

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

- Five New Year's Resolutions for 401k Plan Fiduciaries
- Companies Face Pressure to Offer ESG Options in Retirement Plans
- What to Keep on Your Radar and Some Predictions for 2023
- After Committee Change, SECURE 2.0 Does Not Allow CITs in 403bs

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- IRS Proposes Making Remote Notarization Permanent for Retirement Plan Elections & Consents
- How SECURE 2.0 Will Affect New Plan Creation
- DOL's Final Rule Gives ERISA Fiduciaries Green Light to Consider ESG Factors When Selecting Investments
- What's Next with the Evolution of State-Sponsored Retirement Plans?

INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- Secure 2.0 Highlights for Retirement Plan Sponsors
- \$10 Billion 401k Smacked With Excessive Fee Suit
- Among Advisers' Top Concerns Is Another 401k Drop in 2023
- Fiduciary Concerns Continue to Stymie Annuities in 401ks

COMPLIANCE AND REGULATORY RELATED

- Court Dismisses 403b ERISA Claim Against Employer, but Not the Plan's Adviser
- ERISA Lawsuit Filed Against Ventura Foods
- Another TDF Suite Draws Excessive Fee Suit
- Responding to a Cyberterrorist Attack

GENERAL ITEMS

FIVE NEW YEAR'S RESOLUTIONS FOR 401K PLAN FIDUCIARIES

This is the time of year when resolutions for the cessation of bad behaviors and the beginning of better ones are in vogue. Here are three for plan fiduciaries for 2023. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/5-new-year%E2%80%99s-resolutions-401k-plan-fiduciaries>

COMPANIES FACE PRESSURE TO OFFER ESG OPTIONS IN RETIREMENT PLANS

Most corporate retirement plans are awash in fossil-fuel investments. But that could start to change this year as a new U.S. rule comes online and employee pressure builds for more climate-friendly options. But, it may take more than that to get large employers to change their offerings. Source: Investmentnews.com

Full Article Available Here --->> <https://www.investmentnews.com/companies-face-pressure-to-offer-esg-options-in-retirement-plans-232677>

WHAT TO KEEP ON YOUR RADAR AND SOME PREDICTIONS FOR 2023

The end of one year and the beginning of the next is traditionally a time to take stock of new developments and compliance issues. Though nobody has a crystal ball, it's also a good time to assess trends and changes likely to occur in the future. Here is a list of items for compliance calendars and some subjective predictions of what to watch for in 2023. Source: Cohenbuckmann.com

Full Article Available Here --->> <https://cohenbuckmann.com/insights/2023/1/2/what-to-keep-on-your-radar-and-some-predictions-for2023>

AFTER COMMITTEE CHANGE, SECURE 2.0 DOES NOT ALLOW CITS IN 403BS

Disregard any coverage to the contrary: SECURE 2.0, as passed, does not permit 403b plans to invest in collective investment trusts. House Financial Services had "consumer protections" concerns. The required amendments to securities laws did not make it into the final SECURE 2.0 Act. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/committee-change-secure-2-0-not-allow-cits-403bs/>

FIDUCIARY AND PLAN GOVERNANCE MATERIAL

IRS PROPOSES MAKING REMOTE NOTARIZATION PERMANENT FOR RETIREMENT PLAN ELECTIONS & CONSENTS

The proposed amendments would provide an alternative to in-person witnessing of spousal consents required to be witnessed by a notary public or a plan representative, and clarifies that certain special rules for the use of an electronic medium for participant elections also apply to spousal consents. This article provides background and commentary. Source: Groom.com

Full Article Available Here --->> <https://www.groom.com/resources/irs-proposes-making-remote-notarization-permanent-for-retirement-plan-elections-consents/>

HOW SECURE 2.0 WILL AFFECT NEW PLAN CREATION

Retirement plan advisers specializing in new plan creation will have busy times ahead. Many of the reforms in the SECURE 2.0 package are focused on new plans, with a goal both of spurring more employers to offer retirement benefits, as well as boosting participation among American workers. The two main provisions affecting new plan creation are required automatic features and more generous tax credits. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/secure-2-0-will-affect-new-plan-creation/>

DOL'S FINAL RULE GIVES ERISA FIDUCIARIES GREEN LIGHT TO CONSIDER ESG FACTORS WHEN SELECTING INVESTMENTS

The 2022 final rule removes the emphasis on the pecuniary factors in selecting ESG investments and is intended to provide clarity on how ERISA's fiduciary duties of prudence and loyalty apply to selecting investments and investment courses of action and exercising shareholder rights such as proxy voting. This is a summary of the key changes in the 2022 final rule. Source: Huntonlaborblog.com

Full Article Available Here --->> <https://www.huntonlaborblog.com/2023/01/articles/employee-benefits/dols-final-rule-gives-erisa-fiduciaries-green-light-to-consider-esg-factors-when-selecting-investments/>

WHAT'S NEXT WITH THE EVOLUTION OF STATE-SPONSORED RETIREMENT PLANS?

