Top 10 Opportunities for Retirement Plan Sponsors in 2021

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Best Practices for Plan Sponsors

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#1 - CONSIDER OPEN ARCHITECTURE PLATFORMS

When selecting your recordkeeping solution, strongly consider open architecture recordkeeping platforms

- Ideally, the platform should be both open and revenue neutral meaning:
  - When building a list of designated investment alternatives, you should ideally be able to choose from most publicly traded mutual funds and ETFs
  - Where appropriate, no-load and institutionally priced funds should be available
  - Any revenue-sharing paid by a fund complex should be paid back to the plan and available for the plan sponsor to use to offset other fees
- Consider avoiding packaged platforms built by product providers
  - Avoid any solution that might appear to be "pay-to-play" – solutions where fund complexes are paying to have their products available on the recordkeeper's investment menu

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#2 - EXAMINE PLAN FEES

Retirement plan sponsors are obligated to make sure fees are reasonable under ERISA

- For qualified retirement plans, monitoring fees is not simply a best practice – the law compels you to ensure certain fees are reasonable
  - Regulators are particularly concerned about fees that are passed on to participants
- Fees impact performance and, ultimately, a participant's retirement
- Documenting a process for determining the reasonableness of a plan's fees can be challenging
- Best practice – periodic fee benchmarking studies

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#2 - EXAMINE PLAN FEES

Sample fee benchmarking study

Your Plan of $8,736,202 in assets is Benchmarked against 741 Plans within an asset range of $5 to $10 million

		Plan Comparison		90th Percentile		75th Percentile		50th Percentile		25th Percentile		10th Percentile		Mean	
SERVICE CATEGORIES	Universe	Total %	Total $	Total %	Total $	Total %	Total $	Total %	Total $	Total %	Total $	Total %	Total $	Total %	Total $
Investment Management	700														
Current		0.76%	$66,131	0.63%	$54,759	0.47%	$40,824	0.36%	$31,625	0.25%	$22,094	0.16%	$14,057	0.38%	$32,901
Proposed		0.20%	$17,354												
Recordkeeping/Admin	693														
Current		0.00%	$0	0.45%	$39,016	0.35%	$30,944	0.21%	$17,970	0.11%	$9,697	0.06%	$5,617	0.24%	$21,072
Proposed		0.27%	$23,960												
Advisor Services	517														
Current		0.72%	$62,901	0.58%	$50,836	0.42%	$37,103	0.29%	$25,440	0.15%	$13,218	0.09%	$7,941	0.32%	$27,702
Proposed		0.31%	$27,082												
WEIGHTED AVERAGE EXPENSE															
CURRENT		1.48%	$129,032	1.21%	$105,359	1.00%	$87,624	0.82%	$71,375	0.60%	$52,767	0.42%	$36,867	0.81%	$71,025
PROPOSED		0.78%	$68,397												

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#2 - EXAMINE PLAN FEES

Sample fee benchmarking study

Your Plan of 220 participants is Benchmarked against 725 Plans within a participant count range of 101 to 249

		Plan Comparison		90th Percentile		75th Percentile		50th Percentile		25th Percentile		10th Percentile		Mean	
SERVICE CATEGORIES	Universe	Total %	$ Per Head	Total %	$ Per Head	Total %	$ Per Head	Total %	$ Per Head	Total %	$ Per Head	Total %	$ Per Head	Total %	$ Per Head
Investment Management	669														
Current		0.76%	$300.60	0.63%	$249.90	0.49%	$192.67	0.37%	$146.05	0.25%	$97.85	0.15%	$60.24	0.39%	$154.75
Proposed		0.20%	$78.88												
Recordkeeping/Admin	666														
Current		0.00%	$0.00	0.62%	$247.35	0.40%	$160.03	0.27%	$106.26	0.13%	$51.94	0.07%	$27.56	0.31%	$124.05
Proposed		0.27%	$108.91												
Advisor Services	534														
Current		0.72%	$285.91	0.56%	$224.32	0.41%	$161.02	0.27%	$107.22	0.14%	$56.39	0.08%	$31.05	0.30%	$118.14
Proposed		0.31%	$123.10												
WEIGHTED AVERAGE EXPENSE															
CURRENT		1.48%	$586.51	1.36%	$540.06	1.06%	$422.12	0.84%	$333.96	0.62%	$246.20	0.41%	$162.81	0.87%	$343.49
PROPOSED		0.78%	$310.89												

