

# 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

- Midterm Election Results Could Delay SECURE 2.0
- Political Pressure Aside, Asset Managers Stand Pat on ESG Integration
- FTX Bankruptcy Has Chilling Effect on Crypto Use in Retirement Plans
- The "Entity" Difference Between 403b and 401a Plans

### FIDUCIARY AND PLAN GOVERNANCE MATERIAL

- What Responsibilities and Liabilities Come With Signing the Form 5500?
- SPARK Releases Updated Data Security Best Practices
- A 401k Plan Sponsor's Guide to Hiring a Financial Advisor
- A Rollover Recommendation Is a Securities Recommendation

### INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

- Recordkeeper Consolidation Leads to Drop in Proprietary Product Share, Opening Door for Asset Managers
- Resilient Retirement Savers Shifting Focus to Short-Term Needs: Study
- How Does Local Cost of Living Affect Retirement for Low and Moderate Earners?
- Arbitration of ERISA Plan Disputes

### COMPLIANCE AND REGULATORY RELATED

- IRS Opens Determination Letter Program to 403b Plans
- Employee Benefit Plan Year-End Deadlines
- Participant Loans: Important Considerations
- 2022 Retirement Plan Year-End Amendments and Operational Compliance

## GENERAL ITEMS

### MIDTERM ELECTION RESULTS COULD DELAY SECURE 2.0

A shift in Congressional power in Washington to Republicans could delay passage of SECURE 2.0 and push Democrat's ESG and cryptocurrency efforts to administrative tactics, experts say.

Source: Planadviser.com

Full Article Available Here ---> <https://www.planadviser.com/midterm-election-results-delay-secure-2-0/>

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### POLITICAL PRESSURE ASIDE, ASSET MANAGERS STAND PAT ON ESG INTEGRATION

Regardless of the divided political pressure surrounding environmental, social, and governance investing, asset managers remain committed to considering such factors, with climate change remaining a top priority for firms, a new Cerulli report suggests.

Source: Napa-net.org

Full Article Available Here ---> [https://www.plansponsor.com/callan-dc-plan-esg-use-drops-22-backlash-rule-confusion\\_trashed-2/](https://www.plansponsor.com/callan-dc-plan-esg-use-drops-22-backlash-rule-confusion_trashed-2/)

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### FTX BANKRUPTCY HAS CHILLING EFFECT ON CRYPTO USE IN RETIREMENT PLANS

The rapid collapse of the cryptocurrency exchange FTX has some in the retirement industry second-guessing a recent push toward including cryptocurrency in 401ks and other defined contribution retirement plans. Source: Planadviser.com

Full Article Available Here ---> <https://www.planadviser.com/ftx-bankruptcy-chilling-effect-crypto-use-retirement-plans/>

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### THE "ENTITY" DIFFERENCE BETWEEN 403B AND 401A PLANS

Think about this: the tax-favored status of the contributions to a 401a plan, and the earnings on the fund held by the plan, are derived from the tax-exempt status of the trust which receives and holds those funds. Compare this to the 403b plan. The favorable tax status granted to 403b plan participants does not derive from the tax-exempt status of any particular organization or entity. Instead, the statutory language makes it clear that it is derived from the contributions being made to an annuity contract, a custodial account, or a retirement income account.

Source: Businessofbenefits.com

Full Article Available Here ---> <https://www.businessofbenefits.com/2022/11/articles/secure-2-0/the-entity-difference-between-403b-and-401a-plans/>

## FIDUCIARY AND PLAN GOVERNANCE MATERIAL

### WHAT RESPONSIBILITIES AND LIABILITIES COME WITH SIGNING THE FORM 5500?

You are wise to check on what the responsibilities associated with signing the 5500 are. Here's a quick review. Source: Plansponsor.com

Full Article Available Here --->> <https://www.plansponsor.com/responsibilities-liabilities-go-along-signing-form-5500/>

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### SPARK RELEASES UPDATED DATA SECURITY BEST PRACTICES

The SPARK Institute released Monday its Plan Sponsor and Advisor Guide to Cybersecurity, laying out its specific data security "Best Practices and seventeen Control Objectives." Developed by its Data Security Oversight Board, SPARK's best practices and control objectives establish a base of communications between recordkeepers and the public through third-party audits of cybersecurity control objectives. Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/spark-releases-updated-data-security-best-practices/>

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### A 401K PLAN SPONSOR'S GUIDE TO HIRING A FINANCIAL ADVISOR

There are so many varieties of financial advisors that it can be confusing what you should be looking for. This article is intended to act as a guide for you as you select a financial advisor for your retirement plan or review the current advisor as part of your fiduciary responsibility. Source: Jdsupra.com

Full Article Available Here --->> <https://www.jdsupra.com/legalnews/a-401k-plan-sponsors-guide-to-hiring-94713/>

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### A ROLLOVER RECOMMENDATION IS A SECURITIES RECOMMENDATION

The SEC and FINRA are in alignment with the DOL's position that a recommendation to roll over is, in effect, a securities recommendation. This may explain why the DOL, SEC, and FINRA all expect broker-dealers and investment advisers to have information about the investments held in a participant's account, that is, how can a "sell" recommendation be made without knowing the investments that the recommendation covers? Source: Fredreish.com

Full Article Available Here --->> <https://fredreish.com/a-rollover-recommendation-is-a-securities-recommendation/>



## INSIGHTS: STUDIES, RESEARCH AND WHITE PAPERS

### RECORDKEEPER CONSOLIDATION LEADS TO DROP IN PROPRIETARY PRODUCT SHARE, OPENING DOOR FOR ASSET MANAGERS

The consolidation of DC plan providers may not be as much of a threat to asset managers as some have thought, with recordkeeper integration needs and legal risk meaning less focus on proprietary investment options, according to new research from ISS Market Intelligence.

