

# 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

- Considering the Arguments for and Against Actively Managed Funds in DC Plans
- TDF Usage Increases as Younger Participants Invest
- Ways and Means Greenlights Automatic Retirement Arrangements
- Dust Off Your ERISA Fiduciary Liability Insurance Policy

### FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- The Rules of 401k Plan Provider Engagement
- IRS Announces Opening of the Second 403b Pre-Approved Plan Cycle
- 401k Plan Sponsors See Value in Using a Single Recordkeeper
- Here's What Many Retirement Plan Committees Have in Common

### INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- Analyzing the BrightScope DC Plan Data in the Context of Excessive Fee Lawsuits
- Second Circuit Revives Share-Class Claim in NYU Retirement Plan Class Action
- Most Retirement Plan Savers Aren't Tapping Their Accounts Despite Pandemic
- DOL Watchdog Recommends Additional Action to Inform 401k Participants About Fees

### COMPLIANCE AND REGULATORY RELATED

- The New EPCRS
- IRS Priority Guidance Plan Includes Retirement Items
- IRS Updates Tools for Reviewing Retirement Plan Document Compliance
- Reporting Rules for "Groups of Plans" Poised for Release

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## GENERAL ITEMS

### CONSIDERING THE ARGUMENTS FOR AND AGAINST ACTIVELY MANAGED FUNDS IN DC PLANS

The argument for whether actively managed funds are appropriate in DC plans has been going on for decades, and numerous excessive fee lawsuits against retirement plan sponsors have been pushing the needle toward the use of passive funds on DC plan investment menus. The debate continues following a recent publication from the CFA Institute Research Foundation which asks, "Is active management worth it?" Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/considering-arguments-actively-managed-funds-dc-plans/>

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### TDF USAGE INCREASES AS YOUNGER PARTICIPANTS INVEST

The EBRI and ICI have found that participants are increasingly using target-date funds to save for retirement, especially younger participants. The new report by the two organizations found more 401k plan participants are using the funds than in the past. Fifty-one percent of 401k plan assets owned by participants in their 20s were invested in TDFs, versus 23% for those in their 60s. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/tdf-usage-increases-as-younger-participants-invest/>

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### WAYS AND MEANS GREENLIGHTS AUTOMATIC RETIREMENT ARRANGEMENTS

The House Ways and Means Committee has approved the retirement subtitle of the Build Back Better Act as a way to help close the coverage gap and boost the existing retirement savings system. Among other things, the legislation would require employers without employer-sponsored retirement plans to automatically enroll their employees in IRAs or 401k-type plans. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/ways-and-means-greenlights-automatic-retirement-arrangements>

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### DUST OFF YOUR ERISA FIDUCIARY LIABILITY INSURANCE POLICY

Now is a great time to dust off your company's ERISA fiduciary liability policy to ensure your plan fiduciaries have robust, comprehensive coverage. Fiduciary liability policies provide coverage for claims related to the administration and operation of retirement and health and welfare plans. Unlike D&O coverage, fiduciary liability policies rarely get much attention but can similarly provide significant protection to a company's Board or other plan fiduciaries. Source: Benefitslawadvisor.com

Full Article Available Here --->> <https://www.benefitslawadvisor.com/2021/09/articles/fiduciary-liability-policy/its-time-to-dust-off-your-erisa-fiduciary-liability-insurance-policy/>

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## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### THE RULES OF 401K PLAN PROVIDER ENGAGEMENT

Hiring a 401k plan provider isn't an easy process and there are so many mistakes that plan sponsors like you have been made. It's not like making any other decision of your own in life, because it's a fiduciary decision. As a plan fiduciary, you are responsible for the retirement assets of your employees. This article is about the rules of engagement in hiring 401k plan providers Source: Jdsupra.com

Full Article Available Here --->><https://www.jdsupra.com/legalnews/the-rules-of-401k-plan-provider-engage-07294/>

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### IRS ANNOUNCES OPENING OF THE SECOND 403B PRE-APPROVED PLAN CYCLE

Like the pre-approved plan document program for 401k plans, the 403b pre-approved plan document program is intended to be on a regular 6-year cycle. Many 403b plan providers and eligible employers, particularly QCCOs and Non-QCCOs, have been wondering when the second cycle would begin and what changes it might include. The IRS has now issued guidance on Cycle 2. Source: Groom.com

Full Article Available Here --->> <https://www.groom.com/resources/irs-announces-opening-of-the-second-403b-pre-approved-plan-cycle/>

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### 401K PLAN SPONSORS SEE VALUE IN USING A SINGLE RECORDKEEPER

Plan sponsors using a single recordkeeper to manage multiple retirement plans see better overall time savings and fewer administrative drawbacks when compared to sponsors using multiple providers. That's a key finding from a survey released today by Principal Financial Group, which also revealed that respondents with one provider also reported higher rates of employee satisfaction and engagement with retirement benefits. Source: 401kspecialistmag.com

Full Article Available Here --->> <https://401kspecialistmag.com/401k-plan-sponsors-see-value-in-using-a-single-recordkeeper/>

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### HERE'S WHAT MANY RETIREMENT PLAN COMMITTEES HAVE IN COMMON

Although retirement plan committees can be as varied as the companies that sponsor them, they often are similar in structure and approach. The Plan Sponsor Council of America recently surveyed retirement plan sponsors to learn what their committees have in common. This article briefly reviews the commonalities. Source: Voya.com

