

# IFS | Fiduciary Insights Update

## Retirement Plan Monthly Newsletter

### CONTACT INFORMATION

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April 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

- Warning Signs That Your Retirement Plan Might Be in Trouble
- Demand Rising for Virtual and Self-Service 401k Education
- Design a 401k Plan Like a Pro in Six Steps
- The Impact(s) of Automatic Enrollment

### FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- The Twists and Turns of the DOL Fiduciary Rule
- IRS Lists Solo 401k Plans as Audit Target
- DOL Reinstates Five-Part Test for Determination of ERISA Fiduciary Status
- Participant Directed Investments Through Brokerage Windows: The Last Frontier or a Trap for the Unwary?

### INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- What to Know Before Adding an SDBA to Your Plan
- Morningstar Updates Findings on 2020 401k Allocation Decisions
- American Rescue Plan Act Contains Many Employee Benefits Related Provisions
- The Key to Avoiding Retirement Plan Excessive Fee Litigation

### COMPLIANCE AND REGULATORY RELATED

- IRS Sets 2021 Retirement Plan Compliance Priorities
- DOL Urged to Give Retirement Plans Cybersecurity Guidance
- Top Mistakes in Voluntary Correction Program (VCP) Submissions
- Significant Changes to 2022 Pension and IRA Reports Reflected on Draft Withholding Forms

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## GENERAL ITEMS

### WARNING SIGNS THAT YOUR RETIREMENT PLAN MIGHT BE IN TROUBLE

There are warning signs that your plan is in trouble. If you pay attention to these warnings signs, you might avoid costly problems like compliance fees and penalties as well as potential fiduciary liability. Here are some of the warnings signs that your retirement plan might be in serious trouble. Source: Jdsupra.com

Full Article Available Here --->> <https://www.jdsupra.com/legalnews/warning-signs-that-your-retirement-plan-94368/>

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### DEMAND RISING FOR VIRTUAL AND SELF-SERVICE 401K EDUCATION

The popularity of virtual and self-service 401(k) educational sessions has grown since the start of the pandemic, but apparently that trend was accelerating even before then. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/demand-rising-virtual-and-self-service-401k-education>

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### DESIGN A 401K PLAN LIKE A PRO IN SIX STEPS

Small businesses can have dramatically different goals for their 401k plan. The process of matching business goals to available plan options is called plan design. At first blush, 401k plan design can seem intimidating, but it doesn't need to be. Here is a six-step process for plan design. Source: Employeefiduciary.com

Full Article Available Here --->> <https://www.employeefiduciary.com/blog/design-a-401k-plan-in-6-steps>

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### THE IMPACT(S) OF AUTOMATIC ENROLLMENT

A new study finds that automatic enrollment not only triples the participation rate of new hires, but that over time the vast majority increase their deferral rates. The report from researchers at Vanguard, found that among new hires, participation rates triple to 91% under automatic enrollment, compared with 28% under voluntary enrollment. Over time, 9 in 10 participants increase their deferral rates, either automatically or on their own, and more than three-quarters of participants remain exclusively invested in the default investment fund. Source: Asppa.org

Full Article Available Here --->> <https://www.asppa.org/news/impacts-automatic-enrollment>

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## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### THE TWISTS AND TURNS OF THE DOL FIDUCIARY RULE

The DOL's fiduciary rule still generates discussion. That's staying power, it was first proposed more than a decade ago. A March 31 NTSA webcast took a look at the rule and current developments involving it. Source: Asppa.org

Full Article Available Here ---> <https://www.asppa.org/news/twists-and-turns-dol-fiduciary-rule>

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### IRS LISTS SOLO 401K PLANS AS AUDIT TARGET

If your business sponsors a "solo 401k" plan, it may be in the crosshairs of the Internal Revenue Service. The Service's TE/GE division has identified one-participant 401k plans as among its current audit initiatives. In its web posting announcing the initiative, TE/GE states: "[t]he focus of this strategy is to review one-participant 401k plans to determine if there are operational or qualification failures, income and excise tax adjustments, or plan document violations." Source: Eforerisa.com

Full Article Available Here ---> <https://eforerisa.com/2021/04/09/irs-lists-solo-401k-plans-as-audit-target/>

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### DOL REINSTATES FIVE-PART TEST FOR DETERMINATION OF ERISA FIDUCIARY STATUS

On December 18, 2020, the DOL published in the Federal Register a final prohibited transaction exemption for investment advice fiduciaries that effectively reinstates the DOL's "five-part test" as outlined in its 1975 regulation defining investment advice fiduciaries under the Code and ERISA. In addition to meeting all five tenets of the test, there must also be receipt of direct or indirect compensation to be considered fiduciary investment advice. Source: Hallbenefitslaw.com

Full Article Available Here ---> <https://hallbenefitslaw.com/dol-reinstates-five-part-test-for-determination-of-erisa-fiduciary-status/>

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### PARTICIPANT DIRECTED INVESTMENTS THROUGH BROKERAGE WINDOWS: THE LAST FRONTIER OR A TRAP FOR THE UNWARY?

