

# FIDUCIARY INSIGHTS UPDATE

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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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**ROBERT A. SHY, AWMA®, CPFA**  
VICE PRESIDENT, WEALTH MANAGEMENT  
1100 RIDGEWAY LOOP RD., STE. 600  
MEMPHIS TN 38120

## GENERAL ITEMS

### [Navigating Generational Shifts in the Workplace](#)

The presence of five generations in a single workforce is shaking things up for business owners. Here are some steps for fostering collaboration to drive your business forward.

**Read the full article at [Raymond James](#).**

### [Why Almost Half the "Sandwich Generation" is Delaying Retirement](#)

Almost half (47%) of respondents from what is known as the "Sandwich Generation" indicated that they are delaying their retirement plans to provide financial assistance to their elderly extended family members or grown-up children, with a similar 46% using their retirement savings to cover these costs, according to a new survey from Athene.

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

### [One Step Forward, One Step Back for Use of Crypto in Retirement Accounts](#)

It was one step forward, one step back this week toward a world in which cryptocurrency investments start popping up widely in retirement accounts. ForUsAll, a firm that helps retirement plans offer cryptocurrency investments to their participants, suffered a setback when the U.S. Court of Appeals for the District of Columbia dismissed the firm's lawsuit against the DOL over its March 2022 crypto guidance.

**Read the full article at [Investment News](#).**

### [401k Loan Activity Among Younger Workers Rises With Age](#)

The study by EBRI and ICI found that 29% of younger 401k participants had an outstanding loan at some point in the five years analyzed, compared with 18% at year-end 2016. As younger workers age and accumulate larger account balances, their likelihood of taking a loan from their 401k plan grows.

**Read the full article at [401k Specialist](#).**

## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### [A Condensed History of the DOL's Fiduciary Rule](#)

ERISA is less than one year away from turning 50. For nearly the entirety of those 50 years, it has defined fiduciary investment advice using a five-part test. Attempts in 2010 and 2016 to modify the 1975 regulation containing the definition were unsuccessful. Recently, the DOL sent a new proposed regulation to the Office of Management and Budget. Here is a condensed history of the DOL's Fiduciary Rule

**Read the full article at [PLANSPONSOR](#).**

### [Eastern District of Pennsylvania Rules in Favor of ERISA Defendants After Rare Bench Trial](#)

Lawsuits bringing fiduciary claims under ERISA continue to surge, but trials remain a rarity. Against that backdrop, Nunez et al., v. B. Braun Medical Inc. et al. stands apart. The 63,000-member class action lawsuit alleged that B. Braun Medical Inc. and its retirement committee violated ERISA's fiduciary duties concerning the monitoring and selection of the retirement plan's investments and recordkeeping fees. After a three-day bench trial, the Eastern District of Pennsylvania found in favor of B. Braun on all counts.

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

### [Offer Your Employees a Competitive Benefits Package](#)

A competitive benefits package starts with understanding the needs of your employees and building a package to meet those needs is key. Here are some simple steps to get the ball rolling.

**Read the full article at [Raymond James](#).**

### [How Plan Sponsors Are Working to Close the Gender Savings Gap](#)

With women still lagging in retirement savings, plan sponsors are making changes across retirement, health care, and financial wellness to ensure access is as equitable as possible.

**Read the full article at [PLANSPONSOR](#).**

## INSIGHTS; STUDIES, RESEARCH AND WHITE PAPERS

### [How Financial Factors Outside of a 401k Plan Can Impact Retirement Readiness](#)

What happens to households with spending "spikes" that lack the income and cash reserves to support spending volatility? This Issue Brief provides a unique analysis of 401k plan participants' finances by linking 401k plan data with consumer banking data to better understand how 401k participants behave when faced with irregular expenses. Changes in credit card utilization, 401k plan contributions, and/or 401k plan loan use were examined after these participants experienced a significant spending spike.

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

### [Tenth Circuit Adopts "Meaningful Benchmark" Pleading Standard in Dismissing Challenges to 401k Plan Fees](#)

In a case of first impression in the Tenth Circuit, the Court recently joined the chorus of circuit courts in holding that a 401k plan participant alleging excessive investment management or recordkeeping fees must assert a "meaningful benchmark" to survive a motion to dismiss. In addition to rejecting commonly pleaded "benchmarks" because they were not meaningful, the Court's ruling is of particular significance because, unlike some other courts, it dismissed the participants' "share-class claim" ruling on a motion to dismiss that their allegation that cheaper share classes of the same mutual fund were available to the plan was demonstrably false.

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

### [SECURE 2.0: IRS Issues 2023 Required Minimum Distribution Relief](#)

The IRS issued Notice 2023-54 that provides relief from Code Sec. 401(a)(9) required minimum distribution compliance for certain 2023 lifetime and post-death distributions to participants and beneficiaries under individual retirement accounts and employer plans. The guidance largely tracks similar guidance that was previously under Notice 2020-51 and Notice 2022-53.

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

### [DCIIA Provides QDIA Selection Advice to Plan Sponsors](#)

More defined contribution plan sponsors are, of late, looking to not only help participants save for retirement but also continue saving through retirement. To meet this additional objective, qualified default investment alternatives are also evolving. The Defined Contribution Institutional Investment Association recently published an "action kit" for plan sponsors, as well as service providers and advisers, to follow when selecting the best QDIA for their plan.

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

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## COMPLIANCE AND REGULATORY RELATED

### [IRS Grants Relief from Secure 2.0 Roth Catch-Up Provisions](#)

On August 25, 2023, the IRS issued Notice 2023-62, which delays the implementation of a key, and administratively troublesome, SECURE 2.0 Act provision by two years, until tax years beginning after December 31, 2025. Here is the background and review.

Read the full article at [Compliance Dashboard](#).

### [New Fiduciary Proposal Could Alter Participant-to-Adviser Relationships](#)

The DOL sent the Office of Management and Budget a rule proposal the DOL says is designed to "more appropriately define when persons who render investment advice for a fee to employee benefit plans and IRAs are fiduciaries," with a focus on "the ways advisers are compensated that can subject advisers to harmful conflicts of interest." The proposal is a third take on a fiduciary rule finalized in 2016.

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

### [IRS Delays Roth Catch-Up Contribution Change to DC Plans](#)

One of the changes made by the SECURE 2.0 Act requires that catch-up contributions made by employees with FICA compensation from an employer sponsoring a defined contribution plan of at least \$145,000 in the prior calendar year, as indexed, be made as after-tax Roth catch-up contributions. This provision, which was supposed to become effective January 1, 2024, is problematic because the IRS has issued no guidance, and many service providers have stated they will be unable to update their systems by the end of the year.

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

### [May Climate Funds Be Used in DC Plan Menus?](#)

Yes, as long as they don't come at the cost of participants' investment outcomes, according to Wagner Law Group. The Wagner Law Group published a legal opinion letter outlining how and when fiduciaries for defined contribution plans can consider "climate-aligned" funds in investment menus. The letter was written on behalf of Impact Experience, a nonprofit and advocate for sustainable investing.

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