

IFS | Fiduciary Insights Update

Retirement Plan Monthly Newsletter

November 2021

Welcome to Fiduciary Insights, the monthly newsletter that keeps you in touch with issues, trends, events, and insights of significance to individuals connected with the retirement plan industry. The articles have been carefully selected from a variety of high quality sources.

GENERAL ITEMS

- When Is a 401k Not a Retirement Plan?
- The Who, What, Where, Why, and How of Retirement Plan Audits
- Misuse of Participant Confidential Data
- Switching Retirement Plan Providers in a Changing Market

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- The DOL's Proposed ESG Rule: A Retirement Committee Perspective
- 2021 Best Practices Conference: Outsourcing and What to Expect From Providers
- 2021 Best Practices Conference: Benchmarking Investments and Fees
- Fiduciaries: Assuming Additional Responsibilities for Retirees Is Rife With Questions

INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- Employer-Sponsored Retirement and Health Plans: What You Need to Know for Year-End
- Self-Directed 401k Investors Stay the Course in Q3, See Balances Increase 12.8% Year-over-Year
- RISE Act OKed by House Panel, Will Be Merged With SECURE 2.0
- EPCRS Update Brings Good News for Plan Sponsors

COMPLIANCE AND REGULATORY RELATED

- IRS Adds Two FAQs to Its Covid-19 Q&A Guidance for Retirement Plans
 - 2021 Best Practices Conference: Understanding ERISA And Fiduciary Fundamentals
 - ERISA Bonding Requirements and Compliance Testing
 - 2021 Retirement Plan Year-End Amendments and Operational Compliance
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GENERAL ITEMS

WHEN IS A 401K NOT A RETIREMENT PLAN?

A 401k plan is not a "retirement plan" for California creditor protection purposes when it was expressly set up to protect IRA rollover assets from creditors. This was the holding in a 2019 California Court of Appeal decision that is still valid law and that is worth revisiting. Source: Eforerisa.com

Full Article Available Here --->> <https://eforerisa.com/2021/11/15/when-is-a-401k-not-a-retirement-plan/>

THE WHO, WHAT, WHERE, WHY, AND HOW OF RETIREMENT PLAN AUDITS

You (or your client) may have just found out that an audit is required for its retirement plan. Many questions may be running through your head such as Why must an audit be performed? What must be audited? Who performs audits? Who is required to have an audit? How is an audit performed? Well, it's your lucky day, because this blog will address these burning questions. If your plan already requires an audit, this article may still provide benefits by uncovering facts that you didn't know. Source: Belfint.com

Full Article Available Here --->> <https://employeebenefitplanaudit.belfint.com/retirement-plan-audits/>

MISUSE OF PARTICIPANT CONFIDENTIAL DATA

The DOL has become highly focused on the cybersecurity practices of plan sponsors and their service providers and has begun asking comprehensive cybersecurity questions in plan audits. It seems clear the DOL is concerned not just with theft of plan data or assets, but also with the misuse of confidential participant data. Source: Wagnerlawgroup.com

Full Article Available Here --->> <https://www.wagnerlawgroup.com/resources/erisa/misuse-of-participant-confidential-data>

SWITCHING RETIREMENT PLAN PROVIDERS IN A CHANGING MARKET

All eyes are on Congress as it wrestles with a \$1 trillion infrastructure bill and a \$3.5 trillion budget reconciliation bill. The House Ways and Means Committee markup of the reconciliation bill would require certain employers with five or more employees to automatically enroll employees in a payroll deduction IRA. This requirement would take effect on January 1, 2023. Source: Wagnerlawgroup.com

Full Article Available Here --->> <https://www.wagnerlawgroup.com/resources/erisa/congress-considers-mandatory-auto-enrollment-iras>

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

THE DOL'S PROPOSED ESG RULE: A RETIREMENT COMMITTEE PERSPECTIVE

A recently proposed DOL regulation entitled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" addresses the duties of retirement plan fiduciaries when considering economically targeted investments, i.e., investments that take into account environmental, social, and governance factors. Issued in response to a May 20, 2021, Executive Order, the Proposal would significantly modify prior, Trump-era rules on the subject. This article examines the proposal from the retirement committee perspective. Source: Mintz.com

Full Article Available Here --->><https://www.mintz.com/insights-center/viewpoints/2226/2021-11-12-department-labors-esg-proposed-rule-retirement-committee#page=1>

2021 BEST PRACTICES CONFERENCE: OUTSOURCING AND WHAT TO EXPECT FROM PROVIDERS

A panel discussion at the virtual 2021 PLANSPONSOR Best Practices Conference focused on the critical topic of fiduciary outsourcing and what plan sponsors can expect from service providers. Experts discussed the types of outsourcing available to plan sponsors, from basic 3(16) administration services to full discretionary 3(38) investment management. Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/2021-best-practices-conference-outsourcing-expect-providers/>

2021 BEST PRACTICES CONFERENCE: BENCHMARKING INVESTMENTS AND FEES

During the final session of PLANSPONSOR's virtual 2021 Best Practices Conference, experts talked about the mechanics of benchmarking plan investments and fees, what to look for when benchmarking, and where to get help. Plan sponsors should consider two necessary elements when benchmarking investments. Meanwhile, whether fees need to be benchmarked depends on how they are paid. Source: Plansponsor.com

Full Article Available Here --->><https://www.plansponsor.com/2021-best-practices-conference-benchmarking-investments-fees/>

