

Fiduciary Insights

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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

- [The Impact of 408\(b\)\(2\) on Service Providers](#)
- [The Defined Contribution Plans of Fortune 100 Companies](#)
- [401k Plan Provisions That Are Bad Ideas](#)
- [Six Ways to Measure the Success of a 401k Plan](#)
- [New 401k Obligations Heaped on CFOs](#)
- [Changes to the 401k Match Could Increase Employee Participation](#)

403(b) Plan Items

- [New IRS Guidance on Section 403\(b\) Plan Terminations](#)

Fiduciary Issues

- [Fee Disclosure: What 401k Plans Can No Longer Hide](#)
- [ERISA Fidelity Bonds—Who Needs Them, and Who is Responsible for Securing Them?](#)
- [401k Fees: A Hot Topic for Plan Fiduciaries and Participants](#)

Studies and Research

- [More Employers Adopt Auto-Plan Designs](#)
- [Fidelity Reports Average 401k Account Balance Hits 10-Year High](#)

Court and Legislative Items

- [Seventh Circuit Vacates Class Certification in Two 401k Excessive Fee Cases](#)
- [404\(c\) is Not a Defense to Claims Based on Fiduciaries' Selection of Plan Investment Options](#)
- [Retirement Income Disclosure Bill Makes a Comeback](#)
- [Final Settlement of Ford Stock Suit Dictates Plan Provisions](#)

Regulatory Items

- [The Spark Institute Seeks Changes to EBSA Fiduciary Definition; Proposes Safe Harbor](#)
- [Final Participant Fee Disclosure Regulations](#)

General Items

[The Impact of 408\(b\)\(2\) on Service Providers](#)

Summary: As a practical matter, any covered service provider that has not implemented the 408(b)(2) disclosures by July 16th will be precluded from providing services to its ERISA-governed covered plans. The purpose of this article is to briefly discuss some of the issues.

Source: Reish & Reicher.

[The Defined Contribution Plans of Fortune 100 Companies](#)

Summary: DC plan designs affect the financial security of millions of Americans and deserve thorough evaluation and careful management; this Towers Watson analysis looks at eligibility and vesting rules, employee and employer contributions, and plan investments, as well as four-year trends in plan design and practices.

Source: Towers Watson.

[401k Plan Provisions That Are Bad Ideas](#)

Summary: There are many 401k plan provisions that are legal under the Internal Revenue Code and ERISA, but can complicate the administration of the plan by the plan sponsor, assisted by the third party administrator. These provisions may increase the likelihood of administrative error, thereby increasing plan sponsor liability and the risk of plan disqualification by the Internal Revenue Service.

Source: The Rosenbaum Law Firm.

[Six Ways to Measure the Success of a 401k Plan](#)

Summary: When companies set out to measure how successful their 401k plan is, they generally don't do it based on how comfortably their former employees are supporting themselves in retirement. Instead, employers evaluate how many employees use the plan and whether the benefits offered are competitive with other companies in the same industry. Here is how you could potentially measure the success of a 401k plan.

Source: U.S. News & World Report.

[New 401k Obligations Heaped on CFOs](#)

Summary: In the second half of 2010, the Department of Labor issued several proposed or final regulations regarding disclosures of retirement plan fees and investment-related information that will be effective, or are expected to be, by the beginning of 2012. These rules impose new responsibilities on CFOs, either as plan fiduciaries or as representatives of plan sponsors.

Source: CFO.com.

[Changes to the 401k Match Could Increase Employee Participation](#)

Summary: For years, the typical 401k match has meant that a plan sponsor puts in 50 cents for every dollar an employee contributes, up to 6 percent of salary. But why not 33 cents on 9

percent of salary? Or 25 cents on 12 percent? An increasing number of money managers and advisers are urging their clients to rethink the magic formula, as a way to get workers to save more.

Source: Emii.com.

403(b) Plan Items

[New IRS Guidance on Section 403\(b\) Plan Terminations](#)

Summary: The Internal Revenue Service has clarified, in Revenue Ruling 2011-7, how a section 403(b) retirement plan can be terminated, and whether distributions made to participants and beneficiaries in connection with such a termination are includable in gross income.

Source: Ballard Spahr LLP.