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#3 - MONITORING INVESTMENT OPTIONS

Retirement plan sponsors also must have a process in place for reviewing investment options in their plan

- The fund lineup is sometimes referred to as the designated investment alternatives
- Retirement plan sponsors should be able to demonstrate procedural prudence has been used to select and monitor the plan's investment options
- One best practice is to define this prudent process in an investment policy statement and then monitor investments relative to these defined benchmarks
  - Doing so consistently and regularly is very important
  - Documenting this process is critical

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#3 - MONITORING INVESTMENT OPTIONS

Sample Investment Policy Statement

INVESTMENT MANAGER SELECTION

The Committee will apply the following due diligence criteria in selecting each money manager or mutual fund.

1. *Regulatory oversight:* Each investment manager should be a regulated bank, an insurance company, a mutual fund organization or a registered investment adviser.

2. *Correlation to style or peer group:* The product should be highly correlated to the asset class of the investment option. This is one of the most critical parts of the analysis since most of the remaining due diligence involves comparisons of the manager to the appropriate peer group.

3. *Performance relative to a peer group:* The product's performance should be evaluated against the peer group's median manager return, for 1, 3 and 5 year cumulative periods.

4. *Performance relative to assumed risk:* The product's risk-adjusted performance (Alpha and/or Sharpe Ratio) should be evaluated against the peer group's median manager's risk-adjusted performance.

5. *Minimum track record:* The product's inception date should be greater than three years.

6. *Assets under management:* The product should have at least $75 million under management.

7. *Holdings consistent with style:* The screened product should have no more than 20% of the portfolio invested in "unrelated" asset class securities. For example, a Large-Cap Growth product should not hold more than 20% in cash, fixed income and/or international securities.

8. *Expense ratios/fees:* The product's fees should not be in the bottom quartile (most expensive) of their peer group.

9. *Stability of the organization:* There should be no perceived organizational problems – the same portfolio management team should be in place for at least two years.

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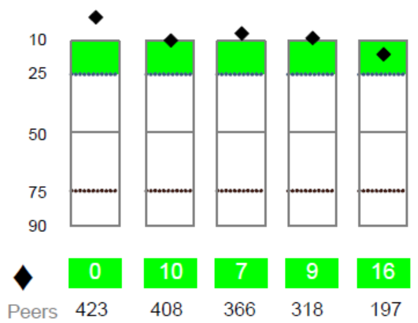
#3 - MONITORING INVESTMENT OPTIONS

Sample Investment Option Due Diligence

Fund/ETF Profile: Northern Small Cap Value — **Ticker: NOSGX**

Fi360 Fiduciary Score®



The Fi360 Fiduciary Score is a peer percentile ranking of an investment against a set of quantitative due diligence criteria.

Holdings 2018-12-31

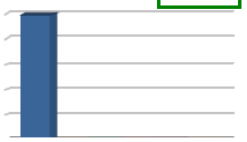
Style Consistency √

Morningstar Style Box™

Small Value None

Composition (%) √

U.S. Stocks	98.77
Non-U.S. Stocks	0.76
U.S. Bonds	0.00
Non-U.S. Bonds	0.00
Cash	0.45
Other	0.02



Holding Detail

Top 10	$215.47 mil (8.14% of net assets)
# of Stock Holdings	Long: 523 | Short: 0
# of Bond Holdings	Long: 0 | Short: 0

