

Fiduciary Insights Newsletter

January 2023

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

Five New Year's resolutions for 401(k) plan fiduciaries

This is the time of year when resolutions for the cessation of bad behaviors and the beginning of better ones are in vogue. Here are three for plan fiduciaries for 2023. Source: Napa-net.org

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What to keep on your radar and some predictions for 2023

The end of one year and the beginning of the next is traditionally a time to take stock of new developments and compliance issues. Though nobody has a crystal ball, it's also a good time to assess trends and changes likely to occur in the future. Here is a list of items for compliance calendars and some subjective predictions of what to watch for in 2023. Source: Cohenbuckmann.com

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After Committee Change, SECURE 2.0 Does Not Allow CITS in 403(b)s

Disregard any coverage to the contrary: SECURE 2.0, as passed, does not permit 403b plans to invest in collective investment trusts. House Financial Services had "consumer protections" concerns. The required amendments to securities laws did not make it into the final SECURE 2.0 Act. Source: Planadviser.com

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Fiduciary & Plan Governance Material

IRS Proposes Making Remote Notarization Permanent For Retirement Plan Elections & Consents

The proposed amendments would provide an alternative to in-person witnessing of spousal consents required to be witnessed by a notary public or a plan representative, and clarifies that certain special rules for the use of an electronic medium for participant elections also apply to spousal consents. This article provides background and commentary. Source: Groom.com

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DOL's Final Rule Gives ERISA Fiduciaries Green Light to Consider ESG Factors When Selecting Investments

The 2022 final rule removes the emphasis on the pecuniary factors in selecting ESG investments and is intended to provide clarity on how ERISA's fiduciary duties of prudence and loyalty apply to selecting investments and investment courses of action and exercising shareholder rights such as proxy voting. This is a summary of the key changes in the 2022 final rule. Source: Huntonlaborblog.com

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What's Next With the Evolution of State-Sponsored Retirement Plans?

To address the ongoing retirement savings gap, all but three states have initiated or passed legislation to set up a state-sponsored private-sector retirement savings plan, and while early implementation efforts so far have been successful, a new report suggests there's room for improvement. Source: Napa-net.org

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Insights: Studies, Research & White Papers

SECURE 2.0 Highlights For Retirement Plan Sponsors

While most of the provisions included in SECURE 2.0 have been under consideration in various forms, retirement plan sponsors have been awaiting final passage to understand the specific changes that will impact their employees and retirees. This article focuses on the provisions that will be of most interest to retirement plan sponsors, including public and private employers, public pension systems, university systems, and church plans. Source: Icemiller.com

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\$10 Billion 401(k) Smacked With Excessive Fee

Yet another multi-billion-dollar plan has been sued for recordkeeping and managed account services that the plaintiffs' claim was twice what could have been paid for those services. The target this time is the U.S. Bank 401k Savings Plan. Source: Napa-net.org

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Fiduciary Concerns Continue to Stymie Annuities in 401(k)s

Employers have embraced 401k plan benefits changes for 2023, but are still shying away from annuities, according to Alight. Survey data showed that among employers, 47% cite fiduciary concerns as a major reason for not adding annuities. The figure has remained stagnant since the 2018 report, Alight found. Source: Planadviser.com

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Compliance & Regulatory Related

ERISA Lawsuit Filed Against Ventura Foods

An ERISA class action suit was brought against Ventura Foods LLC, a Brea, California-based food production and processing firm, in the U.S. District Court for the Central District of California by a current Ventura employee. The lawsuit, filed on December 21, 2022, alleges that Ventura overpaid its recordkeeper by allowing variable indirect fees to grow unreasonably high. Source: Planadviser.com

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Another TDF Suite Draws Excessive Fee Suit

Plan fiduciaries' decision to retain an actively managed target-date fund suite has drawn another excessive fee suit. The suit, filed against the \$5.6 billion 401k plan of Quest Diagnostics Inc., claims that the "defendant's failure to disclose the options for the lowest-cost share class available caused plan participants to pay excessive fees when they chose the higher-cost share class for the same funds." Source: Napa-net.org

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Responding To A Cybersecurity Attack

It is a growing club that no one wants to join: the club of companies that became victims of cyberterrorism. Whether the release of credit card data from the infamous Target inside job, the gas pipeline shutdown at Colonial Pipeline, or the more recent CNA Financial ransom attack, it is often not a question of "if" a company will be attacked, but "when." Recently, a major software provider to third-party administrators joined this horrible club. The question addressed here is "What should we do about this issue?" Source: Ntsa-net.org

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