



Retirement Plan Update and Fiduciary Compliance – What You Need to Know for 2026

Brad Oxford
+1 210.250.6114
boxford@clarkhill.com

Joe C. Rust, Jr. AIF®
+1 210.418.1989
joe@davidsoncap.com

November 19, 2025

1

Last Call for Secure Act 2.0

Employee Retirement Readiness

Joe C. Rust, Jr. AIF®
Vice President
210-418-1989
joe@davidsoncap.com



2

Secure act 2.0 Last Call

- The 50-year old challenge
- Importance of the Roth Catch up
- Mandatory Changes
- Optional Changes

*all provisions Generally, apply to all Defined contribution plans. This includes 401(k) and 403(b) plans unless stated otherwise.



3

Disclaimer

The information in these materials is intended to be general information for the webinar attendees. It should not be relied upon as retirement plan advice.

This information does not create an attorney-client relationship between Davidson Capital Management and webinar attendees or any other party.

4

Average 401(k) at 50

Typical 401(k) Balance

By age 50, the average 401(k) ranges between \$120,000 and \$200,000, varying by income and savings years.

Ages 55-64 Average of \$271,320 According to Vanguard

Recommended Savings Benchmarks

Financial experts advise having four to six times your annual salary saved in your 401(k) by age 50.

Impact of Contributions and Matching

Consistent contributions and employer matching play a crucial role in reaching retirement readiness by age 50.



5

2026 plan Limits Just Announced

401(k)/403(b)/457 Salary Deferrals:

For participants under age 50 by 12/31/2026	\$24,500
For participants age 50-59 by 12/31/2026*	\$32,500
For participants age 60-63 by 12/31/2026*	\$35,750
For participants 64 or older by 12/31/2026*	\$32,500

Maximum Annual Defined Contribution Plan Limit**:

For participants under age 50 by 12/31/2026	\$72,000
For participants age 50-59 by 12/31/2026	\$80,000
For participants age 60-63 by 12/31/2026	\$83,250
For participants 64 or older by 12/31/2026	\$80,000

Compensation Limit: \$360,000

Highly Compensated Employee Threshold: \$160,000

Highly Paid Individuals (HPIs) for mandatory Roth Catch-Up: \$150,000

Key Employee Officer Compensation: \$235,000

Social Security Wage Base: \$184,500



6

Mandatory-2026 Roth Catch-Up Changes

Mandatory Roth Catch-Up Contributions

From 2026, certain employees aged 50+ earning over \$150,000 must make catch-up contributions as Roth contributions.

Impact on Retirement Savings

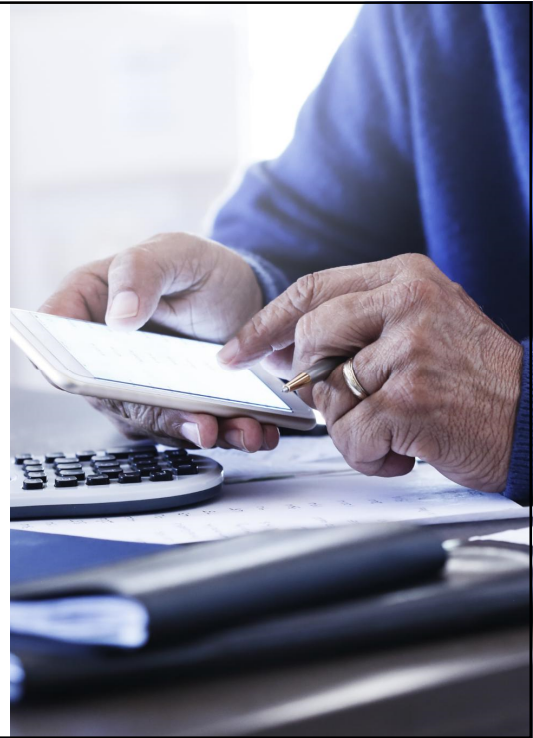
This change is designed to increase after-tax savings, benefitting long-term retirement planning for higher earners.

Employer Compliance Requirements

Employers must update payroll systems to accommodate Roth catch-up rules, affecting administrative and tax planning processes.

FICA

The 2026 Guidance clarifies Wages are Social Security Wages and wages are counted only for the employer that sponsors the plan



7

Mandatory-401(k) Super Catch-Up Explained

Higher Contribution Limits

Individuals aged 60 to 63 can contribute extra funds to their 401(k) accounts beyond the usual catch-up limits.

Peak Earning Years Advantage

The provision helps workers maximize savings during their peak earning years, enhancing retirement security.

Benefit for Late Savers

Those who started saving late or want to boost their retirement funds can significantly benefit from the super catch-up.

Greater of \$10,000 or 150% of regular catch-up limit,
2025 limit is \$11,250
2026 limit is \$11,250



8

Roth 401(k) AGI Limits



No AGI Contribution Limits

Roth 401(k)s allow contributions from any income level, unlike Roth IRAs, making them accessible for high earners.

Tax-Free Growth

Contributions to Roth 401(k)s grow tax-free, providing attractive long-term benefits for retirement savers.

