COLUMBIA THREADNEEDLE INVESTMENTS®

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Happenings On and Off the Hill

Everything you need to know about current regulation, legislation and litigation

Regulation

Crypto Guidance for 401(k) Plans Rescinded

What happened? The Department of Labor's Employee Benefits Security Administration (EBSA) announced on May 28th that it has rescinded a 2022 compliance notification that cautioned plan fiduciaries to exercise "extreme care before they consider adding a cryptocurrency option to a 401(k) plan's investment menu for plan participants."

What's the latest? In the newly released guidance (Compliance Assistance Release No. 2025-01) EBSA stated its position that the standard of "extreme care" is not found in the Employee Retirement Income Security Act (ERISA) and differs from ordinary fiduciary principles, further stating that the 2022 guidance was a departure from the EBSA's "historically neutral, principled-based approach to fiduciary investment decisions."

What's the fiduciary consideration? While the 2022 guidance did not preclude the inclusion of cryptocurrency in retirement plans, it was widely viewed as discouraging that consideration. The rescission restores a position of regulatory neutrality on cryptocurrency — and other digital assets — but the fiduciary standards for review and monitoring, requiring a duty of care (including a prudent process) and acting in the best interests of plan participants and beneficiaries remains. Given this guidance and the greater availability of digital assets, plan fiduciaries may see more digital assets available to retirement plans in the coming months. Plan fiduciaries should take the time to understand cryptocurrency investments and carefully evaluate whether offering them within the retirement plan aligns with the plan's investment objectives and goals. While the option to include cryptocurrency may be available, plans are not required to offer it. Ultimately, the decision should be based on whether it is in the best interest of plan participants.

DOL Asks for Another Delay in Retirement Security Rule Litigation

What happened? In April, the Department of Labor (DOL) requested more time to decide how to proceed with the consolidated federal court case challenging the Biden administration's retirement security rule. The U.S. Court of Appeals for the Fifth Circuit approved the request, which was made to allow new agency officials to determine the agency's next steps, as any decision could impact the ongoing litigation.

What's the latest? Another 60-day extension was requested in mid-June.

What's the fiduciary consideration? It is now widely expected that the Trump administration's DOL will walk away from a defense of the Biden administration's Retirement Security Rule and propose its own modifications. As a reminder, the Retirement Security Rule, finalized in April 2024 under the Biden administration, aimed to expand the definition of a fiduciary under ERISA. Specifically, it would require more financial professionals, particularly those giving advice on retirement plan rollovers, annuity sales, and plan design, to act as fiduciaries when providing investment advice for a fee. In light of this expectation, plan sponsors may consider the impact on rollover procedures for service providers working with plan participants. Plan sponsors may also consider whether additional education is required for participants to ensure that participants understand that rollovers are at their own risk.

DOL Reveals Plan to Reconsider, Possibly Rescind, ESG Rule

What happened? The Trump-led DOL in April asked the court overseeing the litigation filed by twenty-six state attorneys general challenging the Biden-era ESG rule to pause the ongoing proceedings.

What's the latest? "Now that its new leadership has had the requisite time to gain familiarity with the issues in this case, the Department has determined that it intends to reconsider the challenged rule, including by considering whether to rescind the rule. The [DOL], therefore respectfully requests that this appeal be held in abeyance," its motion explained. The Biden-era ESG regulation, finalized in 2022 and effective in 2023, allows retirement plan fiduciaries to consider Environmental, Social and Governance (ESG) factors when selecting both designated investment alternatives (DIAs) and the qualified default investment alternatives (QDIA) so long as the factors increase return or reduce risk in the investment option. The rule reversed a Trump-era version of a similar regulation.

What's the fiduciary consideration? Similar to the Retirement Security Rule described above, it is widely expected that the Trump administration's DOL will walk away from a defense of the Biden administration's version – and propose its own modifications or a new rule altogether under the notice and comment rulemaking process. Plan sponsors should monitor developments closely and prepare for another potential shift in requirements, which may impact investment selection and monitoring, including the way the investment policy statement is drafted and implemented.

