

IFS | Fiduciary Insights Update

Retirement Plan Monthly Newsletter

CONTACT INFORMATION

Institutional Fiduciary Solutions

880 Carillon Parkway
St. Petersburg, FL 33716

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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 Mechanics of Moving to a PEP
- Missing Participants: Best Practices for Pension Plans
- 2021 Appropriations Bill Includes New and Expanded Relief for Employee Benefit Plans
- Annual Plan Deadlines for the Plan Year Ending December 31, 2021

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- SECURE Act Guidance for 401k Plan Sponsors to Remember in the New Year
- When You Have to Tailor Your 401k Plan
- Lessons Learned From ERISA Class Action Litigation Arising Out of the "Great Recession"
- The Emerging Patchwork of Fiduciary Investment Advice Regulation: Putting the Pieces Together

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- Mutual Fund Revenue Sharing in 401k Plans
- Poll Finds 60% Raided Retirement Accounts During Pandemic
- Americans Need to Change Their Retirement Trajectory
- Another Record Year for Retirement Savings

COMPLIANCE AND REGULATORY RELATED

- Benefits-Plan Sponsors Face a Tough Year on Compliance
- DOL's Rule on Investment Duties of ERISA Fiduciaries and Its Impact on Retirement Plan ESG Investing
- Form 5500: The Body Language of ERISA Compliance
- Retirement Plan Provisions in the New COVID-19 Relief Acts

GENERAL ITEMS

THE MECHANICS OF MOVING TO A PEP

The goal of the provisions of the SECURE Act that created pooled employer plans was to encourage employers that didn't have retirement plans for employees to offer one. But employers that already sponsor a plan may also decide a PEP is a better choice for them and their participants. With a lack of regulatory guidance, plan sponsors can rely on certain existing rules to know the steps to take if they decide to move from a single-employer plan to a pooled employer plan. Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/in-depth/mechanics-moving-pep/>

MISSING PARTICIPANTS: BEST PRACTICES FOR PENSION PLANS

This DOL document outlines best practices that the fiduciaries of defined benefit and defined contribution plans, such as 401k plans, can follow to ensure that plan participants and beneficiaries receive promised benefits when they reach retirement age. Source: Dol.gov

Full Article Available Here --->> <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-best-practices-for-pension-plans>

2021 APPROPRIATIONS BILL INCLUDES NEW AND EXPANDED RELIEF FOR EMPLOYEE BENEFIT PLANS

The Consolidated Appropriations Act, 2021 was passed and signed into law in late December 2020. In addition to funding for the current fiscal year, the Act also includes numerous provisions addressing employee benefit plans and providing a range of relief provisions relating to the COVID-19 pandemic and other disasters. While many of these changes are new, some of them extend or add on to previous legislation issued earlier in 2020 under the CARES Act. This article describes the key provisions of the Act applicable to employer-sponsored welfare and retirement plans. Source: Huntonak.com

Full Article Available Here --->> <https://www.huntonak.com/en/insights/2021-appropriations-bill-includes-new-and-expanded-relief-for-employee-benefit-plans.html>

ANNUAL PLAN DEADLINES FOR THE PLAN YEAR ENDING DECEMBER 31, 2021

This 7-page chart explains key plan events and the deadline for each for Section 401(a) and 401k defined contribution plans with a plan year ending December 31, 2021. Off-calendar year plans should adjust the deadlines accordingly based on the time frames described in the chart. The chart is intended as a tool to assist employers with monitoring the key annual plan requirements. Source: Voya.com

Full Article Available Here --->> <https://www.voya.com/sites/voya.com/files/2021-01/Voya%20Alert%21%202021%20Annual%20Plan%20Deadlines%20for%20Plan%20Years%20Ending%2012312021.pdf>

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

SECURE ACT GUIDANCE FOR 401K PLAN SPONSORS TO REMEMBER IN THE NEW YEAR

The IRS continues to provide important guidance for 401k plan sponsors regarding the Setting Every Community Up for Retirement Enhancement Act of 2019. Most immediately impactful is additional guidance concerning long-term, part-time employee eligibility for 401k plans and qualified birth and adoption distributions from 401k plans. Source: Thompsonhine.com

Full Article Available Here --->>

https://www.thompsonhine.com/uploads/1345/doc/Thompson_Hine_Newsletter_-_Business_Law_Update_-_Winter_2021.pdf#page=8

WHEN YOU HAVE TO TAILOR YOUR 401K PLAN

When it comes to 401k plans, most plan sponsors forget to realize that the plan should be perfectly tailored to fit their needs. And those needs change from time to time. This article is all about how you need to make sure that the 401k plan is tailored to your needs as a plan sponsor and employer. Source: Jdsupra.com

Full Article Available Here --->> <https://www.jdsupra.com/legalnews/when-you-have-to-tailor-your-401k-plan-29663/>

LESSONS LEARNED FROM ERISA CLASS ACTION LITIGATION ARISING OUT OF THE "GREAT RECESSION"

Often fiduciary duties are magnified and called into question when the country is plunged into an economic crisis and retirement plans suffer significant losses. Most notably, we saw an increase in the number of ERISA class action lawsuits in the wake of the Great Recession of 2008. This article analyzes the ERISA litigation trends that emerged after the Great Recession, the lessons learned, and what we may expect in the wake of the economic impacts resulting from the novel coronavirus pandemic, COVID-19. Source: Dechert.com

Full Article Available Here --->> <https://www.dechert.com/knowledge/onpoint/2021/1/lessons-learned-from-erisa-class-action-litigation-arising-out-o.html>