Universal Accessibility

Anyone with employer access can contribute to a Roth 401(k), regardless of their income level.

9

Optional -small balance cash out limit / Auto Portability

Terminated participants' vested account balances can be distributed if under \$7,000 without the participants' consent. This is an increase from \$5,000.

Auto portability — Participants may have their balances, up to \$7,000, transferred to their new employer plan.

Important for borderline audit plans

*401(a) included



10

Mandatory-RMDs

RMD age increase — The age requirement for participants to begin taking RMD increased to age 73 beginning in 2023 and will increase again to age 75 in 2033.

RMD penalty reduced — The penalty for failing to take an RMD will decrease from 50% to 25% of the RMD amount not taken, and in some cases can be further reduced to 10%, if corrected timely

*401(a) Included

RMDs for surviving spouses of deceased participants — Surviving spouses, who are the sole beneficiary of their deceased spouses' retirement account, can elect to delay the RMD payment until the deceased spouse would have reached RMD age had they lived, if later than the surviving spouse's RMD age. RMDs for the surviving spouse will be calculated using the Uniform Lifetime Table, resulting in a lower RMD amount.

*401(a) Included

11

Mandatory -Automatic Enrollment & Escalation for new plans

Plans started after 2023 and after

Employees must be enrolled in the plan automatically, at a 3% minimum deferral rate, not to exceed 10%. The deferral must increase by 1% each year, up to 10%, if it starts lower than that.

Employees have the option to opt out of participation at any time. The proposed regulations clarify that the automatic enrollment provisions must apply to any participant that has not previously made an affirmative election under the plan.

The proposed regulations also provide additional guidance on how to handle certain situations related to mergers and spin off plans.



12

Mandatory -Long-term, Part-time (LTPT) expanded eligibility reminder

SECURE 1.0 Act required plans to allow part-time employees who work between 500 and 999 hours for three consecutive years to make contributions into the retirement plan. SECURE 2.0 reduced that time period to two years. Effective 1/1/2025



13

Mandatory-Paper Statements

Oct DOL 2025 Guidance

While there are no specific details on what's contained in the proposed guidance, Section 338 of SECURE 2.0 amended ERISA to generally provide that, with respect to DC plans, unless a participant elects otherwise, a plan must provide a paper benefit statement to participants and beneficiaries who become newly eligible for a plan after Dec. 31, 2025.

- *401(a) included



14

Optional - savers and emergency

Saver's match — Low to middle income employees will be eligible for a Federal matching contribution on up to \$2,000 of contributions per year to their retirement account. The match phases out based on income.

Emergency Expense withdrawal —

Participants can withdraw up to \$1,000. The distribution is not subject to the 10% penalty on early withdrawals. Participants can repay the withdrawal over a 3-year period. However, if not repaid, a participant will need to wait 3 years before taking an additional Emergency withdrawal.

*401(a) included

15

Optional-Domestic Abuse Victim Withdrawal

Domestic abuse victim withdrawal — Participants experiencing domestic violence may take a withdrawal for the lesser of \$10,000 or 50% of their account balance. The participant can self-certify and the distribution must be taken within 12 months of the domestic abuse incident. The distribution is not subject to the 10% penalty on early withdrawals. Participants can repay the withdrawal over a 3-year period.

• *401(a) included

16

Optional-Qualified Birth or Adoption Distribution

Qualified Birth or Adoption distribution (QBAD) — Participants may take a penalty free distribution, up to \$5,000, for the expenses related to the birth or adoption of a child. The distribution must be requested within 1 year after the birth or adoption. SECURE 2.0 clarified that participants have 3 years to repay the QBAD distribution.

*401(a) Included

17

Optional -self-certification for hardship withdrawal



Participants can self certify in writing that they are experiencing an immediate and heavy financial need that does not exceed the amount needed.

18

Optional-disaster relief



- **Federally declared disaster withdrawal options:** Withdrawals — Participants may withdraw up to \$22,000. The distribution is not subject to the 10% penalty on early withdrawals. Participants can repay the withdrawal over a 3-year period.
- **Loans** — Participants can take the lesser of 100% or \$100,000. Repayment can be delayed up to 1 year.
- *401(a) included

19

Optional-Long Term Care

Section 334 of the Act permits retirement plans to distribute up to \$2,500 per year for the payment of premiums for certain specified long term care insurance contracts.

Distributions from plans to pay (qualifying) long-term care insurance premiums are exempt from the additional 10% tax on early distributions.



This Photo by Unknown Author is licensed under [CC BY-ND](#)

20

Employee Retirement Readiness:

Strategies to support workforce financial wellness:

- Adopt an Education Plan
- Don't recreate the wheel
- One on ones with participants

21

Adopt and Education Plan-calendars

VOYA Plan. Invest. Protect.

2026 Engagement and education overview

	Q1	Q2	Q3	Q4
Quarterly education	Supported through emails and content hubs.			
- Financial Wellness - Financial professional - Budgeting	✓			
- Financial stress - College planning - Emergency savings		✓		
- Mid-year check-in - Budget check-in - Retirement income planning			✓	
- Cybersecurity - Retirement readiness - COLA limits				✓
Participant web messages (account login)	→			
Personalized journeys (emails to be sent to eDelivery/users *text available)	→			
- Diversify - Birthday - Advice - Max out				
- Beneficiary* - Restart* - Save More* - Health Savings Account¹				

*Text messaging also available.