Peer Group
Small Value

Fund Family Name
Northern Funds

Manager Name(s)
Bergson

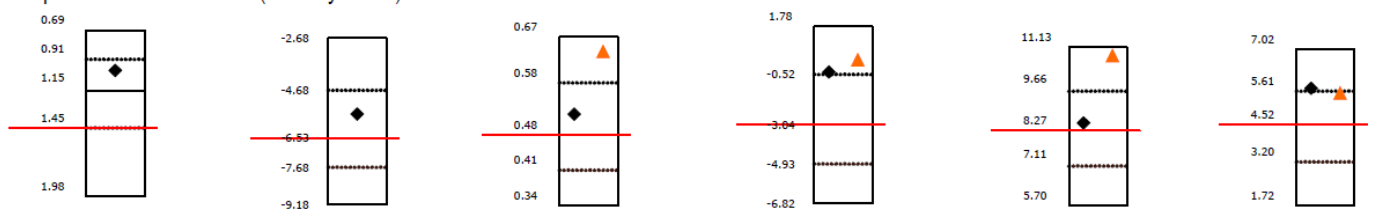
Basic Investment Data

Product Inception Date	03/31/1994	√
Share Class Inception: 3/31/1994		
Total Assets (Millions)	2,977.91	√
Manager Tenure (Longest)	17.68 years	√
Socially Responsible Fund	No	

Availability
- Open

Fi360 Fiduciary Score Criterion

◆ Investment | ▲ Russell 2000 Value TR USD | - Fi360 Fiduciary Score Threshold | Primary Index: S&P 500 TR USD



	Prospectus Net Expense Ratio	3-Year Alpha (Primary Index)	3-Year Sharpe Ratio	1-Year Total Return	3-Year Total Return	5-Year Total Return
◆	1.00	-5.63	0.52	-0.45	8.55	5.73
Rank	36	35	39	24	42	23
Peers	454	423	423	444	423	396
▲	-	-	0.64	0.17	10.85	5.59
	√	√	√	√	√	√

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#4 - TRACK TIMELINESS OF PARTICIPANT DEFERRALS

Retirement plan sponsors for defined contribution plans are under pressure to deposit employee salary deferrals in the 401(k) trust as soon as possible

- There is a misconception, based on a Department of Labor safe harbor rule, that retirement plan sponsors have 15 days to make their 401(k) deposits
- Unfortunately, this is no longer the case
  - Example – if a Department of Labor investigator reviews payroll records, and you demonstrate an ability to make a deposit within three days, then, that is your new standard
  - If deposits are late, you may be responsible for lost earnings on the late contributions

#5 - REVIEW PLAN DESIGN PERIODICALLY

Plan sponsors should challenge their service providers to periodically review their design and make sure the plan is meeting the sponsor's objectives

- Consider opportunities to allow participants better use of the plan and maximize contributions
- Also, by reviewing plan provisions, you may be able to allocate more dollars to reward top-performing participants.
  - For example, often you can allocate proportionally more profit sharing to participants who are older than the group average age.
    - This is referred to as an age–weighted profit-sharing allocation
  - You may also be able to allocate more profit-sharing contributions to certain participants using a combination of age, compensation and employment classification.
    - This is referred to as either cross-tested or new comparability profit sharing methodology

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#6 - REVIEW PLAN DESIGN PERIODICALLY

Retirement plan sponsors may also benefit from pairing their 401(k) retirement plan with a cash balance retirement plan

- Generally, a cash balance retirement plan is a type of plan where an employer credits the participant account with a set percentage of his or her compensation plus a credit for earnings
- The percentage of the participant’s compensation and the interest credited are guaranteed by the employer
- Account balances must be trued up annually by the employer, regardless of market performance
- Reporting is done annually to participants on an individual account basis
- These types of plans can be very beneficial for participants who are older and more highly compensated