What should fiduciaries of participant-directed plans consider in deciding whether to allow participants to direct their investments using arrangements loosely referred to as "brokerage windows"? The realm of ERISA plan investments through these arrangements remains largely uncharted territory. Fiduciaries operate under the broad understanding that ERISA Section 404(a) fiduciary duties of prudence and loyalty apply, but with little guidance on how. Source: Wagnerlawgroup.com

Full Article Available Here ---> <https://www.wagnerlawgroup.com/resources/erisa/participant-directed-investments-through-brokerage-windows-the-last-frontier-or-a-trap-for-the-unwary-0>

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## INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

### WHAT TO KNOW BEFORE ADDING AN SDBA TO YOUR PLAN

As more participants engage with their investments and take a more hands-on approach, sources say self-directed brokerage accounts are becoming increasingly popular. But there are pros and cons of allowing retirement plan participants to use them. Source: Plansponsor.com

Full Article Available Here ---> <https://www.plansponsor.com/in-depth/know-adding-sdba-plan/>

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### MORNINGSTAR UPDATES FINDINGS ON 2020 401K ALLOCATION DECISIONS

A new paper by Morningstar updates previous findings exploring how 401k participants responded during the first quarter of 2020 to see what, if anything, changed over the year. The paper explores the allocation decisions of 520,556 individuals actively participating in a 401k plan during the 2020 calendar year. Participants are categorized into four broad groups based on whether they were self-directing their accounts, using a target-date fund, defaulted into managed accounts, or opted into managed accounts. Source: Napa-net.org

Full Article Available Here ---> <https://www.napa-net.org/news-info/daily-news/morningstar-updates-findings-2020-401k-allocation-decisions>

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### AMERICAN RESCUE PLAN ACT CONTAINS MANY EMPLOYEE BENEFITS RELATED PROVISIONS

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law. Many of the provisions in this sweeping legislation bring changes to the employee benefits world of which employers should take note of and which are summarized here. Source: Benefitsnotes.com

Full Article Available Here ---> <http://benefitsnotes.com/2021/03/31/american-rescue-plan-act-contains-many-employee-benefits-related-provisions/#page=1>

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### THE KEY TO AVOIDING RETIREMENT PLAN EXCESSIVE FEE LITIGATION

The recent increase in litigation over retirement plans and, specifically, the fees those plans are being charged for administration and management, has many companies concerned about what they need to do to protect the plans they manage. Two recent federal district court rulings illustrate the necessity for plan sponsors to have a prudent decision-making process in place to successfully defend against excessive fee litigation. Source: Hallbenefitslaw.com

Full Article Available Here ---> <https://hallbenefitslaw.com/policies-procedures-the-key-to-avoiding-retirement-plan-excessive-fee-litigation/>

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## COMPLIANCE AND REGULATORY RELATED

### IRS SETS 2021 RETIREMENT PLAN COMPLIANCE PRIORITIES

The IRS's Tax Exempt and Government Entities Compliance Governance Board has approved the items noted here to be prioritized and resourced, primarily through examination. Source: Futureplan.com

Full Article Available Here --->> <https://futureplan.com/resources/news-articles/irs-sets-2021-retirement-plan-compliance-priorities/>

### DOL URGED TO GIVE RETIREMENT PLANS CYBERSECURITY GUIDANCE

DOL officials told GAO that they believe cybersecurity is a serious problem for retirement plans, and the department plans to post sub-regulatory compliance assistance materials addressing related issues for plan sponsors and administrators. But the timing of DOL's coming cybersecurity guidance is uncertain. GAO's report did not recommend legislation, but lawmakers will likely assess the need for action after reviewing the DOL guidance. Source: Mercer.com

Full Article Available Here --->> <https://www.mercer.com/our-thinking/law-and-policy-group/dol-urged-to-give-retirement-plans-cybersecurity-guidance.html>

### TOP MISTAKES IN VOLUNTARY CORRECTION PROGRAM (VCP) SUBMISSIONS

Before you (or your representative) send your VCP submission to the IRS, check to make sure it's error-free. If your submission has errors, it takes longer to review and delays the issuance of the compliance statement. The top mistakes noticed in VCP submissions are listed in this March 31, 2021 article update. Source: Irs.gov

Full Article Available Here --->> <https://www.irs.gov/retirement-plans/top-mistakes-in-voluntary-correction-program-vcp-submissions>

### SIGNIFICANT CHANGES TO 2022 PENSION AND IRA REPORTS REFLECTED ON DRAFT WITHHOLDING FORMS

On March 12, the IRS released the latest versions of the 2022 draft withholding forms for pension, IRA, and annuity payments. While pension withholding elections have historically all been made on Form W-4P, that form will be split into two forms for 2022. Recordkeepers, plan sponsors and other payors may want to consider tackling these form changes early on, as they are likely to entail extensive system changes. Source: Groom.com

Full Article Available Here --->> <https://www.groom.com/resources/significant-changes-to-2022-pension-and-ira-reports-reflected-on-draft-withholding-forms/>