¹ Must have a Voya retirement and Health Savings Account.

Always on Voya.com digital resources 24/7

- Voya.com resources
 - Education library with articles, live and on-demand learning, calculators and more
 - Market Volatility resource center
 - Life stage guidance
 - IRS limits microsite
 - Roth microsite
 - Voya Cares®

Always on participant website digital resources 24/7

- Participant web experience
- myOrangeMoney® experience
- Financial Wellness Experience
- Voya mobile app
- Account aggregation
- Budgeting tool

401(k)/
403(b)
Day

RETIREMENT SECURITY
THE VOICE OF PUBLIC PLAN SPONSORS

AMERICA
SAVES
WEEK

22

Texas Company, Inc.

Plan Service Schedule

Presented by:

Joe Rust

Tel: 210-418-1989

Email: joe@davidsoncap.com



23

Texas Company, Inc.												
Plan: 401K /Pension												
Data as of: 12/31/2024												
2024	Q1			Q2			Q3			Q4		
Financial Services	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
401k Plan Reviews: Onsite and Mid-Year Review				Trustee Meeting		401(k) Plan Review w/Joe Cactus			Trustee Mtg		Trustee Mtg	
Benchmarking Plan for Fiduciary Compliance												
Enrollment / Education Meetings									QDIA/ Education Mtg (8 attended)			
Qtrly Customized Education Campaigns												2025 Plan Limit flyer to employees 3(16)
Compliance Updates / Deadline Notices/5500							July 15 th 5500 Due		Sept 15 th 5500 deadline W/ Extension 3(16)		Fee/Safe Harbor Notices Deadline 3(16)	
Individual Planning and Guidance			Indv Zoom Mtg			(4) Zoom Indv Mtgs		Indv Zoom Meeting			Indv Mtg	Indv Mtg
3(38) DCM Investment Monitoring (see Qtrly Fi-360 Reports)		a			a			a			a	
Executive / Sponsor Conference Calls												
Email Correspondence	249 Email Correspondence											

24

Texas Company, Inc.

Plan: 401K, Pension

Data as of: 04/01/2025

2025	Q1			Q2			Q3			Q4		
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Financial Services												
401k Plan Reviews: Onsite and Mid-Year Review		Trustee Mtg										
Benchmarking Plan for Fiduciary Compliance												
Enrollment / Education Meetings			Budgeting & Roth 101 Workshop			Open Enrollment/Education on Catch up provision						
Qtrly Customized Education Campaigns			Budgeting & Roth 101 Workshop									
Compliance Updates / Deadline Notices/5500												
Individual Planning and Guidance												
3(38) DCM Investment Monitoring (see Qtrly FI-360 Reports)		a										
Executive / Sponsor Conference Calls												
Email Correspondence	41 Email Correspondence											

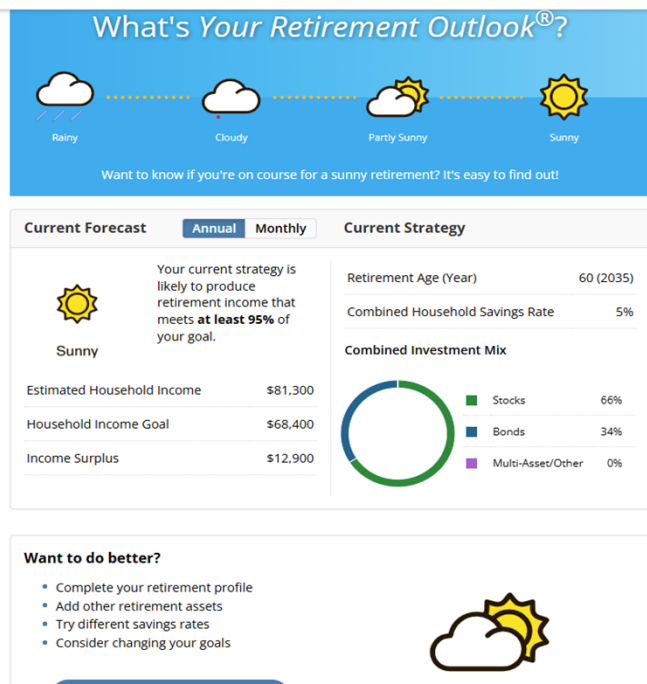
25

Retirement Readiness

➔ Don't recreate the wheel

➔ Use the participant site tools already available!

- In person group meetings
- One on ones with Advisor
- E-mail campaign



26

My Best Retirement



A workbook for those who can see retirement in the future, but don't yet know what it looks like.

Investments are not FDIC-insured, nor are they deposits of or guaranteed by a bank or any other entity, so they may lose value.

27



You are here.

If you are reading this, it's because you are approaching a turning point — not a specific age, but a stage of retirement readiness.