#6 - REVIEW PLAN DESIGN PERIODICALLY

Sample Retirement Plan Design

Name	Date of Birth	Date of Hire	Estimated Compensation	Cash Balance Allocation	Cash Balance %	3% Safe Harbor/ Profit Sharing Allocation	SH/PS %	Owner 401(k) Deferrals	Non-Owner 401(k) Deferrals	Employer-Paid Total	Employer-Paid as % of Total
HCEs:											
Partner 1	08/09/1962	01/01/2000	280,000.00	212,800.00	76.00%	37,000.00	13.21%	25,000.00		274,800.00	58.48%
Partner 2	02/20/1979	09/10/2012	280,000.00	-	0.00%	37,000.00	13.21%	19,000.00		56,000.00	11.92%
Staff 1	05/08/1964	02/27/2003	134,693.85	-	0.00%	4,040.82	3.00%	-	19,000.00	4,040.82	0.86%
Staff 3 (Spouse, Partner 1)	05/22/1980	11/25/2015	90,000.04	6,750.00	7.50%	8,800.00	9.78%	19,000.00		34,550.00	7.35%
Staff 22 (Spouse, Partner 2)	09/22/1979	11/01/2016	21,000.00	-	0.00%	630.00	3.00%	19,000.00		19,630.00	4.18%
NHCEs:											
Staff 2	02/22/1964	03/05/2000	93,933.48	1,878.67	2.00%	6,387.48	6.80%		-	8,266.15	1.76%
Staff 4	12/05/1960	12/01/1997	80,500.00	1,610.00	2.00%	5,474.00	6.80%		-	7,084.00	1.51%
Staff 5	04/20/1954	01/26/2004	74,830.92	1,496.62	2.00%	5,088.50	6.80%		-	6,585.12	1.40%
Staff 6	11/19/1959	07/01/1996	74,480.41	1,489.61	2.00%	5,064.67	6.80%		-	6,554.28	1.39%
Staff 7	07/06/1982	10/03/2016	65,706.34	1,314.13	2.00%	4,468.03	6.80%		-	5,782.16	1.23%
Staff 8	04/20/1989	08/07/2007	63,800.34	1,276.01	2.00%	4,338.42	6.80%		-	5,614.43	1.19%
Staff 9	06/18/1986	05/31/2017	60,000.00	1,200.00	2.00%	4,080.00	6.80%		-	5,280.00	1.12%
Staff 10	12/14/1981	01/23/2008	59,057.69	1,181.15	2.00%	4,015.92	6.80%		-	5,197.07	1.11%
Staff 11	10/27/1964	01/16/2008	50,521.55	1,010.43	2.00%	3,435.47	6.80%		-	4,445.90	0.95%
Staff 12	12/07/1966	08/21/2006	46,728.44	934.57	2.00%	3,177.53	6.80%		-	4,112.10	0.88%
Staff 13	09/20/1961	09/01/2003	45,634.48	912.69	2.00%	3,103.14	6.80%		-	4,015.83	0.85%
Staff 14	10/25/1968	02/11/2006	44,054.01	881.08	2.00%	2,995.67	6.80%		-	3,876.75	0.82%
Staff 15	12/10/1986	01/17/2011	42,797.62	855.95	2.00%	2,910.24	6.80%		-	3,766.19	0.80%
Staff 16	11/22/1964	01/16/2008	34,595.61	691.91	2.00%	2,352.50	6.80%		-	3,044.41	0.65%
Staff 17	09/11/1977	04/25/2016	24,987.42	499.75	2.00%	1,699.14	6.80%		-	2,198.89	0.47%
Staff 18	02/14/1992	02/01/2017	21,577.50	431.55	2.00%	1,467.27	6.80%		-	1,898.82	0.40%
Staff 19	02/27/1995	05/11/2015	18,467.80	369.36	2.00%	1,255.81	6.80%		-	1,625.17	0.35%
Staff 20	06/27/1995	06/30/2016	11,432.79	228.66	2.00%	777.43	6.80%		-	1,006.09	0.21%
Staff 21	06/24/1973	10/16/2017	6,396.77	127.94	2.00%	434.98	6.80%		-	562.92	0.12%
Total			**1,725,197.06**	**237,940.08**		**149,997.02**		**82,000.00**	**19,000.00**	**469,937.10**	**100.00%**

This proposal is for illustrative purposes only. Contributions should not be made based on these proposed numbers.

