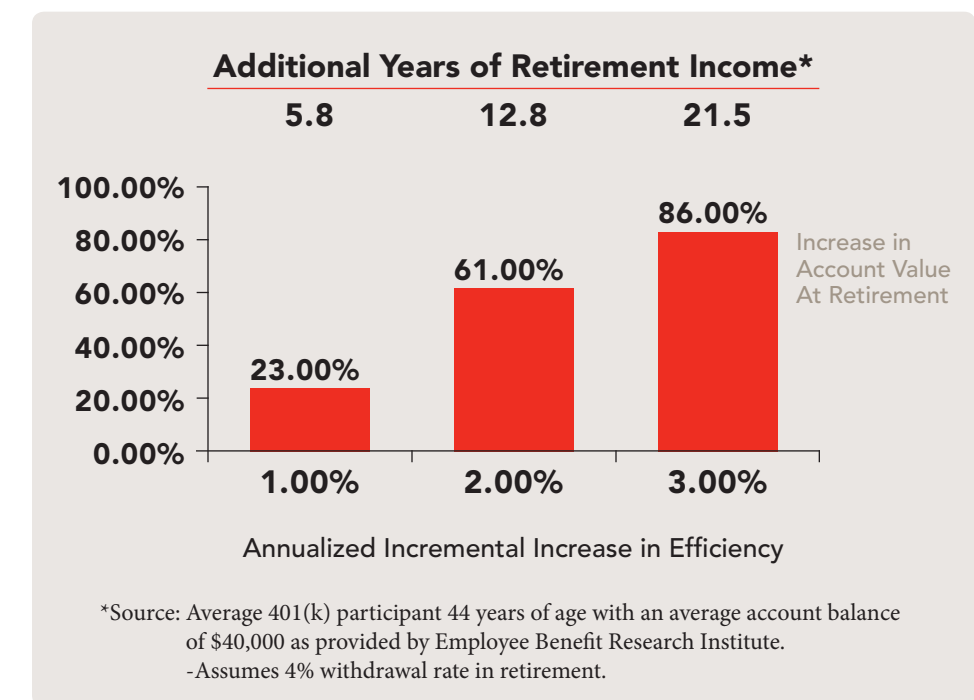
Be sure to stay tuned for our next edition and discussion of the proposed 408(b)(2) regulation. Identifying fees and increased disclosure of fees to plan sponsors and participants is clearly a primary objective of the Department of Labor. In addition, 408(b)(2) will be paying particular interest to advisor fees and the services provided relative to those fees. Unlike the new 5500 requirements, this proposed regulation will apply to all plans regardless of size. ↗

To learn more about the topics covered in **Ahead Of The Curve** or to discuss opportunities to enhance your company's retirement plan, contact Leo Polverini at **Epstein Financial Services: 413-539-2376** or **lpolverini@finsvcs.com**

## SIGNIFICANT REWARDS

The good news is that life expectancies are increasing. A retiree today can reasonably look forward to 20 to 30 years enjoying the "golden years." The financial challenge is optimizing the value of accumulated savings to make retirement years as comfortable and rewarding as possible. As the accompanying graphic demonstrates, the rewards for optimizing the value of participant account balances are profound when viewed in the context of years of retirement income. As the graphic indicates, a 2% increase in annual efficiency translates to nearly 13 years of additional retirement income or, alternatively, to a 60% increase in the level of retirement income.

Many plan sponsors may be under the impression increasing annual operating efficiency approaching 3% may not be attainable. This may be attributable to overweighting the significance of expenses in the selection and the ongoing monitoring process of vendors. A vendor search of four to six "Tier 1" providers will generally demonstrate a fee/expense variance of less than .25% from the lowest to the highest priced provider. While expenses should obviously not be overlooked, you should be in a position



to identify and address variables that have the potential to provide much more favorable financial leverage.

- Investment Performance:** While fee differentials are generally less than .25%, a dollar-and-time-weighted performance review often demonstrates performance differentials in excess 2%. Surprisingly, the performance enhancement can often be achieved with the current vendor.
- Investment Line-Up:** In spite of the recognition that asset allocation is the primary determinant of

return, often there are significant issues in the number and nature of funds available to participants. Due diligence reviews can identify a myriad of restructuring opportunities ranging from too many options within and among assets classes to a lack of exposure to asset classes critical to optimize a portfolio's risk/return profile.

- Participant Demographics:** A review of plan and participant demographics is critical to develop a communication program targeted to address enhancement opportunities. ↗