You see retirement in the near future and may have tried to imagine how your life might be different once you give up the 9-to-5 (or 5-to-9) grind. You may have done some initial planning. But research shows that what most people plan for in retirement is not necessarily what they experience. A recent survey of current retirees by the Employee Benefits Research Institute (EBRI) found only 24% of respondents said their current life in retirement was in line with what they expected.*

My financial advisor asks me, "What are you going to do with your money?" But the question I needed to be asked was, "What are you going to do with your time?"

—Frank, 66



A new take on retirement.

In research from Capital Group, retirees describe a modern midlife: a time of reimagined identity, transformation, renewed vitality and a sense of opportunity. It's a chance to reassess and become an even better version of yourself — no holding back — or at least to do exactly what you want to do, if you know what that is.

With this redefinition comes new questions, shifting priorities, a rewriting of your script. While retirement is often synonymous with career-long financial planning, success in modern midlife goes beyond money matters. Investments and income planning are crucial, as they are the foundation supporting connection, vitality, purpose, well-being and joy. You can plan for all of it.

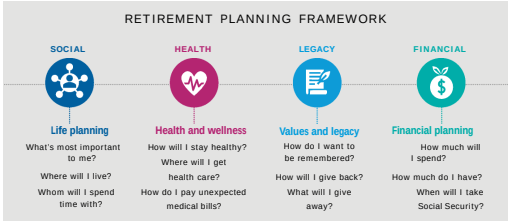
*Source: EBRI Spending in Retirement Survey, 2021.

2 • MY BEST RETIREMENT WORKBOOK

28

Retirement planning framework: 4 aspects of success.

Based on these exciting research findings, we have identified a framework to help you see the full retirement picture and to guide you through it. It includes four important areas of reflection: life planning, health and wellness, values and legacy and financial planning.



For each aspect of your plan, we have questions and activities to help you define what success in modern midlife looks like. You can fill it out yourself and, for even greater insight, have your spouse or partner do the same and compare the results. It's a great way to start important conversations, together as a couple and with a financial professional.

Start here: More or less
To get at those possibilities, start by asking yourself some big questions.
Use the space below to think through your answers.

✔ What provides me with the most meaning in life today? Five things I want more of:

✔ Which obligations are least fulfilling in my life today? Five things I want less of:



Life planning. Envision your life in retirement.

Perhaps the most important factor is one that gets the least consideration: what your day-to-day life will look like. The freedom of space and time creates the opportunity to restructure life in big and small ways. You may envision a total life "redo" — new location, new home, new social life, new possibilities. Or you may rely on simple day-to-day routines to create a new rhythm of events.

To get started, select five examples of things that are most important to you in retirement (or add in your own). You can cross out those that don't matter at all.

✔ What's most important to me?

___ stay busy ___ kick back and relax ___ have plenty of alone time ___ be near family ___ spend time with partner

___ keep in contact with friends ___ spend time on hobbies ___ travel and see the world ___ have more spiritual time

___ spend time volunteering ___ spend time with kids and grandkids ___ try something completely new

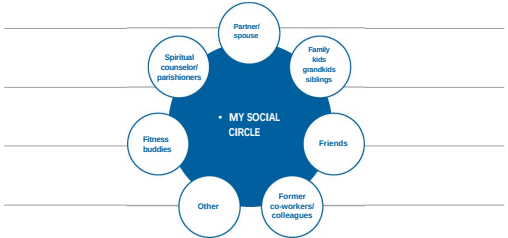
___ always be learning ___ continue to work a bit ___ not work at all ___ start own business ___ start own nonprofit

✔ Where will I live? I see myself...

___ staying where I am ___ possibly downsizing ___ upsizing ___ relocating (to _____) ___ not sure

✔ Whom will I spend time with?

Fill your social circles by adding people you plan to spend time with or see regularly.



Life planning. How you will spend your time.



From memorable moments to just marking time, the freedom of your post-work schedule may take a little getting used to. It can help to imagine exactly how you might spend your time during a typical year — and a typical day.

A year in retirement

Map out how you might spend an early year in retirement. Include any travel plans, community or professional obligations, and scheduled time with friends and family.

Jan	Feb	Mar	Apr	May	Jun
Jul	Aug	Sep	Oct	Nov	Dec

You don't want to become bored. If you slow down too much, you can actually get overwhelmed. I have church on Thursdays, I volunteer on Mondays, I have eggs on Fridays. But there's a fine line between structure and obligation — you want to keep control of your own time while still allowing yourself choice and flexibility.

— Sally, 69

A view of a typical week

Considering the things you want to do and plans for the year, what might an average week look like? Include regular events like date night, lunch or exercising with friends, volunteering or spiritual routines.

M	T	W	Th	F	Sat	Sun

MY BEST RETIREMENT WORKBOOK • 5

31



Health and wellness. Keep vitality high and medical costs low.

Because we are generally living longer, fuller lives, staying healthy and well is as important as ever. While some health issues are generally out of our control, there are ways to encourage a healthy lifestyle.

How will I stay healthy?

Forget the idea of retirement as a time to slow down and think of it in terms of your "EVP index": energy, vitality and passion. Select three or more of the following you can commit to.

