THE STRATEGIC ALLIANCE GROUP OF RAYMOND JAMES®

JULY 2023

FIDUCIARY INSIGHTS UPDATE

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.

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GENERAL ITEMS

Gen X on Shaky Ground for Retirement, With 40% Having Saved Nothing

Gen Xers, who were the first generation strongly affected by the shift from traditional pensions to DC plans, have far too little saved on average in 401ks and individual retirement accounts, according to a report from the National Institute on Retirement Security. In many cases, those workers were thrown into the new system well before advances such as automatic enrollment, diversified default investment options, and annual contribution escalations made 401ks more user-friendly

Read the full article at *InvestmentNews.*

Auto-Portability Solutions Show Signs of Growth

Retirement savings leakage and lost 401k accounts have become a major loss for employees when moving from one job to the next, and as a result, new auto-portability solutions are gaining steam. Principal Financial Group announced it has joined the Portability Services Network, and Millennium Trust has begun testing its open portability network.Retirement savings leakage and lost 401k accounts have become a major loss for employees when moving from one job to the next, and as a result, new auto-portability solutions are gaining steam. Principal Financial Group announced it has joined the Portability Services Network, and Millennium Trust has begun testing its open portability network.

Read the full article at *PlanSponsor.*

Boosting Participant Engagement

By implementing automatic features, using targeted communications, and speaking to participants on a personal level, plan sponsors will be more successful in driving engagement, according to experts.

Read the full article at *PlanSponsor.*

401k Lawsuit Over ESG Is a Sign of the Times

The first lawsuit over ESG in a 401k has officially been filed. A plaintiff alleges that ESG led to lower returns, but the case brought against American Airlines' defined-contribution plan might be more political than substantive.

Read the full article at *InvestmentNews.*

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

Rollovers, Regulation, Litigation: Where Are We and What's Next?

The recent decisions on the DOL's interpretation of fiduciary status are significant but limited in scope. Fiduciary status for plan-to-IRA rollover recommendations, standing alone, has been vacated. But other important transactions, such as IRA transfers, have not. In this article, Fred Reish discusses what is going on with the DOL's fiduciary rule.

Read the full article at *Fred Reish.*

State IRA Programs Improve Odds That Firms Set Up a 401k

The programs in California, Oregon, and Illinois have increased by three percent the likelihood that the residents in these states work for a firm that offers its retirement plan and by 33 percent the probability individuals are saving in those employer plans.

Read the full article at *Center for Retirement Research at Boston College.*

DOL Provides Cybersecurity Tips For Plan Sponsors, Participants

If it wasn't already clear to plan sponsors and retirement plan advisers, Employee Benefits and Security Administration head Lisa Gomez reiterated this week the importance of cybersecurity and increased protection for participants in a new post providing eight areas for guidance. In her blog post on the Department of Labor website, Gomez laid out various tips plan sponsors and advisers can convey to participants for keeping their information safe.

Read the full article at *PlanSponsor.*

Fidelity Bonds v. Fiduciary Insurance -- Do You Know the Difference?

ERISA fidelity bonds and fiduciary liability insurance are not the same. Both serve to mitigate risk for fiduciaries and are critical aspects of an employee benefits plan. The difference between the two lies in the risks that they cover. Are you looking to protect your employees from criminal acts or the company from legal liability?

Read the full article at *Graydon.*

INSIGHTS; STUDIES, RESEARCH AND WHITE PAPERS

Employees More Likely to Stay if Offered a Retirement Plan

According to a new study, 71% of employed Americans say they're more likely to stay with their current employer if they're offered an employer-sponsored retirement savings plan. The number, from Voya Financial's second-quarter retirement report, is up significantly from October 2022, when just 60% of employees said the same.

Read the full article at *401kSpecialist.*

The Clash Over ESG in Retirement Plans

At this time, the 2022 ESG Rule remains in effect, which means ERISA plan fiduciaries may continue to consider any relevant factors (including ESG factors) in evaluating and selecting an investment. While it is unlikely that H.R. 4237 will advance out of committee, when considered along with the two lawsuits against the DOL that are still ongoing, it is clear that the 2022 ESG Rule will likely continue to be subject of strong opposition for the foreseeable future.

Read the full article at *Ropes & Gray.*

What the Verdict in Yale Tells Us About My Time-Tested Way to Reduce Excessive Fee Litigation Against Plan Sponsors

The author writes, I was "vindicated, when Yale University prevailed at trial last week on one of the most significant ERISA excessive fee class actions ever filed -- a statement I do not believe is hyperbole when one considers the *plaintiffs*' counsel, the bellwether nature of the action in relation to all of the other similar actions filed against prominent universities, the brand name of the defendant, the circuit and, yes as well, the publicity. It also should not be overlooked that this was not just a trial, but a jury trial, with the jury returning a verdict in favor of the plan sponsor rather than in favor of the university's employees, despite the concerns voiced in some corners of the ERISA bar over having a jury, rather than a judge, decide the case."

Read the full article at *Boston ERISA Law.*

Stepping Into the Future: Employers, Workers, and the Multigenerational Workforce

This 120-page report, a collaboration between the nonprofit Transamerica Institute and Transamerica Center for Retirement Studies, examines employers' workforce management-related concerns and how they are enhancing their business practices and benefit offerings to adapt to new post-pandemic realities. Underscoring employers' vital societal role, the report includes detailed findings about their flexible work arrangements, health and welfare benefits, workplace wellness programs, retirement benefits, and best practices for the multigenerational workforce. The report offers recommendations for employers and workers.

Read the full article at *Transamerica Institute.*

COMPLIANCE AND REGULATORY RELATED

IRS Notice 2023-43 Continues the Expansion of EPCRS

Section 305 of SECURE 2.0 expands the Employee Plans Compliance Resolution System outlined in Rev. Proc. 2021-30 to increase opportunities for self-correction of plan errors. Section 305 requires EPCRS to be updated to conform to the statute no later than 2 years after its enactment. IRS Notice 2023-43 provides interim guidance to plan sponsors until Rev. Proc. 2021-30 is updated.

Read the full article at *Cohen & Buckmann, P.C.*

Judge Rejects Proposed Class Certification in Remanded TIAA Retirement Plan Case

U.S. District Judge J. Paul Oetken denied a class certification claim by plaintiffs seeking to represent about 8,000 participants in Washington University in St. Louis retirement plans managed by recordkeeper TIAA in a June 27 opinion in U.S. District Court for the Southern District of New York. The district court found no "single policy" affecting all putative class participants from Washington University in St. Louis.

Read the full article at *PlanAdviser.*

Just Catching Up? Payroll Challenges Plague Roth Catch-Up Contribution Implementation

The SECURE 2.0 Act requires participants who earned more than $145,000 in FICA wages in the prior year from their current employer to make all catch-up contributions on a Roth basis beginning in 2024. This new rule has quickly become one of the most talked about changes included in the act, as employers grapple with not only questions regarding how the rule should be applied but also the significant implementation challenges posed by the change.

Read the full article at *McDermott Will & Emery.*

Establishing Practices and Procedures to Support Self-Correction of Operational Failures

The self-correction of retirement plan operational failures under IRS correction principles has been conditioned upon a plan sponsor's establishment of compliance practices and procedures since the creation of the Employee Plans Compliance Resolution System 25 years ago. This condition was articulated in IRS Revenue Procedure 98-22, which refined and consolidated several prior correction programs to create the modern day EPCRS, and it remains a core requirement in the most recent iteration of the program.

Read the full article at *Verrill Law.*