Full Article Available Here --->> <https://voyainsights.voya.com/insights/heres-what-many-retirement-plan-committees-have-common-nc>

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## INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

### ANALYZING THE BRIGHTSCOPE DC PLAN DATA IN THE CONTEXT OF EXCESSIVE FEE LAWSUITS

The annual report provides insights into plan design and trends and represents the most comprehensive data available to understand defined contribution plan fees. BrightScope has an express disclaimer that its report is for general information on fees and is not intended for benchmarking the costs of specific plans. But plaintiff lawyers often ignore this disclaimer and cite the report to support their excessive fee claims, and thus it is important to analyze the BrightScope data to evaluate how your plan compares. This article documents the significant trends and statistics in the BrightScope report. Source: Euclidspecialty.com

Full Article Available Here --->> <https://www.euclidspecialty.com/fid-guru-blog-analyzing-the-brightscope-defined-contribution-plan-data-in-the-context-of-excessive-fee-lawsuits/>

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### SECOND CIRCUIT REVIVES SHARE-CLASS CLAIM IN NYU RETIREMENT PLAN CLASS ACTION

The Second Circuit recently vacated the district court's dismissal of Plaintiffs' share-class claim. *Sacerdote v. New York Univ.* To begin, the Court observed that the notion that "prudent fiduciaries may very well choose to offer retail class shares over institutional class shares" because retail shares offer greater liquidity provides no basis to dismiss pleadings that otherwise generate plausible inferences of the claimed misconduct." Source: Erisalitigationadvisor.com

Full Article Available Here --->> <https://www.erisalitigationadvisor.com/2021/09/articles/second-circuit-revives-share-class-claim-in-nyu-retirement-plan-class-action/>

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### MOST RETIREMENT PLAN SAVERS AREN'T TAPPING THEIR ACCOUNTS DESPITE PANDEMIC

Americans continued to save for retirement through DC plans during the first half of this year despite ongoing economic stresses brought about by the COVID-19 pandemic, according to ICI's "Defined Contribution Plan Participants' Activities, First Half 2021." The study tracks contributions, withdrawals, and other activity in 401k and other DC retirement plans, based on DC plan recordkeeper data covering more than 30 million participant accounts in employer-based DC plans at the end of June 2021. Source: Ici.org

Full Article Available Here --->> <https://www.ici.org/news-release/21-news-recordkeeperq2>

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### DOL WATCHDOG RECOMMENDS ADDITIONAL ACTION TO INFORM 401K PARTICIPANTS ABOUT FEES

The DOL could take steps to help 401k participants better understand the fees they pay as part of their retirement plans, according to the results of a July study by the U.S. Government Accountability Office. The GAO said it found that nearly 40% of 401k plan participants did not fully understand and have difficulties using the fee information DOL requires their plans to provide, while 41% incorrectly believed that they did not pay 401k plan fees. The agency offered five recommendations to the DOL. Source: Hrdive.com

Full Article Available Here --->> <https://www.hrdive.com/news/dol-watchdog-recommends-additional-action-to-inform-401k-participants-abo/606089/>

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## COMPLIANCE AND REGULATORY RELATED

### THE NEW EPCRS

Perfection is aspirational, especially when it comes to retirement plan administration. That is why 30 years ago, in 1991, the IRS created the Employee Plan Compliance Resolution System, a mechanism for plan sponsors to fix mistakes. Compliance with pre-approved correction methods grants plan sponsors forgiveness without punishment. But sometimes, even the approved correction methods need fixing. Source: Belfint.com

Full Article Available Here --->> <https://employeebenefitplanaudit.belfint.com/new-epcrs/>

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### IRS PRIORITY GUIDANCE PLAN INCLUDES RETIREMENT ITEMS

The IRS has issued its initial 2021-2022 Priority Guidance Plan, in which it describes guidance projects in the current fiscal year. Many items in the plan have appeared in prior years' Priority Guidance Plans. A number of the guidance items deal with retirement savings arrangements, including those noted here. Source: Ascensus.com

Full Article Available Here --->> <https://www2.ascensus.com/news/industry-regulatory-news/2021/09/10/irs-priority-guidance-plan-includes-retirement-items/>

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### IRS UPDATES TOOLS FOR REVIEWING RETIREMENT PLAN DOCUMENT COMPLIANCE

The IRS has updated nearly all of the "subject matter packages" used by IRS specialists when reviewing retirement plan documents. Each package consists of an Explanation, a Worksheet, and a Checksheet that are designed to be used together. In general, the Explanations describe the applicable legal requirements and provide citations to the Code and regulations, the Worksheets consist of yes-or-no questions, and the Checksheets provide lists of required plan provisions. While they were created for IRS personnel, these materials can also be used by plan sponsors to review a plan's compliance before submitting a determination letter application. Source: Thomsonreuters.com

Full Article Available Here --->> <https://tax.thomsonreuters.com/blog/irs-updates-tools-for-reviewing-retirement-plan-doc>

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### REPORTING RULES FOR "GROUPS OF PLANS" POISED FOR RELEASE

Proposed regulations drafted by the DOL implementing changes under the SECURE Act that allow a group of plans to file a single Form 5500 annual return could be released any day now. Based on the regulatory listing posted on the OMB website, it appears the White House has completed its review of the proposed regulations, which were sent to OMB on July 30. This is typically one of the last steps before a regulatory proposal is released publicly. Source: Asppa.org

Full Article Available Here --->> <https://www.asppa.org/news/browse-topics/reporting-rules-groups-plans-poised-release>

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