

# 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

- IRS Determination Letter Program: Then and Now
- How the ERISA Landscape May Shift in 2022
- More Employers Put 401k Savings on Autopilot
- Employers Adding Roth 401k Option at a Fast Clip

### FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- Plaintiffs Refile ERISA Lawsuit, Adding Adviser to Defendant List
- DC Plan Design Can Be Creatively Used to Get Participants Back on Track
- Ten Steps for DC Plan Sponsors to Consider in 2022
- Avoiding the Rule That Will Cause You Trouble as a 401k Plan Sponsor

### INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- Opinion: The Great American Retirement Fraud
- 401ks Substantially More Costly Than Pensions
- Courts Expand on Rules Regarding the Protection of Retirement Plan Assets
- 401k and IRA leakages May Be More Severe Than Previously Believed

### COMPLIANCE AND REGULATORY RELATED

- Finalized Form 5500 Changes Add to Plan Sponsors' Responsibilities
- IRS Updates Procedures for Determination Letter Requests
- Tick, Tock, the DC Restatement Clock Is Running Out
- 403b Plans and RMDs at Age 72

## GENERAL ITEMS

### IRS DETERMINATION LETTER PROGRAM: THEN AND NOW

The IRS determination letter program has changed over the years, but it remains an invaluable benefit to plan sponsors that offer custom-designed tax-favored plans. Groom principals Elizabeth Dold and David Levine look back over the years at the importance of the IRS determination letter program, review the current program, and highlight the areas where plan sponsors most benefit from a favorable determination letter.

Source: Groom.com

Full Article Available Here --->> <https://www.groom.com/wp-content/uploads/2021/12/TAXES-The-Tax-Magazine-IRS-Determination-Letter-Then-and-Now.pdf>

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### HOW THE ERISA LANDSCAPE MAY SHIFT IN 2022

2021 was another busy year for litigation under ERISA, with more than 125 new ERISA class actions filed, more than were filed in 2018 or 2019, but down from the all-time high in 2020, which saw more than 200 class actions filed for the first time in the 45-year history of the statute. As 2022 begins, several key issues working their way through the courts are likely to reshape the landscape of ERISA litigation.

Source: Groom.com

Full Article Available Here --->> <https://www.groom.com/wp-content/uploads/2022/01/Law360-How-The-ERISA-Landscape-May-Shift-This-Year.pdf>

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### MORE EMPLOYERS PUT 401K SAVINGS ON AUTOPILOT

Employers are increasingly putting retirement savings on autopilot for their workers. About 62% of businesses with a 401k plan used automatic enrollment in 2020, up from 60% the year prior and 46% a decade ago, according to the Plan Sponsor Council of America, a trade group. Auto-enrollment leverages worker behavior (inertia, in this case) to their advantage. Workers receive a paper or digital notification ahead of time and can opt out, but most do not. Source: Cnbc.com

Full Article Available Here --->> <https://www.cnbc.com/2021/12/28/more-employers-use-401k-automatic-enrollment.html>

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### EMPLOYERS ADDING ROTH 401K OPTION AT A FAST CLIP

The share of employers allowing Roth 401k savings has surged, giving more workers access to the financial benefits that accompany such contributions. But there are some roadblocks to employee use, such as automatic enrollment and the structure of 401k matching contributions. Source: Cnbc.com

Full Article Available Here --->> <https://www.cnbc.com/2021/12/27/roth-401k-availability-grows-rapidly.html>

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## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### PLAINTIFFS REFILE ERISA LAWSUIT, ADDING ADVISER TO DEFENDANT LIST

The plaintiffs in an ERISA fiduciary breach lawsuit known as Fleming v. Rollins Inc. have refiled their complaint in federal court, this time also proposing claims against multiple financial advisory firms that serve their retirement plan.

Source: Planadviser.com

Full Article Available Here ---> <https://www.planadviser.com/plaintiffs-refile-erisa-lawsuit-adding-adviser-defendant-list/>

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### DC PLAN DESIGN CAN BE CREATIVELY USED TO GET PARTICIPANTS BACK ON TRACK

Many individuals didn't have a choice but to lower their DC plan savings rates, stop contributing or take loans or withdrawals out of their plans because of the economic impact of the pandemic. A recent podcast, "Plan Designs During Challenging Times," hosted by Bill Harmon, chief client officer, and Heather Lavalley, CEO of wealth solutions at Voya, addressed what employers can do to help participants get back on track with their retirement savings after events like the pandemic or economic recessions. Source: Plansponsor.com

Full Article Available Here ---> <https://www.plansponsor.com/dc-plan-design-can-creatively-used-get-participants-back-track/>

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### TEN STEPS FOR DC PLAN SPONSORS TO CONSIDER IN 2022

This 7-page paper first reviews strategies to navigate the onerous legal and regulatory issues faced by DC plan fiduciaries today. The paper then shifts to examining tactics to better fund future "liabilities," including increasing savings and creating more efficient investment strategies for both active participants and retirees, with an overall objective of increasing the likelihood that employees will have successful retirement outcomes. Source: Russellinvestments.com