Energy

- ☐ Eating whole foods
- ☐ Balanced social choices
- ☐ Sufficient sleep
- ☐ Stress management

Vitality

- ☐ Regular movement/exercise
- ☐ Portion control (eat to 80% full)
- ☐ Mental stimulation/agility
- ☐ Positive thinking

Passion

- ☐ Daily activity and routines
- ☐ Social connections
- ☐ Work, volunteering or group activity
- ☐ Continuing education

Where will I get health care?

Individuals are eligible for Medicare at age 65. Part A covers hospital expenses, Part B is for routine care, and Part D can help with prescriptions. Learn more at ssa.gov/benefits/medicare/.

If I plan to retire before age 65, I will get health insurance through:

- ☐ Private insurance
- ☐ COBRA
- ☐ Other
- ☐ Not sure

How will I pay for unexpected medical costs?

It can be difficult to estimate medical needs and expenses, because future ailments are unknown and the cost of medicine is ever rising. If you're concerned, consider the following:

☐ Do I have a health savings account (HSA)? HSAs let you set aside and invest pretax money, which accumulates over time to pay for medical expenses like deductibles, copayments and coinsurance.

☐ Will I get Medicare supplement ("Medigap") coverage? This insurance, sold by private companies typically for a monthly fee, is designed to fill gaps in Medicare coverage and help pay for costs such as copayments and deductibles.

☐ Have I considered long-term care (LTC)? LTC insurance is designed to cover the cost of getting help with daily self-care, like bathing and cooking. But not all LTC policies are the same. Talk to your advisor about existing plans or those you are considering.

6 • MY BEST RETIREMENT WORKBOOK

32

Values and legacy. Define what's most important, then share it.



Gratitude is its own reward. The gift of time in retirement may allow you to give back in kind, to a favorite charity, community organization or your own nonprofit. You can also plan to pass along assets, favorite treasures or memories to charities, family and friends.

✓ How do I want to be remembered? Three words I want used to describe me are:

✓ What do I have left to do? I will have lived a truly great life if I:

✓ How will I give back?

If you can see yourself involved in a charity in the future, what would that be? Would you donate money, time or both? Check all giving opportunities that might work for you:

___ Charitable donations

___ Donor-advised funds

___ Community involvement / volunteering

___ Starting your own nonprofit

What will I give away?

Under the lifetime exemption from the gift and estate tax, individuals can transfer a certain amount of assets without being impacted by the 40% estate tax. More than \$13 million as of 2024, the exemption is set to fall to about \$5 million (et adjusted for inflation) by the end of 2025, if not sooner. If you want to give assets as part of an estate plan, here are some tools:

Annual exclusion gifts — Separate from the lifetime exemption as of 2024, you can give \$18,000 per year, per person, without being impacted by the gift or estate tax, making this a convenient way to move assets from the estate.

529 plans — Save tax-deferred to pay for future education costs. As of 2024, 529 plan contribution maximums exceed \$500,000 in some states, but you can save \$18,000 per spouse, per beneficiary, under the gift tax exclusion — and fund five years at once. Withdrawals from these accounts are free from federal tax as long as they are used to pay for qualified expenses. State tax treatment varies.

Trusts — Certain irrevocable trusts can be structured to remove the asset from your estate.

Roth IRA conversions — Some investors convert traditional IRAs to Roth IRAs, which allows you to pay income taxes now and avoid tax on qualified withdrawals later, including distributions to beneficiaries.

Review beneficiary designations — Because retirement assets and insurance policies are distributed by beneficiary designations, it's crucial to review them regularly.

MY BEST RETIREMENT WORKBOOK • 7



Financial planning. Run the numbers for income and expenses.

Depending on how far you are from retirement, you may have a good sense of how much you need to get by.

✓ How much will I spend?

Budgeting can help you get specific about your income needs, and factor inflation and shifting necessities and "nice to haves." Use this rudimentary estimator to get started. If you think today's expense will be more or less in the future, note that as well.

What I currently spend each month on average

Essential expenses \$
(home, food, utilities, insurance)

More Less Same Not sure

Discretionary expenses \$
(travel, dining, luxury, gifts)

___ More ___ Less ___ Same ___ Not sure

✓ How much do I have?

To get a sense of where your retirement income will come from, list all personal retirement assets below for you and your spouse or partner. Again, even rough estimates can be used to help provide a clearer overall financial picture. Not sure? Note that here as well.

Savings and investments

Account type	Where it lives	Balance
Company retirement plans (401(k), 403(b), 457, SIMPLE, ESOP, etc.)	_____	_____
Individual retirement accounts (IRA, Roth IRA, SEP IRA, rollover IRA, etc.)	_____	_____
Investment accounts	_____	_____
Personal savings accounts	_____	_____
Other	_____	_____
Total retirement savings and investments:		_____

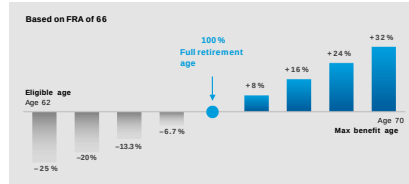
Financial planning. Identify sources of reliable income.



