

# IFS | Fiduciary Insights Update

## Retirement Plan Monthly Newsletter

### CONTACT INFORMATION

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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

- Five Steps to Cybersecurity
- Time to Issue Annual Retirement Plan Notices
- Experts Discuss Participant Interest in In-Plan Annuities
- ACP Testing for Safe Harbor Plan That Suspended Match Contributions

### FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- Why Fiduciaries Should Consider Outsourcing Plan Investment Responsibility
- What to Consider When Selecting a QDIA
- COVID-19 and Retirement Plan Fiduciary Obligations
- Supreme Court Review of Excessive Fee Litigation?

### INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- 401k Investors Continue to Flee Equities for Fixed Income
- Another Year-End Tax Act Brings Changes for Plan Sponsors (and Their Service Providers)
- 401k Fee Lawsuits: What Can a Plan Sponsor Do?
- Solutions for Missing Participants and Uncashed Checks

### COMPLIANCE AND REGULATORY RELATED

- What's Next? The Post-Election Future of Employee Benefits Policy
- IRS Increases User Fees for Various Qualified Retirement Plan Filings
- Part-Time Employees May Be Eligible for 401k Plans
- IRS Simplifies Certain 403b Plan Terminations

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## GENERAL ITEMS

### FIVE STEPS TO CYBERSECURITY

Recent reports of 401k thefts and an ongoing concern about cybersecurity should have everybody on the alert. Here are five things you, your plan sponsor clients, and their participants should check out. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/5-steps-cyber-security>

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### TIME TO ISSUE ANNUAL RETIREMENT PLAN NOTICES

It is again time for plan sponsors to finalize and issue their annual notices to participants. We have experienced many legislative and economic changes since this time last year, so plan sponsors might have more to consider and update in this year's annual notice outside of the normal changes to plan COLAs and investment expense ratios. Source: Graydon.law

Full Article Available Here --->> <https://graydon.law/time-to-issue-annual-retirement-plan-notices-2/>

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### EXPERTS DISCUSS PARTICIPANT INTEREST IN IN-PLAN ANNUITIES

Industry experts reviewed what companies are doing to engage participants with in-plan annuity options during a webinar hosted by the SPARK Institute. The industry authorities explained how they are drawing participants to in-plan annuity options. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/experts-discuss-participant-interest-plan-annuities/>

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### ACP TESTING FOR SAFE HARBOR PLAN THAT SUSPENDED MATCH CONTRIBUTIONS

For safe harbor plans that suspend their safe harbor matching contributions, the IRS does NOT permit prior-year testing, only current-year testing. If your plan was NOT a safe harbor plan, it could use prior-year testing if that method was stipulated in the plan document. Recent IRS guidance regarding contribution suspensions in safe harbor plans affirmed this position. Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/acp-testing-safe-harbor-plan-suspended-match-contributions/>

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## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### WHY FIDUCIARIES SHOULD CONSIDER OUTSOURCING PLAN INVESTMENT RESPONSIBILITY

Plan sponsor fiduciaries who take a do-it-yourself approach to plan investments face huge potential exposure for underperforming investments and excessive plan fees. If you are a plan sponsor fiduciary who is losing sleep over all of this, it may be time to consider outsourcing your investment responsibilities to an investment manager or outsourced chief investment officer. Source: Cohenbuckmann.com

Full Article Available Here --->> <https://cohenbuckmann.com/insights/2020/11/8/ppass-it-forward-why-fiduciaries-should-consider-outsourcing-plan-investment-responsibility>

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### WHAT TO CONSIDER WHEN SELECTING A QDIA

When selecting a QDIA, there are many variables to consider. This paper is the third in a series of papers and presents the perspectives of managed accounts providers and target-date fund providers as well as investment consultants and ERISA counsel where relevant. The paper poses several questions that a typical committee might ask when evaluating a QDIA, whether the QDIA is a professionally managed account program or one composed of target-date funds. Source: Ymaws.com

Full Article Available Here --->> [https://cdn.ymaws.com/dciia.org/resource/collection/86B222DC-DAAD-41B9-9A31-B63EA74AF98F/ManagedAccounts\\_Paper3\\_102720.pdf](https://cdn.ymaws.com/dciia.org/resource/collection/86B222DC-DAAD-41B9-9A31-B63EA74AF98F/ManagedAccounts_Paper3_102720.pdf)

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### COVID-19 AND RETIREMENT PLAN FIDUCIARY OBLIGATIONS

COVID-19 has presented many challenges, including market volatility and business disruptions, which have placed added pressures on plan fiduciaries to comply with their ongoing obligations to prudently administer plans and plan investments. The steps outlined here will help employers and ERISA fiduciaries demonstrate prudence in plan operation and management and to mitigate their legal risk in response to the COVID-19 environment. Source: Vanblacklaw.com

Full Article Available Here --->> <https://vanblacklaw.com/articles/covid-19-and-retirement-plan-fiduciary-obligations/>

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### SUPREME COURT REVIEW OF EXCESSIVE FEE LITIGATION?