Total for Owners	384,980.00	81.92%
Total for Staff	84,957.10	18.08%

Tax Savings of Total Contributions (Estimated 40% Tax Rate)	187,975
Amount to Staff	84,957
Estimated Net Savings Remaining for Owners	103,018

Total for HCEs	389,020.82	82.78%
Total for NHCEs	80,916.28	17.22%

#7 - CONSIDER OUTSOURCING FIDUCIARY LIABILITY

Retirement plan sponsors should consider requesting that various service providers acknowledge their fiduciary responsibility in writing

- For example, your investment advisor/consultant may be willing to act as a nondiscretionary investment advisor to the plan under ERISA section 3(21)
- Some advisors are willing to assume *all* responsibility and liability associated with the investment decisions for the plan as a discretionary investment manager under ERISA section 3(38)
- Further, some third-party administrative firms are willing to provide fiduciary advice for their services – these are covered under ERISA section 3(16) and are typically marketed as 3(16) administrative services

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#8 – CONFIRM ADEQUATE ERISA BOND

ERISA generally requires that every fiduciary of an employee benefit plan who handles funds or other property be bonded. The purpose of the bond is to protect employee benefit plans for risk of loss due to fraud or dishonesty on the part of persons who handle plan funds or other property.

- Generally, each person must be bonded in an amount equal to at least 10% of the amount of funds he or she handled in the preceding year
- The bond amount cannot, however, be less than $1,000, and the DOL cannot require a plan official to be bonded for more than $500,000, or $1,000,000 for plans that hold employer securities

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#8 – CONFIRM ADEQUATE ERISA BOND

There are no specific penalties for not having an ERISA bond in place. However, there are substantial risks associated with not meeting these ERISA bonding requirements including:

- Failing to report a sufficient bond on the Form 5500 can trigger a plan audit
- It's unlawful under ERISA for plan officials not to be bonded
- 401(k) fiduciaries can be held personally liable for losses that should have been covered by a fidelity bond

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#9 – CONSIDER VOLUNTARILY COMPLYING WITH 404(C)

Consider voluntarily complying with regulation 404(c). If the ERISA qualified retirement plan satisfies this regulation, fiduciaries will not be liable for any claim brought about by poor investment decisions made by the participant.

- Example – a participant ignores principles of proper diversification and invests all of their assets in an emerging markets fund. The fund loses half of its value in one year. If the plan does not comply with 404(c), the participant is not responsible for that decision, the plan fiduciaries are
- This applies to participant directed plans only – such as 401(k)s, 403(b)s, etc.
- Again, compliance with this regulation is voluntary, you do not have to attempt to comply

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#9 – CONSIDER VOLUNTARILY COMPLYING WITH 404(C)

Complying with regulation 404(c) requires plan sponsors to do several things, most are related to communication and disclosures.

- Under 404(c), participants must be able to select from at least three investment alternatives, each of which is diversified and has materially different risk and return characteristics.
  - Most participant directed retirement plans such as 401(k) retirement plans already meet this requirement
- To qualify for 404(c) protection, plan sponsors must follow all of the requirements of the fee disclosure regulations under 404(a)(5), along with two additional requirements of 404(c):
  - Confirm that the plan intends to comply with 404(c).
  - Provide a description of the procedures for maintaining confidentiality when a participant invests in employer securities

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#10 – USE A QDIA (Qualified Default Investment Alternative)

A QDIA is used when participants haven't made an active investment election. When money is contributed to the plan, it is automatically invested in the QDIA that was selected by the plan fiduciary. The participant can then leave the money in this default investment or transfer to other plan investments.

- The concept of the QDIA was first introduced through the Pension Protection Act of 2006
- When a 401(k) plan has a QDIA that meets the Department of Labor's rules, then the plan fiduciary is not liable for the QDIA's investment performance
- Without a QDIA, the plan fiduciary is liable for investment losses when participants don't actively direct their plan investments

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#10 – USE A QDIA

The Department of Labor has several conditions that plan sponsors must follow in order to obtain safe harbor relief from fiduciary liability for investment outcomes related to a QDIA.

