

Raymond James 401(k) Monthly Newsletter

November 2011

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.

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General Items

[Can Earthquakes, Hurricanes and Floods Get Employees Hardship Distributions?](#)

Summary: In case you missed it, the East Coast has had an odd month or so with an earthquake, hurricane and flooding. In trying to find money to pay for repairs and clean up, some folks might look to their retirement plan savings as a resource. Here are the nuts and bolts of "hardship distributions."

Source: Employee Benefit News (free registration may be required).

[Best Practices in Workplace Financial Education for the Millennials](#)

Summary: Gen Y (the Millennials) is learning how to manage their day-to-day finances since coming of age during the financial crisis, but even though they are saving in their retirement plans, they don't know if they are on track to retire. Employers who understand this generation can have a huge impact on their employees' financial success. This article reviews some of the best practices in financial education for Gen Y employees.

Source: 401khelpcenter.com.

[Multiple Employer Plans -- An Enticing Alternative for Plan Sponsors](#)

Summary: An intriguing new use of a long-established concept is catching the attention of small to mid-size plan sponsors seeking a way to simplify 401k plan oversight: Multiple Employer Plans (MEPs). By merging their plan into a properly structured MEP, employers cease to be a plan sponsor and effectively transfer many of the responsibilities and liabilities associated with being a named fiduciary to the MEP.

Source: Plansponsor.com.

[Excess Contribution in a 401k Plan](#)

Summary: An excess contribution in a 401k occurs as a result of a failed ADP test, and is the amount to be refunded to a HCE in order to pass the ADP test. The term "excess contribution" has a very different meaning for a 401k plan than for an Individual Retirement Account. Here is a review of each.

Source: McKay Hochman.

[Fiduciary Items](#)

[Best Practices for 401k Plan Unitized Stock Funds](#)

Summary: Does your 401k plan offer participants the opportunity to invest in employer stock through a unitized stock fund? If so, as a fiduciary you should review and consider whether your plan's investment committee needs to adopt the best practices suggested

in this article. These suggestions are based on a recent Seventh Circuit case and are intended to help plan fiduciaries comply with their ERISA prudent investor duties.
Source: McKenna Long & Aldridge LLP.

[Fiduciary Education Resource Guide](#)

Summary: This guide lists some of the most useful governmental publications and information compiled by industry trade associations designed to assist plan fiduciaries in the design, operations and maintenance of employee benefit plans.
Source: Pension Resource Institute (PDF File).

[Upgrade Employee Benefit Plan Auditing, Says ERISA Advisory Council](#)

Summary: This past spring, the ERISA Advisory Council issued a report on employee plan auditing and financial reporting models. The council studied whether the requirements of ERISA Sections 103 and 104 provide the protections to plan participants and beneficiaries as originally intended. The council narrowed its focus to three issues: audit and auditor quality, limited-scope audits and Section 403(b) plan audits. The current financial product environment today is not the same as it was in the 1970s when ERISA was enacted. That makes the council's findings and recommendations that much more worth examining.
Source: ERISAdiagnostics (PDF File).

403(b) Plan Items

[New Study Provides 403\(b\) Market Overview](#)

Summary: Sponsors in all segments of the 403(b) market are looking to their providers as 403(b) partners and experts. Providers offering solutions to help ease plan administration and cost will have a competitive edge. Government regulation and more transparent fee reporting are driving both innovation and consolidation.
Source: 401khelpcenter.com.

Studies and Research

[Employers Adding 401k Plan Features to Drive Participation and Savings](#)

Summary: Charles Schwab released new insights into the growing number of employers providing their employees with value-added 401k plan features that help drive positive plan participation and savings behaviors.

Source: 401khelpcenter.com.

Court and Legislative Items

[Mandatory Workplace IRA Bill Returns](#)

Summary: A pair of US Senators have introduced legislation they claim will "dramatically increase retirement savings."

Source: Plansponsor.com.

[401k Plan Includes Reasonable Investment Options, Directed Trustee Not a Fiduciary: Third Circuit](#)

Summary: In Renfro v. Unisys Corp., the U.S. Court of Appeals for the Third Circuit upheld the district court's dismissal of a putative class action alleging the defendants breached their fiduciary duty under ERISA in choosing the investment options available under the Unisys Corp. 401k plan. The court also concluded that Fidelity Management Trust Co. did not act as a fiduciary in its capacity as a directed trustee of the plan.

Source: Practical Law Publishing.

Regulatory Items

[DOL to Re-Propose Rule on Definition of a Fiduciary](#)

Summary: The DOL will re-propose its rule on the definition of a fiduciary. The agency anticipates revising provisions of the rule including, but not restricted to, clarifying that

fiduciary advice is limited to individualized advice directed to specific parties, responding to concerns about the application of the regulation to routine appraisals and clarifying the limits of the rule's application to arm's length commercial transactions, such as swap transactions.

Source: 401khelpcenter.com.

[Electronic Participant Disclosures: New DOL Guidance](#)

Summary: The Department of Labor just issued Technical Release 2011-03 regarding the use of electronic media to satisfy the new participant disclosure requirements under DOL Regulation §2550.404a-5 (the Participant Disclosure Regulation). Though temporary, these rules may simplify the providing of required disclosures electronically.

Source: Drinker Biddle & Reath LLP (PDF File).

[Resolving Employee Benefit Plan Audit Problems and Late or Amended Forms 5500](#)

Summary: Under the Delinquent Filer Voluntary Compliance Program (DFVC), an employer can file a late Form 5500 for a penalty of \$10 per day measured from the original, unextended filing deadline. Penalties may be capped depending up on the circumstances. If an audit reveals a prior year issue that necessitates an amended return, the employer may select the correct form with the DOL's new correction tool.

Source: Porter Wright Morris & Arthur LLP.

[Investment Firms Pulling Out All Stops Against Financial Adviser Rule Change](#)

Summary: Financial-services companies are pulling out all the stops to fight a proposed regulation from the Labor Department that they say will hurt middle-class investors. At stake is the Employee Benefits Security Administration's proposal to broaden the definition of "fiduciary" status to more financial advisers.

Source: Thehill.com.

[DOL Sues Trustees Over Plan Loan Violations](#)

Summary: The U.S. Department of Labor has sued trustees of a benefit fund for violating the Employee Retirement Income Security Act with respect to loans issued from the fund.

Source: Plansponsor.com.

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