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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.

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GENERAL ITEMS

[CITs to Overtake Mutual Funds in Battle for Target-Date Assets](#)

Lower-cost collective investment trusts continue to eat away at mutual funds' hold on target-date funds and are expected to be the primary target-date vehicle in 2023, a new report suggests.

Read the full article at [NAPA](#).

[Efforts to Keep Workers From Cashing Out Their 401ks Gain Steam](#)

A provision in President Biden's new legislation aims to keep workers from cashing out their 401k when they move from one job to another, building on a similar effort launched last year by the private sector.

Read the full article at [Yahoo!Finance](#).

[Retirement Savers Held Course in 2022 Despite 401k Declines](#)

With equity and bond markets down in 2022, most workplace retirement plan savers saw double-digit declines in their portfolios. But according to new data from the Vanguard Group and Bank of America, most participants stayed the course with their retirement savings.

Read the full article at [Planadviser](#).

[State-Sponsored Plans: A Look at Participation](#)

Interest in participation in state-sponsored plans is not universal. Laurie Rowley, Co-Founder and President of Icon, a universal retirement plan, said that employees are not enthusiastic about state-run retirement plans. "Our study data shows that 70% of employees don't want to save in a state-run plan," she says.

Read the full article at [NTSA](#).

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

[DOL Backs Plaintiffs in Fiduciary Breach Appeal](#)

The Labor Department has weighed in on an excessive fee case on behalf of the participant plaintiffs asserting that the district court made a bad call on the burden of proof. The case under appeal involves Home Depot

Read the full article at [NAPA](#).

[How SECURE 2.0 Impacts 403b Plans, MEPs and ESOPs](#)

The reach of SECURE 2.0 is extensive. Its general provisions affect all types of retirement plans, but SECURE 2.0 also has some provisions targeted at plans subject to their own set of statutory and regulatory requirements. Sponsors of 403b plans, ESOPs, and employers participating in or considering joining multiple employer plans should keep these changes on their radar.

Read the full article at [Cohen & Buckmann, P.C.](#)

[Florida Court Strikes Down DOL Guidance Making Rollover Advice Fiduciary](#)

A federal court in Tampa, Florida, on Monday, struck down DOL guidance that made a rollover recommendation for fiduciary investment advice. The American Securities Association had filed suit alleging that a DOL document improperly claimed that a one-time recommendation to transfer assets from a company plan to an IRA triggered fiduciary duty.

Read the full article at [InvestmentNews](#).

[Who's Liable When a Plan Participant Is a Victim of Identity Theft](#)

Because of the scarcity of case law and regulatory guidance on the issues, any case that analyzes the liability of ERISA plan sponsors and service providers following a cybersecurity incident and/or identity theft will be heavily scrutinized. A recent opinion in the Southern District of New York has widened the scope of liability for potential ERISA defendants in actions seeking to recover fraudulent distributions from ERISA-covered plans. It has also made new legal determinations that, if followed by other courts, will have an impact on future suits by plan participants seeking to recover lost retirement plan money.

Read the full article at [The Wagner Law Group](#).

INSIGHTS; STUDIES, RESEARCH AND WHITE PAPERS

Second Court Rejects DOL's Interpretation of ERISA's Fiduciary Rule

Two recent federal courts have rejected a key interpretation by the DOL of its own fiduciary rules under ERISA. These cases, and particularly the ASA case, which was decided earlier this week, could potentially act as a major impediment to the DOL's pursuit of a critical policy initiative relating to the regulation of rollover solicitations.

Read the full article at [The Wagner Law Group](#).

Road-Testing SECURE 2.0's Auto-enrollment Mandate for New DC Plans

Some defined contribution plans will have to gear up for mandatory automatic enrollment under the SECURE 2.0 Act of 2022. This article examines SECURE 2.0's auto-enrollment mandate and its numerous exceptions and provides a road map of implementation questions ripe for agency guidance.

Read the full article at [Mercer](#).

DOL's ESG Rule Attacked on Multiple Fronts

In recent weeks, opponents of the DOL's ESG rule have brought new challenges in the courts and Congress. Most of the provisions of the DOL's final rule addressing fiduciary duties for ERISA retirement plans concerning investment selection and consideration of ESG factors as well as exercises of shareholder rights, which the agency issued last fall, became effective as of January 30, 2023.

Read the full article at [Ropes&Gray](#).

Ten Mandatory SECURE 2.0 Changes for 401k Plans

The SECURE 2.0 Act of 2022 contains over 90 provisions affecting retirement plans and IRAs, but only a handful are required changes for 401k plans. This post lists those changes and indicates when the provisions go into effect. Unless otherwise noted, 401k plans will need to be amended to reflect mandatory SECURE 2.0 changes by the end of their 2025 plan year. Some of the changes listed here, such as the paper disclosure requirement, may not require a plan amendment

Read the full article at [E is for ERISA](#).

COMPLIANCE AND REGULATORY RELATED

DOL: More Time to Comment on Fiduciary Correction Program

The DOL has extended the public comment period for a program that would allow fiduciaries to self-correct for retirement plan contributions that are not invested, rather than going to the DOL first. Source: Planadviser.com.

Read the full article at [Planadviser.com](#).

A Look at the IRS's New Employee Plans Audit Pilot Program

On June 3, 2022, the IRS announced a new 90-day pre-examination compliance pilot program. The program provides an avenue to streamline a retirement plan audit. This streamlined approach requires that plan sponsors address the specific audit issue raised in the IRS letter, as well as provide documentation that supports overall compliance. Importantly, failure to respond to the IRS letter will result in the IRS contacting the plan sponsor to schedule an exam. This article discusses facets of the program in a Q&A format.

Read the full article at [Groom](#).

SECURE 2.0: Emergencies, Hardships, and Disasters

Among the many changes within SECURE 2.0 is increased flexibility for participants to access certain retirement plan accounts when faced with qualifying emergencies, hardships, and disasters.

Read the full article at [Jackson Lewis](#).

IRS Updates Operational Compliance List for 403b Requirements

The IRS has updated the operational compliance list relevant to 403b requirements effective during the calendar year. The update adds a discussion of provisions that became effective in 2022. The IRS intends the list to help plan sponsors and practitioners achieve operational compliance by identifying changes in qualification requirements.

Read the full article at [NTSA](#).

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