

# Fiduciary Insights Newsletter

September 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

### Senate Bill Would Curb ESG Investigating in Retirement Plans

The Maximize Americans' Retirement Security Act (S. 4613), legislation introduced July 26 by Sen. Mike Braun, would clarify that the fiduciary duty of plan administrators is to select and maintain investments based solely on "pecuniary" financial factors. Joining Braun as cosponsors are Sens. Richard Burr, Tommy Tuberville, Cynthia Lummis, Roger Marshall, Roger Wicker, Steve Daines, and James Inhofe. Source: Napa-net.org

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### Retiring (Much) Later: Average Age Up Big Since 1991

Americans are indeed working longer and retiring later than they used to, with an average retirement age that is four years later than it was in 1991. According to Gallup's annual Economy and Personal Finance survey, conducted each April, the average reported retirement age in the U.S. today is 61, four years older than the same survey found in 1991, when on average people reported they retired at age 57. And notably, the average expected retirement age among non-retirees is now 66, up sharply from 60 in 1995. Source: 401kspecialistmag.com

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### Record Increases Projected For 2023 Retirement Plan Limits

The announcement of the official limits is still a few months away, but early projections from Mercer suggest that nearly all qualified retirement plan limits will increase by unprecedented amounts next year. Source: Asppa.org

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## Fiduciary & Plan Governance Material

### A Guide Path For Your Glide Path(s)

A recent report and a new wave of litigation remind us that all target-date funds are not designed the same. A recent Morningstar whitepaper cautioned that "through" glide paths generally include around 13 percentage points more in equity at age 65 than their peers invested in "to" glide paths, as the average "through" series holds 46% in stocks versus just 33% for the average "to" series. That makes them riskier (or at least more volatile), and potentially riskier than those who defaulted into those options may know, or desire. Source: Napa-net.org

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### 401(k) Plan Provisions That Should Be Reviewed For "Tinkering"

When you set up a 401k plan, the plan provisions are not set in stone, so it's beneficial to look at them to determine whether they still fit your needs and the needs of your employees. Here are a few you might tinker with. Source: Jdsupra.com

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### The New Vesting Schedule Debate

Surveys and anecdotal evidence suggest plan sponsors are shortening their plan's vesting periods, but there remains disagreement in the industry about whether vesting schedules may disappear. Source: Planadviser.com

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## Insights: Studies, Research & White Papers

### IRS Extends Retirement Plan Amendment Deadlines

Many tax-qualified retirement plans, including non-governmental 403b plans and IRAs, were running short on time to make needed amendments to plan documents before the December 31, 2022, deadline to comply with recently enacted law changes. Under the new Notice 2022-33, plans and IRAs now have until December 31, 2025, to amend those documents. Source: Bdo.com

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### Are Automatic 401(k) Features Friend or Foe?

Every time it seems there's nothing new to say about auto features, new questions arise. Most of them spring from fallacies that continue to be perpetuated throughout the 401k industry. This article digs into many of the misunderstandings and why they each may be inaccurate. Source: 401kspecialistmag.com

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### Summary of Provisions In The Securing A Strong Retirement Act

Staff on both sides of the Capitol are now working to negotiate a unified, bicameral version of retirement legislation that could potentially be included in a must-pass spending bill later this year. This chart compares the House and Senate bills and identifies differences among the bills. Source: Groom.com

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## Compliance & Regulatory Related

### Employee Deferrals and Employer Contributions on Bonus Payments May Pose Challenges

An issue that can arise when considering the potential qualified status of a tax-qualified retirement plan is whether the definition of compensation under a plan is being properly implemented based on a participant's elective deferral election and corresponding employer contributions based on an employee's elective deferral election and the plan document. This article provides background on this issue and discusses the consequences of providing separate deferral elections on bonuses, the potential risks of permitting such separate elections, and related considerations that are important to maintain the tax-qualified status of a plan. Source: Groom.com

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### Why You Need Cybersecurity Insurance and How To Get It

The topic of cybersecurity insurance has crept to the top of the charts for the DOL's ERISA Advisory Council. Each year, the EAC picks topics it deems crucial to the administration of ERISA. For their May 6, 2022, meeting, they chose cybersecurity insurance and employee benefit plans as one of their topics. When the DOL and, specifically, the EAC take a closer look at a topic like cybersecurity insurance for those who handle employee benefit plan data, you can rest assured it will soon become a mandatory focus. Source: Penchecks.com

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### The Impact of Missing the July 31, 2022 Deadline For Restating Pre-Approved 401(k) Plans

For the many employers that use a pre-approved 401k plan (or another type of defined contribution plan), the deadline to execute a restatement of the plan was July 31, 2022. An employer that missed the deadline will need to review whether a correction will be required to maintain the plan's favorable tax status and implement any required correction. Depending on the circumstances, some failures may require obtaining formal approval from the IRS through its Voluntary Correction Program, while others may be eligible for self correction. Source: Benefitslawadvisor.com

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