Fiduciary Issues

[Fee Disclosure: What 401k Plans Can No Longer Hide](#)

Summary: Employers and employees will gain a much better understanding of the behind-the-scenes workings of 401k and other defined contribution plans as the result of two regulations issued by the Employee Benefits Security Administration. The regulations' aim is to help employers/plan sponsors and employees/participants make better decisions when it comes to selecting and managing investments held in participant-directed retirement plans.

Source: Society for Human Resource Management.

[ERISA Fidelity Bonds—Who Needs Them, and Who is Responsible for Securing Them?](#)

Summary: ERISA requires that every fiduciary of, and every person who handles funds or other property of, an employee benefit plan, be bonded. This seems like a simple enough proposition. And yet, although the statute imposing the bond requirement has been in place for many years and the DOL has issued guidance to clarify the requirement, people still get confused regarding its scope and meaning.

Source: Reish & Reicher.

[401k Fees: A Hot Topic for Plan Fiduciaries and Participants](#)

Summary: In 2010, the Department of Labor released multiple sets of regulations regarding 401k fee disclosure rules. While the new disclosure rules will increase access to cost information, actually interpreting that data may still be difficult.

Source: National Law Review.

Studies and Research

[More Employers Adopt Auto-Plan Designs](#)

Summary: New data by Aon Hewitt show 57 % of 401k plan sponsors offered automatic enrollment in 2010, compared to 24% in 2006. Thirty-six percent of plan sponsors who don't offer the feature said they are likely to add it in 2011.

Source: Employee Benefit News.

[Fidelity Reports Average 401k Account Balance Hits 10-Year High](#)

Summary: Fidelity reported the average 401k balance reached a 10-year high at the end of 2010. Also dispelled five common misconceptions about the retirement account most widely held by today's working Americans.

Source: 401khelpcenter.com.

Court and Legislative Items

[Seventh Circuit Vacates Class Certification in Two 401k Excessive Fee Cases](#)

Summary: On January 21, 2010, a panel of the United States Court of Appeals for the Seventh Circuit issued two important decisions, one in the current wave of 401k fee cases, and another in the long-standing genre of retirement plan stock drop cases. Each decision will likely impact future jurisprudence in these areas.

Source: Goodwin Procter LLP.

[404\(c\) is Not a Defense to Claims Based on Fiduciaries' Selection of Plan Investment Options](#)

Summary: The Court also held that ERISA § 404(c) precluded plaintiffs from proceeding with claims that (a) the plan fiduciaries did not disclose sufficient information to participants regarding Motorola's financial condition; and (b) those who appointed the plan fiduciaries did not sufficiently monitor their appointees. But the Court adopted the position long taken by the DOL that § 404(c) does not apply to claims based on the plan fiduciaries' selection of imprudent investment options.

Source: Groom Law Group (PDF File).

[Retirement Income Disclosure Bill Makes a Comeback](#)

Summary: With a growing interest in the subjects of retirement income and transparency, bipartisan legislation to provide more disclosure about retirement income has been reintroduced.

Source: Plansponsor.com.

[Final Settlement of Ford Stock Suit Dictates Plan Provisions](#)

Summary: The U.S. District Court for the Eastern District of Michigan has given final approval to a settlement of a suit accusing Ford Motor Co. of continuing to offer company stock in its 401k plan when it was no longer prudent.

Source: Plansponsor.com.

Regulatory Items

[The Spark Institute Seeks Changes to EBSA Fiduciary Definition; Proposes Safe Harbor](#)

Summary: The SPARK Institute has submitted a 23-page letter to the Employee Benefits Security Administration requesting modifications to the proposed regulation changing the definition of a fiduciary under ERISA. "While we support EBSA's objective of clarifying the scope of the definition of fiduciary to include certain retirement plan service providers, we are concerned that the proposed rule may have significant unintended consequences that will adversely affect the products and services available to plan sponsors and participants."

Source: 401khelpcenter.com.

[Final Participant Fee Disclosure Regulations](#)

Summary: The Regulation is one part of a three-part set of rules intended to address fee disclosures and calls for two types of disclosures: (1) plan-related disclosures and (2) investment-related disclosures. This is a detailed review of the Regulation.
Source: Haynes and Boone LLP (PDF File).

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