Social Security income can help bolster your retirement cash flow. If you worked during your lifetime, you should receive Social Security benefits. Timing when you (and your spouse or partner) start taking benefits can make a big difference to your plan.

When will I take Social Security, and how much will it be?

You can start taking Social Security as early as age 62, but you will get less in monthly income benefits. You receive full monthly benefits if you begin at full retirement age (FRA). FRA is around 66 for those born before 1960, and 67 for those born after. Wait until age 70 to begin and you'll get even more — an increase of 8% for each year you wait.



To get an estimate of what your retirement income benefits could be at different ages, visit the Social Security Administration at ssa.gov/benefits/retirement/.

What are my reliable income sources and benefits?

You may also have guaranteed sources of monthly income through an annuity or even an employer pension. If you know you have the following sources of income, provide estimates below. If you are not sure or don't know, mark that here as well.

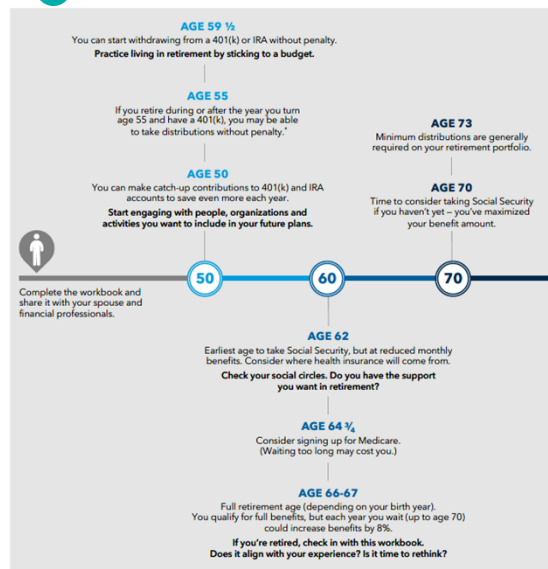
	Expected monthly benefits	Beginning at age
Pensions		
Annuities		
Social Security		
Total predictable monthly income:		

MY BEST RETIREMENT WORKBOOK • 9

35



Financial planning. Important milestones at a glance.



*The "Rule of 55" only applies to distributions made after you separate from service with your employer if the separation occurred in or after the year you reached age 55. Note that the "Rule of 55" only applies to assets in your current 401(k) plan (i.e., the one you invested in while you were "at" the job you left at age 55 or older).

10 • MY BEST RETIREMENT WORKBOOK

36

🔍 Essential questions to ask

Questions to ask HR before retirement

Will I continue to get health insurance after I retire?
What are my health care options?
Can I carry over life insurance, disability coverage or long-term care once I leave the company?
Will I receive compensation for accrued or unused vacation time?
What are my pension benefits, if any?
What are my options for moving or taking distributions from my employer-sponsored accounts?
Do you have any resources to help pre-retirees prepare?

Questions to ask your advisor

Am I on track to have the retirement I envision?
How do I get the most out of Social Security?
What are my options for taking distributions from my investments?
How can I minimize taxes in retirement?
How can I save more for health care needs?
What risks should I be aware of in terms of my retirement goals?
Can you offer support to help bolster my circles in retirement?

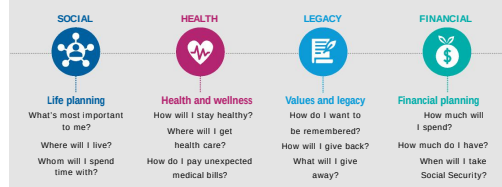
Additional questions or thoughts

Use the space below for topics, questions or concerns you want to discuss.

MY BEST RETIREMENT WORKBOOK • 11

37

RETIREMENT PLANNING FRAMEWORK



It feels like a do over. I have an opportunity to start from scratch. To pick my friends, how I spend my time, how I live my life. It's really exciting you are in control of your life.

Sally, 69



This material does not constitute legal or tax advice. Investors should consult with their legal or tax advisors.

Statements attributed to an individual represent the opinions of that individual as of the date published and do not necessarily reflect the opinions of Capital Group or its affiliates. This information is intended to highlight issues and should not be considered advice, an endorsement, or a recommendation.

All Capital Group trademarks mentioned are owned by The Capital Group Companies, Inc., an affiliated company or fund. All other company and product names mentioned are the property of their respective companies.

Capital Group Group, Inc.

This content, developed by Capital Group, home of American Funds, should not be used as a primary basis for investment decisions and is not intended to serve as impartial investment or fiduciary advice.

Lit. No. RPGERB-203-0224C Litho in USA CSD/SC/15184-598802 © 2024 Capital Group. All rights reserved.

13 • MY BEST RETIREMENT WORKBOOK

38

Consider taxes as part of your retirement strategy

Your retirement plan offers investment flexibility that allows you to make pretax and/or Roth after-tax contributions. Both provide tax benefits and, individually or together, can help you move closer to your long-term goals.

Consider the effect of taxes on your savings

An effective retirement planning strategy takes into account more than just the selection of investments – it also considers how taxes may impact your savings.

