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Market & Legal Update

MAY 2023 REVIEW

Stay on top of the latest market developments and legal and regulatory updates that may affect your business.

MARKET UPDATE | Spring (and Optimism) is in the Air

While May was a relatively positive month regarding economic data, it was quite the mixed bag when it came to market returns. The Dow Jones Industrial Average experienced a tough month, tumbling 3.2% while the more growth-oriented S&P 500 posted a positive 0.4%. Both paled in comparison to the tech-intensive NASDAQ index which surged 5.8% and is up almost 24% thus far in 2023. International equities struggled in May as the MSCI EAFE Index lost 4.1%, while the MSCI Emerging Market Index fell 1.7%. Within fixed income, bond indices struggled as rates jumped across the board. The Bloomberg U.S. Aggregate Index dropped 1.1% while high yield bonds, as measured by the Bloomberg High Yield Index, lost 0.9%.

Market Return Indexes	May 2023	YTD 2023	2022
Dow Jones Industrial Average	-3.2%	0.3%	-6.9%
S&P 500	0.4%	9.7%	-18.1%
NASDAQ (price change)	5.8%	23.6%	-33.1%
MSCI Eur. Australasia Far East (EAFE)	-4.1%	7.2%	-14.5%
MSCI Emerging Markets	-1.7%	1.2%	-20.1%
Bloomberg High Yield	-0.9%	3.6%	-11.2%
Bloomberg U.S. Aggregate Bond	-1.1%	2.5%	-13.0%
Yield Data	**May 2023**	**April 2023**	**March 2023**
U.S. 10-Year Treasury Yield	3.64%	3.44%	3.48%

Investors had their eyes and ears focused on two major areas during the month of May: the debt ceiling and inflation. The debt ceiling, also known as the debt limit, is a constraint on how much the federal government can borrow to pay its bills and allocate funds for future investments. When Congress appropriates government money to be spent, the government is obligated to pay those funds. On May 1st, Treasury Secretary Janet Yellen informed Congress that the government could run out of cash to pay its bills as early of June 1st if the debt ceiling was not raised. And thus began the negotiations and, unfortunately, the market uncertainty for much of the month as investors wondered whether politicians could come to a resolution. Fortunately, on May 25th, it was reported that a deal was close between President Biden and Speaker Kevin McCarthy that would raise the government's $31.4 trillion debt ceiling for two years while capping spending on most items. As expected, markets reacted quite favorably on the news and the rumored deal was confirmed over the Memorial Day weekend. The deal was subject to Congressional approval.

In addition to the debt ceiling, inflation remained at the forefront in May. April's inflation data, released in May, showed that headline CPI (Consumer Price Index) moved lower yet again to 4.9%, marking the 10th consecutive decline in headline CPI on a year over year basis. Normally, with such solid news on the inflation front, the expectation would be that the Federal Reserve would hold fast on interest rates. However, another measure of inflation, the personal consumption expenditures price index (PCE), which measures a variety of goods and services and adjusts for changes in consumer behavior, rose 0.4% in April and 4.7% from a year ago, both a bit higher than expected while other data suggests the economy is not slowing down as much as expected and, as such, the probability of yet another rate hike next month has increased.

Consumer spending increased more than expected in April, up 0.8%, while personal income accelerated 0.4%. The job market remained resilient as well, as initial jobless claims came in below expectations at 229K on May 25th and posted a significant downward revision to the prior week's data. Other data from the Commerce Department showed a surprise rebound in orders of manufactured non-defense capital goods excluding aircraft, which is a closely watched proxy for business spending plans. Along those lines, U.S. business activity increased to a 13-month high in May, lifted by strong growth in the services sector.

The strong economic data caused 10-year Treasury yields to climb 20 basis points in May to 3.64%, illustrating the market's increased optimism for economic growth. Relative strength in recent data and corporate earnings has projected a more positive outlook for economic activity while recent steadying in regional bank deposit outflows has helped soothe concerns of a broader outbreak in the banking sector. As such, looking to 2024 and beyond, both markets and the Fed expect rates to come down significantly.

As we move into the month of June, the market will be enthusiastically awaiting the next FOMC (Federal Open Market Committee) meeting, scheduled for June 13-14, hoping for the Fed to stand pat, but not likely to be surprised by yet another rate hike due to the aforementioned good news in the economic data cycle. What will happen at that meeting is anyone's guess at this point but if economic data in the first few weeks of June continues to show strength and upside surprises, the Fed may have no choice but to raise rates yet again.

