

# IFS | Fiduciary Insights Update

## Retirement Plan Monthly Newsletter

### CONTACT INFORMATION

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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 Saver's Credit: A Tax Credit to Promote Retirement Security
- 401k Investors Display Poise as the Market Struggles
- 401k Plan Investments in Cryptocurrencies
- Can Employers, Wary of 401k Costs, Find the Right Retirement Plan

### FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- Got a Retirement Plan? Race Plays a Role
- Fiduciary Vulnerability Takes a Hit
- ERISA Advisory Council Confronts Retirement Savings Gaps
- Are Brokerage Windows an Effective Way of Limiting Fiduciary Risk After Hughes v. Northwestern?

### INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- 401k Plan Asset Allocation, Account Balances, and Loan Activity in 2019
- 2022 RCS Fact Sheet: Retirement Confidence
- 2022 RCS Fact Sheet: Expectations About Retirement
- Insights From the First Twenty-Five Excessive Fee and Investment Imprudence Cases of 2022

### COMPLIANCE AND REGULATORY RELATED

- Dealing With Undocumented Workers In ERISA Plans
- IRS Extends Temporary Relief From the Physical Presence Requirement
- Another Circuit Court Rules on ERISA Arbitration Rules
- Top Five Operational Errors of 403b Plans

## GENERAL ITEMS

### THE SAVER'S CREDIT: A TAX CREDIT TO PROMOTE RETIREMENT SECURITY

Twenty years since its establishment, the Saver's Credit has proven to be an important financial incentive for retirement savers. However, fewer than half of U.S. workers are aware of the Saver's Credit, according to a 2021 survey by Transamerica Center for Retirement Studies in collaboration with Transamerica Institute. The author shares recommendations for policymakers to enhance and expand the Saver's Credit so that more people can benefit from it and help improve their retirement security. Source: Bloombergtax.com

Full Article Available Here --->> <https://news.bloombergtax.com/tax-insights-and-commentary/the-savers-credit-a-tax-credit-to-promote-retirement-security>

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### 401K INVESTORS DISPLAY POISE AS THE MARKET STRUGGLES

Alight Solutions has published the April update of its 401k Index, noting that despite equity markets posting their worst month in over two years, 401k investors were not making reactionary trades. There were no above-normal trading days in April, Alight says. However, net transfers were up slightly compared to March (.10% vs .09%) as investors moved money out of equities and into fixed income. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/401k-investors-display-poise-market-struggles/>

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### 401K PLAN INVESTMENTS IN CRYPTOCURRENCIES

The Employee Benefits Security Administration of the DOL issued Compliance Assistance Release No. 2022-01 on March 10, 2022. This release warns plan fiduciaries to exercise extreme caution before adding a cryptocurrency investment option to their 401k plan's investment menu for participants. EBSA plans to investigate further plans that offer investment options in cryptocurrency and related options. The goal is to take any actions necessary concerning these options to protect the interests of plan participants and beneficiaries. EBSA also wishes to ensure that plans can meet their fiduciary duties when offering these investment options. Source: Hallbenefitslaw.com

Full Article Available Here --->> <https://hallbenefitslaw.com/401k-plan-investments-in-cryptocurrencies/>

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### CAN EMPLOYERS, WARY OF 401K COSTS, FIND THE RIGHT RETIREMENT PLAN

Small businesses often don't offer retirement benefits because of the cost and the administrative burden. But working with a retirement plan adviser, retirement plan consultant or recordkeeper can help the plan sponsor understand what retirement benefits arrangement is best for employees, owners, and the company bottom line. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/employers-wary-401k-costs-can-find-right-retirement-plan/>

## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### GOT A RETIREMENT PLAN? RACE PLAYS A ROLE

A new study takes a close look at who these people are and shows stark differences along racial lines. A large majority of Hispanic workers in the private sector -- two out of every three -- do not have access to a pension or 401k-style plan, and more than half of Black workers do not have access. Although the numbers are lower for Asians (45 percent) and whites (42 percent), they are still substantial.