To take control of how you may be taxed, decide on one of these contribution options, or even a combination of both.

Learn more. Contact your plan's financial professional to discuss which contribution option may be right for you.



Capital Group, home of American Funds, is a key provider for your retirement plan

- Since 1931, we have invested with a long-term focus and attention to risk.
- More than half of the nearly 67 million investor accounts are retirement accounts.*

For more information, visit us at americanfundsretirement.com.

Want to learn more?

Visit ICanRetire.com to learn the ropes on retirement savings and get a personalized action plan tailored to your retirement style.

*As of December 31, 2023.

All hypothetical examples assume an 8% average annual return compounded monthly and a 4% annual withdrawal rate after the accumulation period. These are point-in-time views and as such do not take into account any growth or loss during retirement. Without investment growth/loss during retirement, a 4% annual withdrawal rate would deplete retirement savings in 25 years. Examples are for illustrative purposes only and do not reflect the results of any particular investment, which may differ, or taxes that may be owed on tax-deferred contributions, including a potential 10% penalty for withdrawals taken before age 59½. Regular investing does not ensure a profit or protect against loss in a declining market.

This content, developed by Capital Group, home of American Funds, should not be used as a primary basis for investment decisions and is not intended to serve as impartial investment or fiduciary advice.

All Capital Group trademarks mentioned are owned by The Capital Group Companies, Inc., an affiliated company or fund. All other company and product names mentioned are the property of their respective companies.

On or around July 1, 2024, American Funds Distributors, Inc. will be renamed Capital Client Group, Inc.

U.N. 1PQZB405 062P Lfho in USA CDDJBN423 09410 © 2024 Capital Group. All rights reserved. Printed on recycled paper.



Roth vs. pretax contributions

There are **two ways** to invest in your plan



Choose the best fit for you

Pretax contributions

- Your contributions reduce your taxable income. That, in turn, reduces your current taxes.
- Your savings grow on a tax-deferred basis. No taxes are owed on your earnings until you withdraw money from your account. You'll have more money that could benefit from years of compounded growth.
- Withdrawals at retirement are taxable. Because you haven't yet paid taxes on your plan contributions, you will be taxed when you take a cash withdrawal from your plan account.

Roth after-tax contributions

- Your contributions are taxed up front. Roth contributions come out of your paycheck after taxes have been calculated; therefore, your current taxable income is not reduced.
- Qualified withdrawals are tax-free. Your qualified withdrawals at retirement – including earnings – will be tax-free.
- You don't have to worry about future tax rates. Since qualified distributions at retirement are tax-free, they won't be negatively affected if your tax rates increase in the future.

Investments are not FDIC-insured, nor are they deposits of or guaranteed by a bank or any other entity, so they may lose value.

The differences in retirement plan contributions

	Are plan contributions taxed?	Are withdrawals (including earnings) taxed?
Pretax employee contributions	No	Yes
Roth employee contributions	Yes	No*
Employer contributions, if applicable (e.g., match or profit sharing)	No	Yes

*Qualified withdrawals are tax-free if taken at least five years after the beginning of the tax year of your first Roth contribution and you're at least 59½ years old.

To compare the advantages of making pretax and after-tax contributions based on your current and expected future tax rates and other factors, use the *Traditional vs. Roth 401(k)/403(b) Analyzer* at americanfundsretirement.com.

The flexibility to choose between pretax and Roth contributions is a great feature of your employer's retirement plan. Choose the best fit for your situation.



Sofia
\$400/mo
Pretax contribution

James
\$300/mo*
Roth after-tax contribution

*Equivalent to \$400 in pretax money.

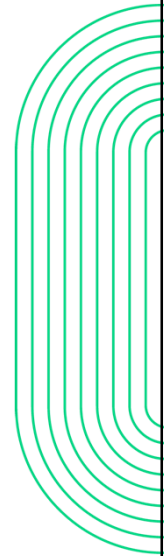
Monthly after-tax retirement withdrawals	Tax rate at retirement
\$3,280	Increases 5%
3,514	Stays the same
3,749	Decreases 5%

Assumes a 40-year accumulation period and a base tax rate of 25%. See the back page for important information regarding hypothetical examples.

Fiduciary Update for Retirement Plan Sponsors

Brad Oxford
+1 210.250.6114
boxford@clarkhill.com

November 19, 2025



41

Topics

- Retirement Plan Litigation
- Fiduciary Best Practices
- Service Provider Agreements
- Requests for Proposal (RFPs)
- Privacy
- AI



42

42

Retirement Plan Litigation

- Investment Performance and Fee Cases
- Claims by Participants Against Employers
- Status of Cases
- Cost of Litigation
- Fiduciary Best Practices
- Forfeiture Account Cases



43

43

Investment Performance and Fee Cases

- College and University 403(b) Plan litigation
- Financial Service Firm 401(k) Plan litigation
- Large Employer 401(k) Plan litigation
- Over 500 cases filed since 2020
- Threshold for plan size getting smaller