Source: Planadviser.com

Full Article Available Here --->> <https://www.planadviser.com/recordkeeper-consolidation-leads-drop-proprietary-product-share-opening-door-asset-managers/>

### RESILIENT RETIREMENT SAVERS SHIFTING FOCUS TO SHORT-TERM NEEDS: STUDY

Rising prices and inflation are certainly affecting American workers but despite the economic environment, Americans remain resilient. More than 63 percent of Americans are confident they are financially on track for retirement. The study analyzes the behavior of approximately 4.3 million active DC participants to better understand their savings habits and levels of involvement with retirement planning, particularly during a highly challenging economic and financial environment. Source: Businesswire.com

Full Article Available Here --->> <https://www.businesswire.com/news/home/20221115005464/en/Empower-Resilient-Retirement-Savers-Shifting-Focus-to-Short-Term-Needs>

### HOW DOES LOCAL COST OF LIVING AFFECT RETIREMENT FOR LOW AND MODERATE EARNERS?

This paper uses the Health and Retirement Study to explore how the local cost of living affects Social Security replacement rates and household behavior. In theory, labor markets with a high cost of living also offer more compensation. If this compensating differential is paid in wages, rather than benefits, it reduces the share of earnings replaced by Social Security due to the progressive benefit structure. This paper examines how important the cost of living penalty is, in practice, and whether it impacts household saving or labor supply.

Source: Bc.edu

Full Article Available Here --->> <https://crr.bc.edu/working-papers/how-does-local-cost-of-living-affect-retirement-for-low-and-moderate-earners/>

### ARBITRATION OF ERISA PLAN DISPUTES

This article discusses the general enforceability of arbitration clauses in certain disputes, including class actions, with a particular focus on the enforceability of arbitration clauses involving legal claims made under ERISA. It also specifically analyzes the advantages and disadvantages of arbitration provisions for retirement plan sponsors. Source: Wagnerlawgroup.com

Full Article Available Here --->>

<https://www.wagnerlawgroup.com/wpcontent/uploads/sites/1101401/2022/11/ArbitrationofERISARetirementPlanDisputes.pdf>



## COMPLIANCE AND REGULATORY RELATED

### IRS OPENS DETERMINATION LETTER PROGRAM TO 403B PLANS

The IRS recently announced the expansion of its determination letter program to individually designed 403b plans beginning June 1, 2023. This presents a significant and welcome opportunity for sponsors of 403b plans -- such as universities, schools, tax-exempt organizations, and churches -- to secure long-awaited assurance from the IRS on plan document compliance.

Source: Icemiller.com

Full Article Available Here --->> [https://www.icemiller.com/ice-on-fire-insights/publications/irs-opens-determination-letter-program-to-403\(b\)-p/](https://www.icemiller.com/ice-on-fire-insights/publications/irs-opens-determination-letter-program-to-403(b)-p/)

### EMPLOYEE BENEFIT PLAN YEAR-END DEADLINES

This year, with the delay of the deadline for amending qualified plans, 403b plans, and governmental 457b plans to comply with the SECURE Act and CARES Act, year-end to-dos are on the light side; however, there are still a few deadlines to be aware of depending on what types of plans an employer sponsors, including the first item mentioned below, a disclosure that applies to the majority of employers.

Source: Frostbrowntodd.com

Full Article Available Here --->> <https://frostbrowntodd.com/employee-benefit-plan-year-end-deadlines/>

### PARTICIPANT LOANS: IMPORTANT CONSIDERATIONS

Many retirement plans allow participants to take loans from their accounts. But that entails more than simply deciding to allow participants to do so. That is only the beginning. Some procedures must be followed, and important considerations that flow from that initial choice. Here are some questions and matters concerning plan loans.

Source: Asppa.org

Full Article Available Here --->> <https://www.asppa.org/news/participant-loans-important-considerations>

### 2022 RETIREMENT PLAN YEAR-END AMENDMENTS AND OPERATIONAL COMPLIANCE

As the end of 2022 approaches, it's again time for plan sponsors to review their plan documents and plan operations to ensure compliance with increasingly complex qualification requirements and moving deadlines. While there are few, if any, required plan amendments for 2022, plan sponsors must remain diligent about amendment deadlines, operational compliance with changes in law, and ensuring later-adopted plan amendments accurately reflect plan operations.

Source: Groom.com

Full Article Available Here --->> <https://www.groom.com/resources/2022-retirement-plan-year-end-amendments-and-operational-compliance/>



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