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SECURE 2.0 Impact on Governmental Plans & Church Plans

While certain provisions of the SECURE 2.0 Act of 2022 (SECURE 2.0) only apply to retirement plans that are maintained by private sector employers subject to the Employee Retirement Income Security Act of 1974 (ERISA), many of the provisions also apply to plans that are not subject to ERISA. This article addresses the applicability of some of the key provisions to non-ERISA retirement plans maintained by governmental employers and religious organizations. The chart below summarizes the key provisions and whether such provisions apply to governmental plans (including tribal governmental plans) and church plans who have not elected to be covered under ERISA.

Summary of Key SECURE 2.0 Provisions & Impact on Plans Who Have Not Elected to be Covered by ERISA

	SECURE 2.0 Provision	Effective Date	Non-Electing Church Plans*	Governmental Plans
MANDATORY	**Section 101:** Automatic enrollment expanded. This provision applies to plans established after December 29, 2022, only, and exempts small employers (under 11 employees), new businesses, church plans and governmental plans.	Effective for plan years beginning after December 31, 2024	✗	✗
MANDATORY	**Section 107:** Increase in age for required minimum distributions from a qualified plan: ▪ Age 73 – for individuals who attain age 72 after 2022, and age 73 before 2033. ▪ Age 75 – for individuals who attain age 74 after 2032.	Effective for RMDs made after December 31, 2022 for individuals who attain age 72 after that date	✓	✓
	Section 109: Catch-Up Limits for participants ages 60-63 in a 401(k) plan, 403(b) plan, governmental 457(b) plan is increased to the greater of: ▪ $10,000; or ▪ 150% of the regular age 50 catch-up contribution limit for 2024, indexed for inflation.	Effective for taxable years beginning after December 31, 2024	✓	✓
OPTIONAL	**Section 110:** Treatment of student loan payments as elective deferrals for purposes of matching contributions to a 401(k), 403(b) or governmental 457(b) plan.	Effective for contributions made for plan years beginning after December 31, 2023	✓	✓
OPTIONAL	**Section 113:** Small immediate financial incentives for contributing to the plan.	Effective for plan years beginning after December 29, 2022	✓	✓ 401(k) & 403(b) plans, but **NOT governmental 457(b) plans**

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	SECURE 2.0 Provision	Effective Date	Non-Electing Church Plans*	Governmental Plans
OPTIONAL	**Section 115:** Withdrawals for certain emergency expenses. Distributions from qualified plans, (other than defined benefit plans), 403(b) plans, 403(a) plans and governmental 457(b) plan on account of certain personal or family emergency expenses are not subject to the IRS 10% early withdrawal penalty. Such distributions, however are generally limited to 1 distribution per calendar year; and may not exceed the lesser of $1,000, or an amount equal to the excess of the individual's vested accrued benefit, over $1,000, and withdraw amount may be re-contributed to the plan within 3 years.	Effective for distributions made after December 31, 2023	✓	✓
MANDATORY	**Section 125:** SECURE 2.0 reduces the long-term, part-time employee eligibility requirement from 3 consecutive years of at least 500 hours, to 2 consecutive years of at least 500 hours. ***Only mandatory for plans subject to ERISA.***	Effective for plan years beginning after 2024	✗	✗
OPTIONAL	**Section 127:** Emergency savings accounts. Contributions are made by participants only on a Roth basis, are capped at $2,500.	Effective for plan years beginning after December 31, 2023	✗	✗
OPTIONAL	**Section 301:** Recovery of retirement plan overpayments: A plan's failure to recover an overpayment will not jeopardize the plan's tax-qualified status if the failure is a result of an "inadvertent benefit overpayment" or the plan is amended.	Effective December 29, 2022	✓	✓ Excluding governmental 457(b) plans
OPTIONAL	**Section 304:** Updating the dollar limit for mandatory distributions (force-outs) from $5,000 to $7,000.	For distributions made after December 31, 2023	✓	✓
	Section 305: Expansion of Employee Plans Compliance Resolution System (EPCRS). Permits self-correction of inadvertent significant failures at any time unless the failures are egregious, discovered by IRS audit or abusive.	Effective December 29, 2022	✓	✓ Excluding governmental 457(b) plans
	Section 306: Participant deferral elections to governmental 457(b) plans can now be made at any time prior to the date compensation becomes available.	Effective for tax years beginning after December 29,2022	✗	✓ Governmental 457(b) plans only