44

44

403(b) Plan Litigation

- 403(b) Plan litigation started 2016
- 2 dozen lawsuits against many of most prominent universities in the country

Yale
Princeton
MIT
University of Pennsylvania
NYU
Columbia

Cornell
Brown
Duke
Northwestern
Vanderbilt
Georgetown

George Washington
Johns Hopkins
University of Chicago
Emory
USC



45

45

403(b) Plan Litigation

- Allegations by plaintiffs
 - Excessive fees
 - Underperforming funds
 - Breach of fiduciary duty
 - Negligence
 - Duty of Loyalty
 - Quid Pro Quo
- Class Action Lawsuits



46

46

403(b) Plan Litigation

- Cases settled
 - Brown - \$3.5 million
 - University of Chicago - \$6.5 million
 - Duke - \$10.7 million
 - Vanderbilt - \$14.5 million
 - MIT



47

47

Financial Service Firm Litigation

- 401(k) Plan litigation
- Financial advisory firms –
 - Merrill Lynch
 - Settled for \$25 million
 - Morgan Stanley
 - Schwab
 - Fidelity
 - Invesco



48

48

Financial Service Firm Litigation

- Allegations by plaintiffs
 - Excessive fees
 - Underperforming funds
 - Breach of fiduciary duty
 - Use of Proprietary Funds
 - Conflict of interest/Self-dealing
 - Duty of Loyalty



49

49

Large Employer Litigation

- Large Employer 401(k) Plan Litigation
 - UnitedHealth Group, Inc. – settled for \$69 million
 - Lockheed Martin – settled for \$62 million
 - Wall-Mart – settled for \$13.5 million
 - Biogen Inc. – settled for \$9.75 million
 - Northern Trust Company – settled for \$6.9 million
 - PNG Financial Services Group – settled for \$6.1 million
 - MetLife Group, Inc. – settled for \$4.5 million
 - Kimberly-Clark Corporation – settled for \$2.25 million



50

50

Large Employer Litigation

- Allegations by plaintiffs
 - Excessive Fees
 - Underperforming funds
 - Breach of fiduciary duty
 - Negligence
 - Self-dealing – high-cost funds for reduced employer costs
 - Duty of loyalty



51

51

Status of Cases

- Most not getting dismissed at Motion to Dismiss stage
- Most going at least to Motion for Summary Judgment stage
- Defendants generally winning at trial
- Most settle – from 2020-2024, 164 settlements totaling over \$1.1 billion
- Average settlement is \$4.6 million, ranging from \$225,000 to \$69 million



52

52

Cost of Litigation

- Through Motion for Summary Judgment approximately \$1 million
- Through Trial approximately \$2-3 million



53

53

ERISA Fiduciary Duties

- Duty to act as a reasonably prudent person who is familiar with such matters (“duty of competence”)
- Duty to monitor investment performance and fees
- Duty to act exclusively in the interest of the plan participants (“duty of loyalty”)
- Duty to avoid conflicts of interest and self-dealing



54

54

ERISA Fiduciary Duties

- ERISA Section 408(b)(2)
 - Duty to monitor fees paid to investment service providers
 - Benchmark fees v industry standards
 - And determine whether fees paid by plan are reasonable
 - If fail to do so, subject to 15% excise tax per year until corrected



55

55

Fiduciary Best Practices

- Steps to Take
 - Comply with ERISA fiduciary duties
 - Act solely in the best interest of plan participants
 - Comply with ERISA Section 408(b)(2) – monitor, benchmark, and evaluate plan investment fees
 - Document evaluation of plan investment fees and determination that fees reasonable
 - Engage 3(21) Investment Advisor or 3(38) Investment Manager
- Independent Third-Party Evaluation



56

56

Forfeiture Account Cases

- 80 cases filed since 2023
- Plan accounts that can be used to pay plan expenses or reduce employer contributions
- Allegation that is breach of fiduciary duty of loyalty to use to reduce employer contributions
- IRS regulations specifically permit
- IRS approved documents permit



57

57

Forfeiture Account Cases

- Defendants have won many at Motion to Dismiss stage
- Many cases have settled
- Employer take away – permissible under IRS regulations and approved by IRS in plan document, but may consider removing from plan



58

58

Service Provider Agreements

- Review carefully
- What to look for
 - Scope of services
 - Fees (direct and indirect)
 - Liability standard
 - Limitation of liability/damages cap
 - Indemnification – mutual?



59

59

Service Provider Agreements

- What to look for (cont'd)
 - Arbitration provision
 - Waiver of jury trial
 - Venue
 - Confidentiality of information and privacy policies
 - DOL Cybersecurity Program Best Practices
<https://www.dol.gov/sites/Dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/best-practices.pdf>
 - Artificial intelligence
 - Termination fees



60

60

Requests for Proposal (RFPs)

- Send every 3-5 years
- Include important provisions from Service Provider Agreements
- Evaluate and document



61

61

Questions?



62

62



Thank You

Legal Disclaimer

The views and opinions expressed in this material represent the view of the authors and not necessarily the official view of Clark Hill PLC. Nothing in this presentation constitutes professional legal advice nor is it intended to be a substitute for professional legal advice.