IRS Announces 2026 HSA Limits

What happened? The IRS has announced a modest cost-of-living increase for the health savings account (HSA) and high-deductible health plan (HDHP) limits for 2026.

What's the latest? The announcement notes that for calendar year 2026, the annual limitation on contributions for an individual with self-only coverage under an HDHP is $4,400. For 2026, the annual limitation on contributions for an individual with family coverage under an HDHP is $8,750. The HSA contribution limits for 2026 are higher than those the IRS set for 2025; however, the increase is less than that from 2024 to 2025 and much less than the increase from 2023 to 2024.

What's the fiduciary consideration? Concerns about health care expenses in retirement remain a major issue for workers, and HSAs, with their "triple tax" advantages (contributions made pre-tax, earnings accumulate pre-tax, distributions for qualified medical purposes not taxed), provide a unique opportunity for individuals to set aside funds to cover those needs. Plan fiduciaries should consider adjusting their HDHP plan designs to meet the 2026 IRS thresholds and update payroll and benefit systems to reflect the new contribution limits.

EBSA Nominee Promises Change if Confirmed

What happened? Daniel Aronowitz, a lawyer, and the founder of Euclid Fiduciary, a fiduciary insurance provider, is President Trump's nominee to lead EBSA. He pledged in June that if confirmed by the Senate he will work every day to "unleash and unlock the creativity and full potential of America's employee benefit system."

What's the latest? In his confirmation hearing before the Senate Health, Education, Labor & Pensions (HELP) Committee, Aronowitz outlined three major goals: (1) that he would improve EBSA's enforcement of fiduciary law, (2) seek to provide regulatory clarity, and (3) champion the cause of encouraging plan sponsors to expand retirement and health care benefits. He also said EBSA will "end the practice of open-ended investigations that go on for years. We will end the bias against ESOPs and other legitimate ways to expand retirement benefits and ownership to America's workers. And we will end the regulatory abuse of common-interest agreements with plaintiff lawyers." On June 26, Aronowitz's nomination was approved by the HELP Committee, advancing to a full vote of the Senate. Until then, Janet Dhillon has been appointed by President Trump as the interim acting head of EBSA.

What's the fiduciary consideration? The comments made in this hearing strike a much more pro-plan fiduciary chord than was evident from the Biden administration. Although he passed the HELP Committee vote, Aronowitz still has to be approved by the full Senate. Plan fiduciaries should stay informed on Aronowitz's confirmation and any new EBSA guidance or rulemaking.

Legislation

Several bills have been introduced – and some have been reintroduced – but no notable legislation was passed during the prior quarter.

Senate Bill Would Establish an Automatic Reenrollment Safe Harbor

What happened? While automatic enrollment programs allow individuals to opt-out of participation, automatic reenrollment is a process that can "sweep" those previously opted-out workers into the plan a year or so later (again, providing the option to opt-out) as their circumstances may well have changed.

What's the latest? The Auto Reenroll Act introduced by Senate HELP Committee Chairman Bill Cassidy, M.D. (R-La.) and Sen. Tim Kaine (D-Va.) would permit qualified automatic contribution arrangements (QACAs) and eligible automatic contribution arrangements (EACAs) to automatically reenroll workers back into the retirement plan at least once every three years, unless the individual affirmatively opts out again.

What's the fiduciary consideration? According to research from the Employee Benefit Research Institute and the U.S. Bureau of Labor Statistics, automatic enrollment significantly boosts and sustains retirement plan participation. Studies suggest that once re-enrolled, the vast majority of workers remain enrolled, supporting the effectiveness of re-enrollment strategies. The proposed bill would provide some safe harbor structures for plans that want to adopt this plan design feature so long as certain requirements are met.