To address the ongoing retirement savings gap, all but three states have initiated or passed legislation to set up a state-sponsored private-sector retirement savings plan, and while early implementation efforts so far have been successful, a new report suggests there's room for improvement. Source: Napa-net.org

Full Article Available Here --->> <https://www.napa-net.org/news-info/daily-news/what%E2%80%99s-next-evolution-state-sponsored-retirement-plans>



INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

SECURE 2.0 HIGHLIGHTS FOR RETIREMENT PLAN SPONSORS

While most of the provisions included in SECURE 2.0 have been under consideration in various forms, retirement plan sponsors have been awaiting final passage to understand the specific changes that will impact their employees and retirees. This article focuses on the provisions that will be of most interest to retirement plan sponsors, including public and private employers, public pension systems, university systems, and church plans. Source: Icemiller.com

Full Article Available Here ---> <https://www.icemiller.com/ice-on-fire-insights/publications/secure-2-0-highlights-for-retirement-plan-sponsors/>

\$10 BILLION 401K SMACKED WITH EXCESSIVE FEE SUIT

Yet another multi-billion-dollar plan has been sued for recordkeeping and managed account services that the plaintiffs' claim was twice what could have been paid for those services. The target this time is the U.S. Bank 401k Savings Plan. Source: Napa-net.org

Full Article Available Here ---> <https://www.napa-net.org/news-info/daily-news/10-billion-401k-smacked-excessive-fee-suit>

AMONG ADVISERS' TOP CONCERNS IS ANOTHER 401K DROP IN 2023

A "state of the industry" report from recordkeeper Ubiquity finds financial advisers fear another year of poor investment returns that would hit client 401ks as well as asset-based management fees. Source: Planadviser.com

Full Article Available Here ---> <https://www.planadviser.com/among-advisers-top-concerns-another-401k-drop-2023/>

FIDUCIARY CONCERNS CONTINUE TO STYMIE ANNUITIES IN 401KS

Employers have embraced 401k plan benefits changes for 2023, but are still shying away from annuities, according to Alight. Survey data showed that among employers, 47% cite fiduciary concerns as a major reason for not adding annuities. The figure has remained stagnant since the 2018 report, Alight found. Source: Planadviser.com

Full Article Available Here ---> <https://www.planadviser.com/fiduciary-concerns-continue-stymie-annuities-401ks/>

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COMPLIANCE AND REGULATORY RELATED

COURT DISMISSES 403B ERISA CLAIM AGAINST EMPLOYER, BUT NOT THE PLAN'S ADVISER

The U.S. District Court for the Northern District of Texas filed a partial order on December 29, 2022, ruling on summary judgment motions from both defendants. District Judge Brantley Starr ruled that the plaintiffs have standing to bring the suit, but Legacy Counseling Center is exempt from the ERISA requirements in this case. Peveto Financial Group, on the other hand, cannot be held liable for IRS corrective damages, yet can still be held liable for not permitting wider plan participation if they are found to be a fiduciary. Source: Planadviser.com

Full Article Available Here ---> <https://www.planadviser.com/court-dismisses-403b-erisa-claim-employer-not-plans-adviser/>

ERISA LAWSUIT FILED AGAINST VENTURA FOODS

An ERISA class action suit was brought against Ventura Foods LLC, a Brea, California-based food production and processing firm, in the U.S. District Court for the Central District of California by a current Ventura employee. The lawsuit, filed on December 21, 2022, alleges that Ventura overpaid its recordkeeper by allowing variable indirect fees to grow unreasonably high. Source: Planadviser.com

Full Article Available Here ---> <https://www.planadviser.com/erisa-lawsuit-filed-ventura-foods/>

ANOTHER TDF SUITE DRAWS EXCESSIVE FEE SUIT

Plan fiduciaries' decision to retain an actively managed target-date fund suite has drawn another excessive fee suit. The suit, filed against the \$5.6 billion 401k plan of Quest Diagnostics Inc., claims that the "defendant's failure to disclose the options for the lowest-cost share class available caused plan participants to pay excessive fees when they chose the higher-cost share class for the same funds." Source: Napa-net.org

Full Article Available Here ---> <https://www.napa-net.org/news-info/daily-news/another-tdf-suite-draws-excessive-fee-suit>

RESPONDING TO A CYBERTERRORIST ATTACK

It is a growing club that no one wants to join: the club of companies that became victims of cyberterrorism. Whether the release of credit card data from the infamous Target inside job, the gas pipeline shutdown at Colonial Pipeline, or the more recent CNA Financial ransom attack, it is often not a question of "if" a company will be attacked, but "when." Recently, a major software provider to third-party administrators joined this horrible club. The question addressed here is "What should we do about this issue?" Source: Ntsa-net.org

Full Article Available Here ---> <https://www.nts-net.org/industry-intel/marketbeat/responding-cyberterrorist-attack>