Source: Bc.edu

Full Article Available Here --->><https://squaredawayblog.bc.edu/squared-away/got-a-retirement-plan-race-plays-a-role/>

### FIDUCIARY VULNERABILITY TAKES A HIT

The legal community's persistent emphasis on fees paid by retirement plans to their service providers has set the stage for a turn in the vulnerability of the individuals who oversee retirement plans. Fiduciary liability insurers have taken note of the recent surge in lawsuits leveled against employers and their executives for allowing service providers to charge excessive fees to the retirement plans they sponsor and manage. The result is a significant increase in many employers' risk exposure. Source: Rolandcriss.com

Full Article Available Here --->> [https://rolandcriss.com/wp-content/uploads/2022/05/JCB\\_Fiduciary\\_Liability-Takes\\_Hit.pdf](https://rolandcriss.com/wp-content/uploads/2022/05/JCB_Fiduciary_Liability-Takes_Hit.pdf)

### ERISA ADVISORY COUNCIL CONFRONTS RETIREMENT SAVINGS GAPS

A recent ERISA Advisory Council report on gaps in retirement savings based on race, ethnicity, and gender contains recommendations for addressing the significant disparities in retirement security for women and people of color. The recommendations would help employers take a more active role in providing financial wellness education and implementing plan features to mitigate some of these disparities. However, the council concluded that larger systemic issues outside the authority of the DOL also contribute to retirement savings gaps and warrant broader policy discussions. Source: Mercer.com

Full Article Available Here --->> <https://www.mercer.com/our-thinking/law-and-policy-group/erisa-advisory-council-confronts-retirement-savings-gaps.html>

### ARE BROKERAGE WINDOWS AN EFFECTIVE WAY OF LIMITING FIDUCIARY RISK AFTER HUGHES V. NORTHWESTERN?

The high standard of fiduciary responsibility embraced by the Court in Hughes may discourage fiduciaries from designating numerous investment alternatives on participant investment menus. Fiduciaries considering less robust plan investment menus, however, may also be concerned that reduced investment options could discourage participation or could trigger challenges from participants that investment options are too restrictive. Could adding brokerage window options expand investment options while reducing fiduciary responsibility for reviewing investment menus? Source: Wagnerlawgroup.com

Full Article Available Here --->> <https://www.wagnerlawgroup.com/blog/2022/05/are-brokerage-windows-an-effective-way-of-limiting-fiduciary-risk-after-hughes-v-northwestern/>

## INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

### 401K PLAN ASSET ALLOCATION, ACCOUNT BALANCES, AND LOAN ACTIVITY IN 2019

In an ongoing collaborative effort, the Employee Benefit Research Institute and the Investment Company Institute collect annual data on millions of 401k plan participants as a means to examine how these participants manage their 401k plan accounts. This 2022 report is an update of EBRI and ICI's ongoing research into 401k plan participants' activity through year-end 2019. The report is divided into four sections: the first describes the EBRI/ICI 401k database; the second presents a snapshot of participant account balances at year-end 2019; the third looks at participants' asset allocations, including an analysis of 401k participants' use of target-date, or lifecycle, funds; and the fourth focuses on participants' 401k loan activity. Source: Ebri.org

Full Article Available Here --->> [https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri\\_ib\\_557\\_k-xsec-3may22.pdf?sfvrsn=30c53b2f\\_2](https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_557_k-xsec-3may22.pdf?sfvrsn=30c53b2f_2)

### 2022 RCS FACT SHEET: RETIREMENT CONFIDENCE

One in three Americans feel very confident about their ability to have enough money to live comfortably throughout their retirement years. Workers who say debt is a problem are, not surprisingly, less confident, while those who have a retirement plan are remarkably more confident. Source: Ebri.org

Full Article Available Here --->> [https://www.ebri.org/docs/default-source/rcs/2022-rcs/rcs\\_22-fs-1\\_confid.pdf](https://www.ebri.org/docs/default-source/rcs/2022-rcs/rcs_22-fs-1_confid.pdf)