- A notice generally must be provided to participants in advance of their first QDIA investment and then on an annual basis after that.
- Information about the QDIA must be provided to participants and beneficiaries and should include the following:
  - An explanation of the employee’s rights under the plan to designate how contributions will be invested
  - An explanation of how assets will be invested if no action is taken by the participant.
  - A description of the actual QDIA, to include investment objectives, risk and return characteristics and fees associated with the investment

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CARES ACT AND SECURE ACT PROVISIONS TO CONSIDER IN 2021

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CARES ACT AREAS OF SIGNIFICANCE FOR 2021

Although it is beyond the scope of this presentation to cover the CARES Act in detail, there are some issues that are relevant to 2021 that plan sponsors should be considering.

- RMDs are back after the one-year holiday
  - As always, the 2021 RMD will be based on 12/31/2020 balances
- Plan sponsors, recordkeepers, and TPAs are starting to deal with participant loan suspensions with resumed payment in 2021
  - The CARES Act allowed loans to be suspended but interest still accrued, so all of these suspended loans require new payments to cover the new outstanding balances
  - The CARES Act did allow those participants who were interested to extend the loan an additional year (even beyond the normal five-year max for non-residential loans). This extension was done to keep the payments similar to or even slightly less than than they were originally

SECURE ACT AREAS OF SIGNIFICANCE FOR 2021

Again, an extensive discussion regarding the SECURE Act is beyond the scope of this presentation. However, there are some issues that are relevant to 2021 that plan sponsors should be considering.

- Expanded new plan tax credit up to $5,000 for three years
- Nominal Tax credit for adding auto enrollment, indicative of the direction the government wants to keep moving
- Requirement that workers with 500 hours in three straight years (2020-2022) become eligible to at least make 401(k) deferrals starting in 2023
  - Such employees are exempt from top-heavy and 401(k) discrimination testing so they can't hurt there but if they are eligible it could throw more plans into audit status

SECURE ACT AREAS OF SIGNIFICANCE FOR 2021

- Liberalized 401(k) Safe Harbor regulations
  - Allows plan sponsors to make the 3.00% decision as late as thirty days before year-end (instead of beginning) eliminates the notices requirement
  - Allows the deadline to be pushed to the last day of the following year (if decided after thirty days before year-end) if the contribution is increased from 3.00% to 4.00%.
  - The Safe Harbor match rules remain unchanged

Retirement Plan Marketplace Outlook

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SECURE ACT 2.0

In October of 2020, Representatives Richard Neal (D-MA) and Kevin Brady (R-TX) introduced the Securing a Strong Retirement Act of 2020. Also known as the Neal-Brady bill, it builds on the 2019 Setting Every Community Up for Retirement (SECURE) Act.

- Requiring new defined contribution plans to enroll participants automatically with at least a 3% contribution rate and increase the rate through auto-escalation by 1% per year until it reaches 10 percent
- Offering a new credit to businesses with 100 or fewer employees to offset up to $1,000 of employer contributions for each employee, which gradually phases out over five years
- Raising the required minimum distribution (RMD) age from 72 (set by the original SECURE Act) to 75 for DC plans and traditional IRAs
- Exempting individuals with retirement account balances of $100,000 or less from RMDs
- Increasing catch-up contribution limits to $10,000 (for 401(k) and 403(b) participants) and $5,000 (for SIMPLE plan participants) for those ages 60+ (up from $6,500 and $3,000)

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POTENTIAL BIDEN RETIREMENT POLICY INITIATIVES

Even in the era of divided government, there is a potential for far-reaching changes to retirement savings programs. Keep in mind, the SECURE Act of 2019 passed with overwhelming majorities in the House and Senate.