FIDUCIARIES: ASSUMING ADDITIONAL RESPONSIBILITIES FOR RETIREES IS RIFE WITH QUESTIONS

Should a 401k plan sponsor take on the additional fiduciary liability associated with retirees? Deciding whether to encourage participants to leave account balances in the plan through retirement should not be based solely on considerations like accumulation of assets in the plan, the offsetting of administrative fees, and the ability to offer very low-cost funds. Using only these factors may lead to unexpectedly difficult questions with no clear answers. Thus, when contemplating whether to encourage participants to leave account balances in the plan, consider the questions outlined here. Source: Keightleyashner.com

Full Article Available Here --->><https://keightleyashner.com/should-401k-plan-fiduciaries-encourage-participants-to-leave-their-account-balances-in-the-plan-through-retirement/>

INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

EMPLOYER-SPONSORED RETIREMENT AND HEALTH PLANS: WHAT YOU NEED TO KNOW FOR YEAR-END

While year-end is ordinarily a busy time for companies, the number of COVID-19-related pieces of legislation and developments present additional items employers and plan sponsors must address in wrapping up 2021. Source: Troutman.com

Full Article Available Here --->><https://www.troutman.com/insights/employer-sponsored-retirement-and-health-plans-what-you-need-to-know-for-year-end.html>

SELF-DIRECTED 401K INVESTORS STAY THE COURSE IN Q3, SEE BALANCES INCREASE 12.8% YEAR-OVER-YEAR

According to Charles Schwab's SDBA Indicators Report, a benchmark on retirement plan participant investment activity within self-directed brokerage accounts, the average account balance across all participant accounts finished Q3 2021 at \$341,068, a 12.8% increase year-over-year and a 2.0% decrease from Q2 2021. The third quarter SDBA report overall showed steady investing behavior among participants. Source: Businesswire.com

Full Article Available Here --->> <https://www.businesswire.com/news/home/20211115005046/en/Schwab-Report-Self-Directed-401-k-Investors-Stay-the-Course-in-Q3-See-Balances-Increase-12.8-Year-over-Year>

RISE ACT OKED BY HOUSE PANEL, WILL BE MERGED WITH SECURE 2.0

Bipartisan retirement security legislation that shares some overlap with the SECURE Act 2.0 has been approved by a key House committee. The House Education and Labor Committee on Nov. 10 approved the Retirement Improvement and Savings Enhancement (RISE) Act of 2021 (H.R. 5891) by a unanimous voice vote. Source: Asppa.org

Full Article Available Here --->><https://www.asppa.org/news/rise-act-ok-ed-house-panel-will-be-merged-secure-20>

EPCRS UPDATE BRINGS GOOD NEWS FOR PLAN SPONSORS

Rev. Proc. 2021-30 is the latest iteration of the IRS correction program -- Employee Plans Compliance Resolution System -- that enables plan sponsors and the retirement industry to sleep at night knowing that plan errors can be corrected and may retain their all-important tax-favored status. In this article, Groom's Elizabeth Dold and David Levine outline the few, key changes that were made to the Self-Correction Program, Voluntary Correction Program, and the Audit Closing Agreement Program, and Voluntary Audit Cap via EPCRS. Source: Groom.com

Full Article Available Here --->><https://www.groom.com/wp-content/uploads/2021/10/TAXES-The-Tax-Magazine-EPCRS-Update-Brings-Good-News-for-Plan-Sponsors.pdf>

COMPLIANCE AND REGULATORY RELATED

IRS ADDS TWO FAQs TO ITS COVID-19 Q&A GUIDANCE FOR RETIREMENT PLANS

On October 28, 2021, the IRS added two FAQs to its official guidance in the form of questions and answers regarding COVID-19 pandemic relief for retirement plans, including 401k plans. Source: [Compliancedashboard.net](https://www.compliancedashboard.net)

Full Article Available Here --->> <https://www.compliancedashboard.net/irs-adds-two-faqs-to-its-covid-19-qa-guidance-for-retirement-plans/>

2021 BEST PRACTICES CONFERENCE: UNDERSTANDING ERISA AND FIDUCIARY FUNDAMENTALS

During the first session of the virtual 2021 PLANSPONSOR Best Practices Conference, experts discussed the requirements for maintaining retirement plan documents and operating a plan according to ERISA. They also discussed what should be reported to participants and regulators, and how sponsors can adhere to fiduciary duties. Source: [Plansponsor.com](https://www.plansponsor.com)

Full Article Available Here --->> <https://www.plansponsor.com/2021-best-practices-conference-understanding-erisa-fiduciary-fundamentals/>

ERISA BONDING REQUIREMENTS AND COMPLIANCE TESTING

ERISA bonding requirements and compliance testing, although not necessarily related, are two of the compliance matters auditors commonly look at during an audit. It is important for plan fiduciaries to be aware of the overall purpose of the bonding requirements and the compliance tests and be familiar with the correction methods and deadlines. Source: [Berrydunn.com](https://www.berrydunn.com)

Full Article Available Here --->> <https://www.berrydunn.com/news-detail/other-erisa-compliance-matters-erisa-bonding-requirements-and-compliance-testing>

2021 RETIREMENT PLAN YEAR-END AMENDMENTS AND OPERATIONAL COMPLIANCE

As we approach the end of 2021, it's again time for sponsors of 401(a) and 403b plans to review their plan documents and plan operations to ensure compliance with increasingly complex qualification requirements. While there is no one-size-fits-all checklist, the following provides an overview of these requirements to help plan sponsors (1) determine the need to adopt plan amendments before year-end, (2) ensure operational compliance with changes in law, (3) evaluate the implications of potential plan changes, and (4) take appropriate action/next steps. Source: [Groom.com](https://www.groom.com)

Full Article Available Here --->> <https://www.groom.com/resources/2021-retirement-plan-year-end-amendments-and-operational-compliance/>

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