THE EMERGING PATCHWORK OF FIDUCIARY INVESTMENT ADVICE REGULATION: PUTTING THE PIECES TOGETHER

Building on the framework of the SECURE Act, Representatives Richard Neal and Kevin Brady have introduced the Securing a Strong Retirement Act of 2020, already being referred to as SECURE Act 2.0. SECURE Act 2.0 contains changes that would further encourage plan adoption and retirement savings, as well as solutions to operational problems that have bedeviled plan sponsors for many years. Source: Cohenbuckmann.com

Full Article Available Here --->> https://us.eversheds-sutherland.com/portalresource/lookup/poid/Z1tOI9NPluKPtDNlqLMRV56Pab6TfzcRXncKbDtRr9tObDdEr4ZCmK3l/fileUpload.name=/Emerging%20Fiduciary%20Patchwork%20chart_US10027_011121_d6.pdf

INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

MUTUAL FUND REVENUE SHARING IN 401K PLANS

Recordkeepers in DC plans are often paid indirectly in the form of revenue sharing from third-party funds on the menu. We show that these arrangements affect the investment menu of 401k plans. Revenue-sharing funds are more likely to be added to the menu and are less likely to be deleted. Overall, revenue-sharing plans are more expensive as higher expense ratios are not offset by lower direct fees or by superior performance. Rebates increase with the market power of the recordkeeper suggesting that third-party funds may revenue share to gain access to retirement assets. Source: Ssrn.com

Full Article Available Here ---> https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3752296

POLL FINDS 60% RAIDED RETIREMENT ACCOUNTS DURING PANDEMIC

While we've often seen studies showing that people have largely refrained from raiding their 401ks to help cover expenses during the COVID-19 pandemic, every now and then we hear differently. According to a new poll released Jan. 6, nearly 60% of Americans withdrew or borrowed money from an IRA or 401k during the pandemic, and nearly two-thirds (63%) used those retirement savings to cover basic living expenses. Source: 401kspecialistmag.com

Full Article Available Here ---> <https://401kspecialistmag.com/poll-finds-60-raided-retirement-accounts-during-pandemic/>

AMERICANS NEED TO CHANGE THEIR RETIREMENT TRAJECTORY

There is a problem with the difference between Americans' current retirement trajectory and where they want to be when they actually get there. A new report from digital financial wellness platform Savology on the current state of personal finance in the U.S. shows Americans need to make changes to achieve the retirement they expect. Source: 401kspecialistmag.com

Full Article Available Here ---> <https://401kspecialistmag.com/americans-need-to-change-their-retirement-trajectory/>

ANOTHER RECORD YEAR FOR RETIREMENT SAVINGS

On June 29, 2020, the DOL proposed a prohibited transaction exemption called Improving Investment Advice for Workers & Retirees, which could have a substantial impact on the compliance operations of financial firms and their representatives. Possibly, the most significant development can be found in the preamble to the exemption. The DOL states that it will now interpret more broadly its long-standing regulation in defining investment advice. Source: Groom.com

Full Article Available Here ---> <https://www.groom.com/wp-content/uploads/2020/11/The-Investment-Lawyer-Vol.-27-No.-11.pdf>

COMPLIANCE AND REGULATORY RELATED

BENEFITS-PLAN SPONSORS FACE A TOUGH YEAR ON COMPLIANCE

The pandemic, remote work, and changing needs have created unique and novel challenges that have necessarily dominated employer attention in the past nine months. The pandemic hasn't affected, however, the constant drum of change to employee benefit plan requirements. Here are some things for plan sponsors to look out for this year. Source: Wagnerlawgroup.com

Full Article Available Here ---> [https://info.wagnerlawgroup.com/hubfs/docs/010520%20-%20I.%20Berio%20LeBeau%20Law360%20Article%20\(A0586257x9E0D7\).pdf](https://info.wagnerlawgroup.com/hubfs/docs/010520%20-%20I.%20Berio%20LeBeau%20Law360%20Article%20(A0586257x9E0D7).pdf)

DOL'S RULE ON INVESTMENT DUTIES OF ERISA FIDUCIARIES AND ITS IMPACT ON RETIREMENT PLAN ESG INVESTING

The DOL adopted the final rule amending the investment duties regulation which governs the obligations of ERISA fiduciaries when selecting investments for ERISA plans. Although the final rule does not mention ESG investing, it is clearly intended to govern the use of ESG investments in ERISA plans. This article covers the final rule's impact on retirement plan ESG investing. Source: Workforcebulletin.com

Full Article Available Here ---> <https://www.workforcebulletin.com/2021/01/08/dols-final-rule-on-investment-duties-of-erisa-fiduciaries-and-its-impact-on-retirement-plan-esg-investing/>

FORM 5500: THE BODY LANGUAGE OF ERISA COMPLIANCE

Last month, the DOL, the IRS, and the PBGC released advance copies of the 2020 Form 5500 Series. When filed, they will join those of prior years' morphing into the body language of ERISA compliance. Here's how. Source: Retirementplanblog.com

Full Article Available Here ---> <https://www.retirementplanblog.com/401k-plans/form-5500-the-body-language-of-erisa-compliance/>

RETIREMENT PLAN PROVISIONS IN THE NEW COVID-19 RELIEF ACTS

The recently enacted COVID-19 Related Tax Relief Act of 2020 and the Taxpayer Certainty and Disaster Tax Relief Act of 2020, both of which are part of the "Consolidated Appropriations Act, 2021," includes the following provisions that expand and extend changes intended to provide relief to retirement plan sponsors and participants affected by the COVID-19 pandemic and other disasters. Source: Bradley.com

Full Article Available Here ---> <https://www.bradley.com/insights/publications/2021/01/retirement-plan-provisions-in-the-new-covid19-relief-acts>