- Replacement of the pre-tax salary deferral contribution with a tax credit
  - Biden has proposed a refundable tax credit that analysts say would equal 26% of the amount contributed
  - This tax credit is described as a matching contribution made by the federal government because it would be deposited in the individual's retirement plan participant account
  - As an example, someone contributing $10,000 to a 401(k) in a given year would receive a matching contribution of $2600, regardless of the taxpayer's marginal tax rate
- Biden also looks to extend tax credits to small businesses for the establishment of a retirement plan
- The administration also hopes to provide incentives for companies to establish automatic enrollment features

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POTENTIAL BIDEN RETIREMENT POLICY INITIATIVES

- In an effort to democratize access to retirement accounts and further encourage saving, the Biden plan also calls for an *Automatic 401(k)*
- The "Automatic 401(k)" proposal could involve a mandatory requirement that employers who do not offer retirement plans allow employee contributions to individual retirement accounts in the form of payroll deductions

Retirement Plan Regulatory Enforcement and Litigation Updates

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DOL ENFORCEMENT ACTIONS

The Department of Labor's Employee Benefits Security Administration (EBSA) is responsible for ensuring the integrity of the private employee benefit plan system in the United States. Their authority extends to nearly 722,000 retirement plans representing 154 million workers and their dependents with approximately $10.7 trillion in plan assets.

- Some plans are selected for random investigations whereas other investigations are triggered by employee/participant complaints

Total Monetary Recoveries (Historical)				
Total Recoveries	FY 2020	FY 2019	FY 2018	FY 2017
$8.4B	$3.124B	$2.57B	$1.6B	$1.1B

Source: US Department of Labor News Release, January 20, 2021.

DOL ENFORCEMENT ACTIONS

- In fiscal year 2020 the EBSA close 230 criminal investigations leading to the indictment of 70 individuals including plan officials, corporate officers and service providers for offenses related to employee benefit plans.
- Common violations noted by the EBSA:
  - Imprudent investments
  - Improper payment of expenses or compensation to fiduciaries
  - Failure to maintain an ERISA bond
  - Late deposits
  - Prohibited transactions or self-dealing transactions
- Filing Form 5500 late and/or incomplete also draws investigators' attention

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Source: US Department of Labor News Release, January 20, 2021.

401(K) LITIGATION

In addition to regulatory exposure, plan sponsors are further exposed to civil action from retirement plan participants if they don't exercise prudent practices and document their decisions.

- A Bloomberg Law analysis showed that class action lawsuits claiming excessive 401k plan fees increased by *five* times in 2019 and 2020
- According to Bloomberg Law, the spike in cases can be explained by the maturing body of law under the Employee Retirement Income Security Act of 1974 (ERISA), an emerging blueprint for filing and litigating cases, new tools available to plaintiffs' attorneys, and even the global pandemic

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Source: US Department of Labor News Release, January 20, 2021.

401(K) LITIGATION

Examples

- In July 2020, Fidelity Investments agreed to pay $28.5 million and change recordkeeping practices on its OWN 401(k) in response to a class-action suit brought by former employees with money still in the plan.
  - Fidelity acknowledge that the settlement amount was being paid for failure to monitor recordkeeping fees and failure to monitor the fees associated with certain Fidelity mutual funds
  - As part of the settlement, Fidelity also agreed to provide one or more plan fiduciaries whose responsibility will be to monitor plan recordkeeping fees and investment options
- In January 2021, participants in a 401(k) plan run by Mercedes-Benz US International Inc., sued the company and its fiduciaries alleging violations of their duties under ERISA. Participant allegations include:
  - Failure by ERISA fiduciaries to monitor costs for reasonableness – having stark consequences for participants and retirees
  - Retirement plan service fees that were excessive when compared with other plans of similar size
  - Mercedes-Benz US failed to employ prudent processes for ensuring that fees were and remain reasonable
  - Failure to defray reasonable expenses of administering the plan
  - Failure to properly disclose fees charged to participants in the plan through quarterly statements or fee disclosures

Source: US Department of Labor News Release, January 20, 2021.

