

Fiduciary Insights Newsletter

June 2022

Timely updates on the retirement industry



Welcome to Fiduciary Insights, the monthly newsletter that keeps you in touch with issues and trends that employers need to know about the retirement plan industry. The articles have been carefully selected from a variety of quality sources.

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

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401(k) 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

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Can Employers, Wary of 401(k) 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

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Fiduciary & 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

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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

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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

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Insights: Studies, Research & White Papers

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

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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

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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: Euclidsspecialty.com

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Compliance & 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

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IRS Extends Temporary Relief From The Physical Residence 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

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Top Five Operational Errors of 403(b) 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

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