

# Raymond James 401(k) Monthly Newsletter

## February 2012

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

[401k Disclosure Is Coming - What to Do in January](#)

[Majority of Retirement Plan Sponsors Do Not Feel Prepared for New Fee Disclosure Rules](#)

[Be Prepared for an Audit \(Even if you Don't Want One\)](#)

[Retirement Plans in a Quandary](#)

### Fiduciary Items

[The 408\(b\)\(2\) Burden on Fiduciaries](#)

### Studies and Research

[EBRI Releases Latest 401k Plan Asset Allocation, Account Balances, and Loan Activity Study](#)

[Companies Trim Investment Choices in 401ks](#)

[Stable-Value Strategies Becoming Riskier](#)

### Court and Legislative Items

[Fourth Circuit Rules on Duty to Investigate and Diversify Investments](#)

[Presumption of Prudence Shields Fiduciaries From Liability Following Decline in Value Of Employer Stock](#)

[Applying the QDROtic Equation in Qualified Plans](#)

[Reforms Equal Smaller 401k's](#)

### Regulatory Items

[ASPPA & CIKR Request Fee Disclosure Extension](#)

[DOL Raises the Stakes for the Audit Quality Initiative](#)

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### General Items

  
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### [401k Disclosure Is Coming - What to Do in January](#)

Summary: Reviews some practical recommendations for fiduciaries seeking to change their investments and fees before the disclosures become mandatory.

Source: Pensionsbenefitslaw.com

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### [Majority of Retirement Plan Sponsors Do Not Feel Prepared for New Fee Disclosure Rules](#)

Summary: Sixty-five percent of middle market executives say benefits costs are the leading factor impacting compensation decisions, largely outweighing a mere four percent of survey respondents who say economic conditions/financial performance is the leading factor, according to the Verisight and McGladrey 2011/2012 Compensation, Retirement and Benefits Trends Survey. The survey also found that the vast majority (61%) of retirement plan sponsors do not feel prepared for new fee disclosure rules.  
Source: 401khelpcenter.com

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### [Be Prepared for an Audit \(Even if you Don't Want One\)](#)

Summary: Rumors continue to swirl that the DOL is increasing its audits of 401k plans. A diligent plan sponsor would want to be prepared for an audit. So while we all hope we are not audited, the best practices are to be prepared that one might occur. Look over your documentation and practices now and make sure you have everything in place just in case.  
Source: Fox Rothschild LLP

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### [Retirement Plans in a Quandary](#)

Summary: "What we've got here is a failure to communicate." That famous line, from the 1967 movie "Cool Hand Luke," summarizes the reason that retirement plans collectively - but unwillingly - hold billions of dollars that plan sponsors have unsuccessfully tried to distribute to former participants.  
Source: Employee Benefit News

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### Fiduciary Items

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### [The 408\(b\)\(2\) Burden on Fiduciaries](#)

Summary: In evaluating service providers, plan fiduciaries should not limit their analysis to cost. Instead, fiduciaries must take into account other factors that are relevant to

making a prudent decision, such as conflicts of interest, the results being produced by the service provider, references, and the needs of the plan and its participants.

Source: Plansponsor.com

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Studies and Research  
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### [EBRI Releases Latest 401k Plan Asset Allocation, Account Balances, and Loan Activity Study](#)

Summary: After a decade marked by two severe bear markets, 401k plan participants have adopted a more balanced approach to their portfolios, according to a report released today by the ICI and EBRI. Fears that younger participants in 401k plans would abandon stock investing are not borne out by the data, which suggest that greater use of target-date funds is helping workers keep their investing on track.

Source: 401khelpcenter.com

### [Companies Trim Investment Choices in 401ks](#)

Summary: While the trend over the past decade has been for companies to increase the number of investment options in their 401ks — the median number of investments companies offer is now 18, up from 10 in 2001, according to consulting firm Aon Hewitt — some companies are switching gears and reducing the number of options, or at least streamlining and simplifying their investment menus.

Source: Marketwatch.com

### [Stable-Value Strategies Becoming Riskier](#)

Summary: The changing economic climate and greater regulatory uncertainty -- combined with diminishing wrap capacity and consistently lower yields -- have reduced the stability and value that investors can expect from stable value investment strategies, according to global professional services company Towers Watson.

Source: 401khelpcenter.com

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## Court and Legislative Items

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### [Fourth Circuit Rules on Duty to Investigate and Diversify Investments](#)

Summary: A very recent decision by the Fourth Circuit Court of Appeals clarifies an important point with respect to the duty of ERISA trustees to investigate investment alternatives and to diversify the portfolio in which the plan funds are invested. In vacating the judgment of the United States District Court, the Fourth Circuit held that a breach of the fiduciary duty to investigate investment alternatives or breach of the duty to diversify does not necessarily mean the actual investments were imprudent. Therefore, such a finding, in and of itself, is insufficient to impose liability on the trustees.

Source: Nixon Peabody LLP (PDF File)

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### [Presumption of Prudence Shields Fiduciaries From Liability Following Decline in Value Of Employer Stock](#)

Summary: Adopting the presumption of prudence that applies when a 401k plan requires stock of the sponsoring employer to be offered as an investment option, the Court of Appeals in New York City (CA-2) ruled that plan fiduciaries did not breach their ERISA duties by retaining company stock as an investment option despite a significant drop in value that may have been foreseeable because of the company's deep exposure to subprime mortgage securities.

Source: CCH

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### [Applying the QDROtic Equation in Qualified Plans](#)

Summary: The recently decided Fifth Circuit decision, *Brown v. Continental Airlines, Inc.*, demonstrates how nine airline pilots and their spouses creatively used qualified domestic relations orders (QDROs) and state domestic relations law to circumvent the early distribution rules in their retirement plan.

Source: Fox Rothschild LLP

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### [Reforms Equal Smaller 401k's](#)

Summary: Two recent proposals to change the existing tax treatment of 401k retirement plans, if enacted, are likely to result in lower account balances for many 401k participants, according to a new analysis by the Employee Benefit Research Institute.  
Source: Employee Benefit News

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### Regulatory Items

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### [ASPPA & ClkR Request Fee Disclosure Extension](#)

Summary: Letter from Craig P. Hoffman, General Counsel and Director of Regulatory Affairs of The American Society of Pension Professionals & Actuaries and the Council of Independent Recordkeepers responding to the U.S. Department of Labor's ongoing delay in the issuance of the 408(b)(2) final regulation.  
Source: ASPPA

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### [DOL Raises the Stakes for the Audit Quality Initiative](#)

Summary: The DOL initiative to review the quality of employee benefit plan financial audits has been in place for many years, but there are signs that it has recently intensified. Some have heard that the DOL is starting to dig deeper into the financial audits that are filed with the Form 5500 and in some cases have rejected the audits and imposed penalties.  
Source: Kilpatrick Townsend & Stockton LLP

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