

# IFS | Fiduciary Insights Update

## Retirement Plan Monthly Newsletter

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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 Hidden Danger of Over-Diversification in 401k Plans
- Why 401k Target-Date Funds Are "Struggling"
- What Are Retirement Advisors Recommending?
- The Advantages and Disadvantages of Hiring a 3(38) 401k Retirement Plan Adviser

#### FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- The Real Fiduciary Threat for Smaller 401k Plans Is a Government Audit
- Four Pitfalls to Avoid When Replacing 401k Plan Investments
- 401k Fiduciary Responsibility and Mutual Fund Fees
- Five Things Plan Sponsors (Still) Screw Up

#### INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- Employers Expanding Benefits Strategy to Meet Employee Needs
- Retirement Assets Total \$29.8 Trillion in Second Quarter 2019
- Understanding Behavioral Biases Can Help Sponsors With Investing Communications
- Four Ways to Improve 403b Plans

#### COMPLIANCE AND REGULATORY RELATED

- How Reg BI Changes the Fiduciary Landscape for the 401k Plan Sponsor
- Ninth Circuit Greenlights Individual Arbitration Provisions in ERISA Plan Documents
- Best Practices for Plan Sponsors - Lessons Learned From Litigation
- Supreme Court Amicus Brief Shows How High the Stakes Really are for the Future of ERISA's "Actual Knowledge" Requirement

## GENERAL ITEMS

### THE HIDDEN DANGER OF OVER-DIVERSIFICATION IN 401K PLANS

Aristotle said, "The virtue of justice consists in moderation, as regulated by wisdom." Nowhere is this adage more appropriate than in selecting investments from a 401k menu. Plan sponsors might feel their job is done once a robust plan menu is provided to employees, but it's really only the beginning. One of the most overlooked plan menu perils is what's known as "over-diversification." Source: Fiduciarynews.com

Full Article Available Here --->> <http://fiduciarynews.com/2019/09/the-hidden-danger-of-over-diversification-why-401k-plan-sponsors-must-demand-fiduciary-advisers-teach-employees-when-too-much-is-too-much/>

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### WHY 401K TARGET-DATE FUNDS ARE "STRUGGLING"

Target-date funds may be the go-to allocation for most 401k sponsors and participants, but there's one area they can't seem to figure out: fee compression. It's an ongoing, and increasing, problem fueled by a concentration of assets in a handful of managers and a rapid rise in inflows. Source: 401kspecialistmag.com

Full Article Available Here --->> <https://401kspecialistmag.com/why-401k-target-date-funds-are-struggling/>

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### WHAT ARE RETIREMENT ADVISORS RECOMMENDING?

NAPA recently asked a large group of retirement plan advisors which, of a wide range of services, they had proposed to their clients or prospects in the past year. They limited their choices to five to see which were the most popular, but automatic enrollment was the most recommended: 80% of this year's respondents had touted that feature, compared with 84% in last year's group. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/what-are-retirement-advisors-recommending>

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### THE ADVANTAGES AND DISADVANTAGES OF HIRING A 3(38) 401K RETIREMENT PLAN ADVISER

For many, high on the list of delegating is the administration of the company's 401k plan. There are two common choices when it comes to delegating specifically the investment functions of the 401k plan. While in the past a popular choice has been to hire an adviser as a co-fiduciary (i.e., a 3(21) adviser), there may now be a trend towards hiring a different type of provider: an adviser that takes on nearly all the fiduciary liability associated with the investment process. Source: Forbes.com

Full Article Available Here --->> <https://www.forbes.com/sites/chrisarosa/2019/09/13/the-advantages-and-disadvantages-of-hiring-a-338-401k-retirement-plan-adviser/#183feea82c40>

## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### THE REAL FIDUCIARY THREAT FOR SMALLER 401K PLANS IS A GOVERNMENT AUDIT

There have been probably more men who landed on the moon than small- or medium-sized 401k plan who have been sued in a class action claim. Good fiduciary practices are necessary, but the real fear that they should be talking about and that you're more than likely ill-prepared for is an IRS or DOL audit. This article is all about the risk of a government audit and what trouble it may get you into. Source: Jdsupra.com

Full Article Available Here --->> <https://www.jdsupra.com/legalnews/the-real-fiduciary-threat-for-smaller-40-92200/>

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### FOUR PITFALLS TO AVOID WHEN REPLACING 401K PLAN INVESTMENTS

With more than \$5 trillion held in 401k plans, watching over retirement savings is no small task for plan sponsors and advisors. Maintaining these plans involves several duties: choosing and changing investments, communicating these changes to employees, and more. Additionally, this fiduciary responsibility includes acting in the best interest of plan participants. Because the tasks of monitoring and making changes to a plan's investment menu can be complicated, it's important for 401k plan sponsors and advisors to do their best to avoid a few common pitfalls. Source: Morningstar.com

Full Article Available Here --->> <https://www.morningstar.com/blog/2019/09/04/401k-plan-sponsors.html>

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### 401K FIDUCIARY RESPONSIBILITY AND MUTUAL FUND FEES

Fiduciaries often are aware of administrative and disclosure requirements, but sometimes become negligent when choosing funds with reasonable fees. Even those who are aware can inadvertently fail to select the best mutual fund. While 401k fees have decreased in recent years because of litigation and various DOL regulations, mutual funds can still charge indirect fees that DOL would deem unreasonable. Unfortunately, fiduciaries with little knowledge regarding fee structures may authorize a plan to charge fees, decreasing participant balances. Source: Forbes.com