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	SECURE 2.0 Provision	Effective Date	Non-Electing Church Plans*	Governmental Plans
MANDATORY	**Section 308:** Early Distribution to firefighters. Extends the exemption from the 10% early withdrawal penalty to public sector firefighters after age 50. ***Automatic, provided plan permits early distributions.***	Effective for distributions made after December 29, 2022	✗	✓
MANDATORY	**Section 309:** Post-retirement age service-related disability pension or retirement distributions to qualified first responders may be excludable from gross income. Qualified first responder service means service as a law enforcement officer, firefighter, paramedic or emergency medical technician.	Effective for plan years beginning after December 31, 2026	✗	✓
OPTIONAL	**Section 312:** Self-Certification For Hardship & Unforeseeable Emergency Distributions: ▪ *Hardship Distributions:* The provision permits administrators of 401(k) and 403(b) plans to rely on an employee's written certification that a distribution is being made on account of one of the seven safe harbor hardship expenses. ▪ *Unforeseeable Emergency Distributions:* The provision permits administrators of governmental 457(b) plans to rely on a participant's written certification that a distribution is being made when a participant is faced with an unforeseeable emergency of a type that is described in the Treasury regulations as an unforeseeable emergency.	Effective for plan years beginning after December 29, 2022	✓	✓
OPTIONAL	**Section 314:** Penalty-free withdrawal from retirement plans for individuals in the case of domestic abuse. Generally limited to the lesser of *(i)* $10,000 (indexed) or *(ii)* 50% of the present value of the participant's accrued benefit. Excludes defined benefit and money purchase pension plans.	Effective for distributions made after December 31, 2023	✓	✓
MANDATORY	**Section 325:** Required Minimum Distribution rules do not apply before death with respect to any designated Roth accounts.	Effective for taxable years beginning after December 31, 2023, but not applicable to RMDs required for years beginning before January 1, 2024	✓	✓

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	SECURE 2.0 Provision	Effective Date	Non-Electing Church Plans*	Governmental Plans
OPTIONAL	**Section 326:** Exception to IRS 10% early withdrawal penalty from qualified plans for individuals with a terminal illness. Under this section "terminally ill individual" means an individual who has a life expectancy of not more than 84 months.	Effective for distributions made after December 29, 2022	✓	✓
	Section 328: "Eligible retired public safety officers" may exclude from gross income a distribution of up to $3,000 made by a governmental plan towards the payment of healthcare premiums, regardless of whether or not the governmental plan makes the payment directly to the provider of an accident or health plan or qualified long-term care insurance contract, or the payment is made to the employee.	Effective for health insurance premiums distributions made after December 29, 2022	✗	✓
MANDATORY	**Sections 329 & 330:** Exclusion from early distribution tax for "qualified public safety employees". The provision expands the exception from the 10% early distribution tax for distributions that are made to a qualified public safety employee from a governmental plan after separation from service after attainment of age 50 to also apply if the employee separates after 25 years of service under the plan. Further, due to changes made by section 308 of the Act, this expanded exception is also available to an employee who provides firefighting services (even if not employed in the public sector) and receives a distribution from a 401(a), 403(a) or 403(b) plan. The provision also expands the definition of "qualified public safety employee" to include any employee of a state or political subdivision of a state who provides services as a corrections officer or as a forensic security employee providing for the care, custody and control of forensic patients. *Automatic (no plan action required).*	Effective for distributions made after December 29, 2022	✗	✓
OPTIONAL	**Section 331:** Qualified Disaster Recovery Distributions permitted for qualified plans (including money purchase pension plans), 403(a) plans, 403(b) plans and governmental 457(b) plans.	Effective for distributions with respect to disasters the incident period for which begins on or after January 26, 2021	✓	✓