401(K) LITIGATION

Historically, lawsuits challenging retirement plan fees and investment performance targeted the largest plans in the country, often sponsored by Fortune 500 companies or prominent universities.

- However, the plaintiff's bar is moving down market. 2020 resulted in a dramatic increase in the number of smaller plans in these lawsuits, including plans with less than 1000 participants and less than $100 million in assets.
- Some of the common allegations in these cases include:
  - Not using the lowest cost share
  - Not offering enough index funds
  - Offering underperforming funds or funds affiliated with the plan's recordkeeper
  - Paying for recordkeeping as a percentage of assets under management rather than per participant
- The pace of new litigation in this space is not expected to slow down
  - Several new plaintiffs firms have entered this area of litigation
  - Often these new plaintiffs firms will file nearly identical lawsuits based solely on reviews of a plan's publicly available form 5500 filings

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Source: US Department of Labor News Release, January 20, 2021.

About HBKS Wealth Advisors

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Wealth Advisors

HBKS® FAST FACTS

SIZE OF FIRM

90+ TEAM MEMBERS

ASSETS UNDER MANAGEMENT

$4.3+ BILLION

OFFICE LOCATIONS

12[1] OFFICES in 4 STATES

OHIO
Youngstown

PENNSYLVANIA
Erie, Philadelphia, Pittsburgh

FLORIDA
Fort Myers, Naples, Sarasota, Stuart, West Palm Beach

NEW YORK
Fredonia

1- HBKS maintains two offices in Erie and two in Naples.

ABOUT HBKS® WEALTH ADVISORS

- An independent, personal financial planning and investment advisory firm with offices in Pennsylvania, Ohio, New York and Florida
- Families, corporate and institutional clients rely on us to supervise their assets. HBKS® Wealth Advisors currently has over $4.3 billion of assets under management
- HBKS® Wealth Advisors is part of the HBK CPAs & Consultants family of service firms and organizations
  – HBK CPAs & Consultants, one of the top 100 accounting firms in the nation, was founded in 1949

HBKS® Wealth Advisors

ABOUT HBKS® WEALTH ADVISORS

Dedicated Staffing in the Retirement Plan Services Area

- HBKS Wealth Advisors’ dedicated group of professionals have worked exclusively with the firm’s qualified retirement plan clients for 20 years
- Having specially trained staff in the pension area allows our team to be very responsive to the unique needs of our corporate clients sponsoring qualified retirement plans

HBK FAST FACTS

SERVICE LINES

8
- HBK CPAs & Consultants
- HBK Client Accounting & Advisory Services
- HBK Corporate Finance
- HBK High Performance
- HBK Risk Advisory
- HBK Valuation, Litigation & Forensics
- HBKS® Wealth Advisors
- HBKS® Retirement Planning

RANKINGS

2020 **TOP100** Firms
Accounting Today

2020 **TOP100** Firms
Inside Public Accounting

2020
BEST TAX & ACCOUNTING Firms
Forbes Magazine

2020
BEST EMPLOYERS in Ohio

HBKS Wealth Advisors

OFFICE LOCATIONS

17[1] OFFICES in **4** STATES

OHIO
Alliance, Columbus, Youngstown

PENNSYLVANIA
Blue Bell, Erie, Hermitage, Meadville, Pittsburgh

FLORIDA
Fort Myers, Naples, Sarasota, Stuart, West Palm Beach

NEW JERSEY
Cherry Hill, Clark, Princeton

1- HBK Valuation, Litigation & Forensics maintains an office in downtown Pittsburgh.

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HBK CPAs & Consultants (HBK) offers a wide range of tax, accounting, audit, business advisory, valuation and support services from offices in Pennsylvania, Ohio, New Jersey, New York and Florida. Like HBKS, HBK CPAs & Consultants combines the technical resources and expertise of a large national firm with the personalized attention of a local company. The accounting and audit arm of HBK is ranked in both Accounting Today and Inside Public Accounting magazines' Top 100, and supports clients globally as a member of BDO Alliance USA.

Thank you!

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