Full Article Available Here --->> <https://www.forbes.com/sites/brianmenickella/2019/09/05/fiduciary-responsibility-and-mutual-fund-fees/#7ce4c4df374e>

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### FIVE THINGS PLAN SPONSORS (STILL) SCREW UP

Plan sponsors have a lot of responsibilities and often rely on others to help them keep their plan operating in accordance with the law. And yet, even with the most attentive plan sponsors, mistakes (still) occur. Here's a list of some of the most common missteps. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/5-things-plan-sponsors-still-screw>

## INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

### EMPLOYERS EXPANDING BENEFITS STRATEGY TO MEET EMPLOYEE NEEDS

Faced with rising costs and continuing struggles to engage employees with their benefits, U.S. employers are expanding their overall corporate benefit strategy to better meet employee needs, according to a new survey by Willis Towers Watson. Aligning benefit offerings to the unique needs of different employee cohorts is one-way employers are striving to better engage employees with their benefits. Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/employers-expanding-benefits-strategy-meet-employee-needs/>

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### RETIREMENT ASSETS TOTAL \$29.8 TRILLION IN SECOND QUARTER 2019

Total US retirement assets were \$29.8 trillion as of June 30, 2019, up 2.3 percent from March 31, 2019. Retirement assets accounted for 33 percent of all household financial assets in the United States at the end of June 2019. Source: Ici.org

Full Article Available Here --->> [https://www.ici.org/research/stats/retirement/ret\\_19\\_q2](https://www.ici.org/research/stats/retirement/ret_19_q2)

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### UNDERSTANDING BEHAVIORAL BIASES CAN HELP PLAN SPONSORS WITH INVESTING COMMUNICATIONS

Advisers say being easily influenced by recent news is the No. 1 investor misstep, a survey found. Understanding these behavioral biases can help retirement plan sponsors with communications to retirement plan participants. Recognizing behavioral biases is an important first step to keep emotions in check and avoid missteps that may have a negative impact on long-term financial goals. Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/understanding-behavior-biases-can-help-plan-sponsors-investing-communications/>

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### FOUR WAYS TO IMPROVE 403B PLANS

NTSA highlights opportunities that can help increase participation and savings for the nation's public education professionals in a new white paper that expands on the positive impact of four specific plan design features. Source: 401khelpcenter.com

Full Article Available Here --->> [http://www.401khelpcenter.com/401k\\_press/pr\\_ntsa\\_090519.html](http://www.401khelpcenter.com/401k_press/pr_ntsa_090519.html)

## COMPLIANCE AND REGULATORY RELATED

### HOW REG BI CHANGES THE FIDUCIARY LANDSCAPE FOR THE 401K PLAN SPONSOR

Over the summer, the SEC finalized Regulation Best Interest. In a June 5, 2019 SEC Press Release, issued by the SEC, Jay Clayton, SEC Chairman, stated, "This rulemaking package will bring the legal requirements and mandated disclosures for broker-dealers and investment advisers in line with reasonable investor expectations, while simultaneously preserving retail investors' access to a range of products and services at a reasonable cost." It is clear Reg BI will impact investors, the industry, and, although many might not expect it, retirement plan sponsors. Source: Fiduciarynews.com

Full Article Available Here --->> <http://fiduciarynews.com/2019/09/how-reg-bi-changes-the-fiduciary-landscape-for-the-401k-plan-sponsor/>

### NINTH CIRCUIT GREENLIGHTS INDIVIDUAL ARBITRATION PROVISIONS IN ERISA PLAN DOCUMENTS

In recent years, the proliferation of ERISA class action lawsuits has commanded the attention of retirement plan sponsors and fiduciaries. These lawsuits have raised a wide range of claims against plan fiduciaries. Plan sponsors and fiduciaries mindful of the need to minimize risk in this area may wish to consider the Ninth Circuit's recent decision in *Dorman v. Charles Schwab Corp.* affirming that provisions in plan documents requiring individual arbitration of ERISA claims can be enforceable. Source: Groom.com

Full Article Available Here --->> <https://www.groom.com/resources/ninth-circuit-greenlights-individual-arbitration-provisions-in-erisa-plan-documents/>

### BEST PRACTICES FOR PLAN SPONSORS - LESSONS LEARNED FROM LITIGATION

Plan sponsors should be aware of the latest trends in fiduciary litigation to help manage the risk of being sued and, if sued, the risk of being liable. This article -- about the ABB settlement agreement -- is another example of the importance of using appropriate share classes and the monitoring of compensation of service providers . . . and more. Source: Fredreish.com

Full Article Available Here --->> <http://fredreish.com/best-practices-for-plan-sponsors-11/>

### SUPREME COURT AMICUS BRIEF SHOWS HOW HIGH THE STAKES REALLY ARE FOR THE FUTURE OF ERISA'S "ACTUAL KNOWLEDGE" REQUIREMENT

Several trade associations filed the amicus brief because the Intel case has the potential to create a paradigm shift for ERISA litigants. Plan fiduciaries routinely employ the statute of limitations "actual knowledge" defense to defeat breach of fiduciary claims that are not brought within three years of such knowledge; therefore, to extend or limit the availability of the defense could have significant implications for the future viability of tardy ERISA suits. Source: Wagnerlawgroup.com

Full Article Available Here --->> <https://www.wagnerlawgroup.com/resources/erisa/much-at-stake-with-erisa-statute-of-limitations-issue-before-the-supreme-court>

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