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	SECURE 2.0 Provision	Effective Date	Non-Electing Church Plans*	Governmental Plans
	Section 339: Tribal Government Domestic Relations Orders. Permits domestic relations orders issued by or under the laws of an Indian tribal government, a subdivision of such tribal government, or an agency or instrumentality of either, to qualify as QDROs (in addition to such orders made pursuant to state law).	Effective for domestic relations orders received by plan administrators after December 31, 2022, including any such order that is submitted for reconsideration after such date	✓	✓
OPTIONAL	**Section 602:** Hardship withdrawal rules for 403(b) plans conforms 403(b) rules with 401(k) rules.	Effective for plan years beginning after December 31, 2023	✓	✓
MANDATORY	**Section 603:** Catch-up contributions made to a 401(k), 403(b), or governmental 457(b) plan by employees earning more than $145,000 in the previous year must be treated as Roth contributions. However, this provision does not apply to special catch-up contributions under 403(b) and 457(b) plans, which can still be made on a pre-tax basis. ***Only mandatory for plans that permit catch-up contributions.***	Effective for plan years beginning after December 31, 2023	✓	✓
OPTIONAL	**Section 604:** Participants may be able to designate some or all employer matching and/or nonelective contributions made to a 401(k), 403(b) and governmental 457(b) plan as Roth contributions.	Effective for contributions made after December 29, 2022	✓	✓

* Note that "electing" church plans are generally treated the same as other qualified plans subject to ERISA.

Overall, whether through a church or government-sponsored plan, individuals should take advantage of the opportunities provided by the SECURE 2.0 Act to save and invest in preparation for retirement. By doing so, they can ensure greater financial security and peace of mind as they enter their retirement years.

How USI Consulting Group (USICG) Can Assist

The USICG team can help answer any questions that you have regarding SECURE 2.0. Both the IRS and the DOL are expected to issue additional guidance regarding the SECURE 2.0 provisions and as soon as additional information becomes available, we will provide updates to inform you about such guidance and its impact on plan compliance and administration.

Retirement Resources for You

The USICG team is happy to assist employers with all retirement plan compliance matters and changes in the market, including those discussed here, to help you mitigate risk and financial impact to your organization.

To learn more, please contact your local USICG representative, visit our Contact Us page or reach out to us at information@usicg.com.

Find the address and telephone number of your local USI Consulting Group office here.

Follow USICG on LinkedIn to stay up to date with retirement news!

For previous market and legal commentaries please click here.

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An index is a measure of value changes in a representative grouping of stocks, bonds, or other securities. Indexes are used primarily for comparative performance measurement and as a gauge of movements in financial markets. You can not invest directly in an index and, for comparative purposes; they do not reflect the effect of the various fees inherent in actual investment vehicles.

The S&P 500 Index is a market value weighted index showing the change in the aggregate market value of 500 U.S. stocks. It is a commonly used measure of stock market total return performance.

The Dow Jones Industrial Average is a price weighted index comprised of 30 actively traded blue chip stocks; primarily industrial companies, but including some service oriented firms.

The NASDAQ Composite Index is a market-value weighted index that measures all domestic and non-U.S. based securities listed on the NASDAQ Stock Market.

Gross Domestic Product (GDP) is the market value of the goods and services produced by labor and property in the U.S. It is comprised of consumer and government purchases, net exports of goods and services, and private domestic investments. The Commerce Department releases figures for GDP on a quarterly basis. Inflation adjusted GDP (or real GDP) is used to measure growth of the U.S. economy.

The MSCI Europe and Australasia, Far East Equity Index (EAFE) is a market capitalization weighted unmanaged index developed by Morgan Stanley Capital International to measure approximately 1,100 securities in 21 major overseas stock markets. It is a commonly used measure for foreign stock market performance.

The Barclays Capital U.S. Aggregate Index covers the U.S. Dollar denominated investment grade, fixed-rate, taxable bond market of SEC-registered securities.

The Barclays Capital U.S. Corporate High Yield Index covers the U.S. Dollar denominated, non-investment grade, fixed income, taxable corporate bond market. Securities are classified as high-yield if the middle rating of Moody's Fitch, and S&P is Ba1/BB+/BB+ or below.

The MSCI Emerging Markets Index (EM) is a free-float-adjusted market-capitalization index developed by Morgan Stanley Capital International. It is designed to measure the equity market performance of 26 emerging market countries.

The 10 Year Treasury Yield is the interest rate the U.S. government pays to borrow money for a 10-year period. In addition to influencing how much the government pays to borrow over this time-frame, the 10-year Treasury Yields also determines how much investors earn by investing in this debt and it is a good indicator of investor sentiment

The higher the yield, the better the economic outlook.

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