### 2022 RCS FACT SHEET: EXPECTATIONS ABOUT RETIREMENT

Many workers continue to say they are behind in their retirement preparations, including saving for retirement. Consequently, what sources of income do workers expect to receive in retirement? How do workers' expectations align with retirees' experiences? Source: Ebri.org

Full Article Available Here --->> [https://www.ebri.org/docs/default-source/rcs/2022-rcs/rcs\\_22-fs-2.pdf](https://www.ebri.org/docs/default-source/rcs/2022-rcs/rcs_22-fs-2.pdf)

### INSIGHTS FROM THE FIRST TWENTY-FIVE EXCESSIVE FEE AND INVESTMENT IMPRUDENCE CASES OF 2022

The most common excess fee claim filed this year is against plans that allegedly have high recordkeeping fees and investments in high-fee retail share classes, led by a concerted attack against plans in the active Fidelity Freedom target-date funds. From the author's perspective, the most concerning development are that plaintiffs have been filing cases challenging isolated actively managed investments in plans with otherwise overall low fees. This article provides insights from the first twenty-five excessive fee and imprudence cases filed against defined contribution plans in 2022. Source: Euclidspecialty.com

Full Article Available Here --->> <https://www.euclidspecialty.com/fiduciary-insights-from-the-first-twenty-five-excessive-fee-and-investment-imprudence-cases-of-2022/>

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## COMPLIANCE AND REGULATORY RELATED

### DEALING WITH UNDOCUMENTED WORKERS IN ERISA PLANS

Dealing with such plan participation adds yet another layer of administrative difficulty and legal exposure for employers who hire employees not authorized to work in the U.S. ERISA does not exclude individuals otherwise qualifying as common law employees from plan rights and protections simply because of their immigration status. However, although the DOL has affirmed that other federal statutes, such as the FLSA, protect undocumented workers, it has conspicuously failed to formally state that ERISA does too. Source: Benefitslawadvisor.com

Full Article Available Here --->> <https://www.benefitslawadvisor.com/2022/05/articles/undocumented-workers/dealing-with-undocumented-workers-in-erisa-plans/>

### IRS EXTENDS TEMPORARY RELIEF FROM THE PHYSICAL PRESENCE REQUIREMENT

The IRS announced that it is extending to the end of 2022 the temporary relief from the requirement that certain participant elections be witnessed in the physical presence of a plan representative or a notary public. In Notice 2022-27 the IRS says that due to the pandemic, it is extending the temporary relief provided in Notice 2021-40 from the requirement that certain participant elections be witnessed in the physical presence of a plan representative or a notary public, the physical presence requirement. Source: Asppa.org

Full Article Available Here --->> <https://www.asppa.org/news/irs-extends-temporary-relief-physical-presence-requirement-0>

### ANOTHER CIRCUIT COURT RULES ON ERISA ARBITRATION RULES

The 6th U.S. Circuit Court of Appeals has ruled that certain types of ERISA claims, while brought by individual participants, ultimately belong to the plan as a whole, meaning individual arbitration agreements cannot as a matter of course prevent such claims from proceeding in court. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/another-circuit-court-rules-erisa-arbitration-rules/>

### TOP FIVE OPERATIONAL ERRORS OF 403B PLANS

No matter how hard we try, there are mistakes we are doomed to make again and again, even when we know the rules all too well. The reasons are valid, and they are countless: mindlessness, being in a rush, employee turnover, deadlines, distractions, the complexity of the rules, and failure to verify the plan provisions. Not surprisingly, the list of common mistakes financial statement auditors find is nearly identical to the list of common errors published by the IRS. Whether you have a large plan or a small plan, you should perform frequent self-reviews to ensure that you are not systematically making the following top five common mistakes. Source: Belfint.com

Full Article Available Here --->> <https://employeebenefitplanaudit.belfint.com/top-five-operational-errors/>

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