Full Article Available Here ---> <https://russellinvestments.com/-/media/files/us/insights/institutions/defined-contribution/dc-top-ten-for-2022.pdf>

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### AVOIDING THE RULE THAT WILL CAUSE YOU TROUBLE AS A 401K PLAN SPONSOR

There are so many pitfalls that a plan sponsor needs to avoid. And certain rules plan sponsors need to avoid if they want to avoid potential liability as a fiduciary. This article lets 401k plan sponsors know which paths and rules they need to avoid if they want to stay out of trouble. Source: Jdsupra.com

Full Article Available Here ---> <https://www.jdsupra.com/legalnews/avoiding-the-rule-that-will-cause-you-tr-31808/>

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## INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

### OPINION: THE GREAT AMERICAN RETIREMENT FRAUD

The author writes, "Despite the benign but misleading rhetoric about enhancing retirement security for everyone, the real beneficiaries of the retirement-reform legislation have been higher-income earners, who would save for retirement even without tax subsidies, and the financial-services industry, whose lobbyists have driven the retirement-reform legislative agenda." Source: Ssrn.com

Full Article Available Here ---> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3997927](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3997927)

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### 401KS SUBSTANTIALLY MORE COSTLY THAN PENSIONS

401k retirement accounts are substantially more costly than pension plans, according to a new analysis from the national institute on retirement security. Economic efficiencies unique to pensions enable plans to deliver retirement benefits at half the cost of 401k accounts, with four-fifths of the cost differential occurring post-retirement. Source: Nirsonline.org

Full Article Available Here ---> <https://www.nirsonline.org/2022/01/401ks-substantially-more-costly-than-pensions/>

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### COURTS EXPAND ON RULES REGARDING THE PROTECTION OF RETIREMENT PLAN ASSETS

Most people in the retirement plan industry know that, in general, funds in qualified ERISA plans are protected from creditors. However, recent court decisions have expanded on the protections provided in some more specific circumstances. Source: Plansponsor.com

Full Article Available Here ---> <https://www.plansponsor.com/in-depth/courts-expand-rules-regarding-protection-retirement-plan-assets/>

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### 401K AND IRA LEAKAGES MAY BE MORE SEVERE THAN PREVIOUSLY BELIEVED

Researchers from the Treasury and Congress' Joint Committee on Taxation have provided new estimates of how much money "leaks" out of 401ks and IRAs based on restricted tax data. The author states that "It's a welcome addition to the literature because the existing range of estimates is enormous." Source: Marketwatch.com

Full Article Available Here ---> <https://www.marketwatch.com/story/401-k-and-ira-leakages-may-be-more-severe-than-previously-believed-11641223378>

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## COMPLIANCE AND REGULATORY RELATED

### FINALIZED FORM 5500 CHANGES ADD TO PLAN SPONSORS' RESPONSIBILITIES

Some updates to the Form 5500 implement changes called for by the SECURE Act, and others will require more review from plan sponsors to ensure completeness and accuracy.

Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/in-depth/finalized-form-5500-changes-add-plan-sponsors-responsibilities/>

### IRS UPDATES PROCEDURES FOR DETERMINATION LETTER REQUESTS

The new procedures are outlined in Revenue Procedure 2022-04. Rev. Proc. 2022-04 is a general update of Rev. Proc. 2021-4, published in Internal Revenue Bulletin 2021-01.

Source: Asppa.org

Full Article Available Here --->> <https://www.asppa.org/news/irs-updates-procedures-determination-letter-requests-1>

### TICK, TOCK, THE DC RESTATEMENT CLOCK IS RUNNING OUT

Chances are that if you have a 401k plan, the document is on an IRS pre-approved form. One of the "costs" of having a pre-approved plan is that it must be re-stated every six years onto an updated pre-approved document that incorporates recent changes in the law. For DC plans, such a 401k, the current restatement deadline is July 31, 2022. A restatement is generally not something that can be done in a week or two, and vendors are under a great amount of stress trying to get all of their clients restated by this looming deadline. This is why it is so important that the restatement process be started as soon as possible. Source: Erisadc.com

Full Article Available Here --->> <https://www.erisadc.com/tick-tock-the-dc-restatement-clock-is-running-out/>

### 403B PLANS AND RMDs AT AGE 72

This post includes basic information about tax-deferred investing, RMDs, and IRS tax regulations concerning RMD tax payments and tax penalties. It also describes research findings on how many investors make RMD withdrawals and new life expectancy tables that debut in 2022. It concludes with six take-away action steps.

Source: 403bwise.org

Full Article Available Here --->> <https://403bwise.org/blog/entry/guest-blog-403b-plans-and-age-72>