On June 19, 2020, plaintiffs in Hughes v. Northwestern University -- an "excessive fee" case -- filed a Writ of Certiorari, asking the Court to review a Seventh Circuit decision affirming a district court's grant of defendants' motion to dismiss. On October 5, 2020, the Supreme Court invited the Acting Solicitor General to file a brief "expressing the views of the United States" in this case. This article briefly reviews what may be at stake for 401k plan sponsors in a possible Supreme Court review. Source: Octoberthree.com

Full Article Available Here --->> <http://www.octoberthree.com/supreme-court-review-of-excessive-fee-litigation/>

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## INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

### 401K INVESTORS CONTINUE TO FLEE EQUITIES FOR FIXED INCOME

Whether it was pre-election jitters or some other force at work, but for the first time in the more than 20-year history of the Alight Solutions 401k Index, an entire month saw net trading flows move to fixed income. 401k investors made "consistent and steady trades" from equities to fixed income, the firm reports in its October 2020 Observations. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/401k-investors-continue-flee-equities-fixed-income>

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### ANOTHER YEAR-END TAX ACT BRINGS CHANGES FOR PLAN SPONSORS (AND THEIR SERVICE PROVIDERS)

This article includes a summary of the key provisions for defined benefit and defined contribution plans from the Further Consolidated Appropriations Act of 2020. Notably, a number of the provisions are effective January 1, 2020, providing an opportunity to take advantage of these provisions in the near term, or otherwise require system changes to be made to comply with any mandatory changes. Source: Ferenczylaw.com

Full Article Available Here --->> <https://ferenczylaw.com/article-another-year-end-tax-act-brings-changes-for-plan-sponsors-and-their-service-providers-v2/>

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### 401K FEE LAWSUITS: WHAT CAN A PLAN SPONSOR DO?

Most weeks, a plan sponsor is sued for breach of fiduciary duty in connection with the investment choices offered under its 401k or 403b plans. A few of these cases get dismissed early in the proceedings. A few go to trial, but most cases settle. Unless dismissed, these claims, whether tried or settled, often involve million-dollar recoveries. What can a plan sponsor do to establish the best record possible if the sponsor and its fiduciaries decide that they want to defend themselves? Source: Foley.com

Full Article Available Here --->> <https://www.foley.com/en/insights/publications/2020/10/401k-fee-lawsuits-what-can-a-plan-sponsor-do>

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### SOLUTIONS FOR MISSING PARTICIPANTS AND UNCASHED CHECKS

A SPARK Institute forum reviewed recommendations on missing participants and uncashed checks from the GAO and the ERISA Advisory Council. Until guidance is issued about transferring amounts to state unclaimed property funds, plan sponsors will have to rely on the limited guidance already given. Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/solutions-missing-participants-uncashed-checks/>

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## COMPLIANCE AND REGULATORY RELATED

### WHAT'S NEXT? THE POST-ELECTION FUTURE OF EMPLOYEE BENEFITS POLICY

Retirement policy has experienced more bipartisanship than most areas of legislative activity and that is likely to continue. However, a Democratic White House, despite a Republican-controlled Senate, improves the prospects for consideration of many Democratic priorities. A Biden administration will also mean a shift in the regulatory agenda. This is a 16-page detailed summary of the probable impact of a Biden presidency on retirement policy. Source: Americanbenefitscouncil.org

Full Article Available Here --->> <https://www.americanbenefitscouncil.org/pub/?id=34C118B3-1866-DAAC-99FB-FA1087949AC3>

### IRS INCREASES USER FEES FOR VARIOUS QUALIFIED RETIREMENT PLAN FILINGS

The IRS has provided an early release of increases to user fees for certain letter ruling and determination letter requests submitted with Employee Plans Rulings and Agreements that are scheduled to take effect on January 4, 2021. Source: Hallbenefitslaw.com

Full Article Available Here --->> <https://hallbenefitslaw.com/irs-increases-user-fees-for-various-qualified-retirement-plan-filings/>

### PART-TIME EMPLOYEES MAY BE ELIGIBLE FOR 401K PLANS

All 401k retirement plans have special age and service rules that employees have to meet to become eligible to participate and to vest in employer contributions to those plans. In Notice 2020-68, the IRS explains the new rules that apply following passage of the SECURE Act. Source: Estateandtaxplanningblog.com

Full Article Available Here --->> <https://estateandtaxplanningblog.com/2020/11/04/part-time-employees-may-be-eligible-for-401k-plans/#page=1>

### IRS SIMPLIFIES CERTAIN 403B PLAN TERMINATIONS

The IRS has issued guidance for employers and employees related to terminating 403b plans that fund benefits through 403(b)(7) custodial accounts. This SECURE Act-based guidance from the IRS will allow for distributions of custodial accounts under rules similar to those that have been available for annuity contracts under a 403b plan. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/irs-simplifies-certain-403b-plan-terminations/>