Legislation Allowing CITs in 403(b) Plans Clears House Panel

What happened? Due to securities law restrictions, 403(b) plans are not currently able to invest in collective investment trusts (CITs) as 401(k) plans are. Legislation to rectify that difference has been introduced in the past but has not yet been passed into law.

What's the latest? H.R. 1013, which was reintroduced on Feb. 5 by four representatives and several other cosponsors, would amend Federal securities laws to allow 403(b) plans to invest in CITs and unregistered insurance contracts that currently may be invested in by comparable retirement plans, such as 401(k)s. Companion legislation has been introduced in the Senate.

What's the fiduciary consideration? CITs can provide a flexible and cost-effective investment for retirement plans and their use continues to grow. Passage of this legislation would extend that option to employers/plans in the non-profit sector. Plan fiduciaries should proactively educate themselves on CITs and be prepared to evaluate their suitability as investment options within the retirement plans.

Bill Introduced to Expand Retirement Plan Eligibility to 18–20 Year Olds

What happened? ERISA has always extended retirement plan coverage to individuals aged twenty-one and above. This legislation would extend that eligibility to 18-year-olds.

What's the latest? Retirement plan eligibility would expand to the ages of 18 through 20 if a bill reintroduced by Sens. Bill Cassidy (R-LA.) and Tim Kaine (D-VA.) is enacted. The Helping Young Americans Save for Retirement Act was previously introduced during the last session of Congress in November 2023. ERISA plans would still be permitted to set a minimum age that is younger than 18.

What's the fiduciary considerations? If passed, the legislation would expand the coverage requirements under ERISA, with implications for non-discrimination testing and matching contributions. However, during the first five years after its enactment, the current version of the bill contains a safe harbor from non-discrimination testing.



Did you know? The DOL issued cybersecurity guidance in 2021 and again in 2024, which says that responsible plan fiduciaries have an obligation to ensure proper mitigation of cybersecurity risks. During the last quarter, another large recordkeeper had a cybersecurity incident that occurred on May 7 and was discovered June 10. This is a reminder to plan fiduciaries of the importance of continually following the guidance from the DOL related to proper selection and monitoring of service providers, including review for cybersecurity practices.

Litigation

Intel Prevails in "Speculative" Investment Challenge

What happened? A suit filed in 2019 alleged that the fiduciaries of the Intel 401(k) Savings Plan and the Intel Retirement Contribution Plan breached their fiduciary duties by "investing billions of dollars in retirement savings in unproven and unprecedented investment allocation strategies featuring high-priced, low-performing illiquid and opaque hedge funds."

What's the latest? A federal appellate court has now affirmed the district court's rejection of a suit challenging as a fiduciary breach the "speculative" nature of a custom target-date fund invested in hedge funds and private equity. The appellate court affirmed that decision, noting that the plan fiduciaries had established — and communicated — specific objectives for its custom approach that the court felt had been matched with the challenged funds.

What's the fiduciary consideration? The outcome serves as a solid reminder of the importance of having established investment goals for the plan, specifically including the plan's target-date funds, and documenting the process of establishing those goals such as in an investment policy statement. The case further highlights the importance of meeting minutes that demonstrate how monitoring adherence to those goals occurred, rather than a singular reliance on investment outcomes. This case is also important given the timing of major announcements related to alternative investments such as private equity, private credit and beyond, that are making their way into 401(k) platforms. What was once more limited to defined benefit plans is becoming available in the defined contribution space as several of the old challenges related to these investment options — including regulatory pushback — may soon be dissipating as the Trump administration has included remarks of support for alternative investments in plans (though no guidance has been issued by the DOL).

Mixed results in forfeiture reallocation suits

What happened? At present, more than 50 of these types of suits — alleging that the decision to reallocate plan forfeitures by offsetting them against employer contributions, rather than offsetting plan expenses was a breach of the duty to act only in the best interests of participants — have been filed by multiple law firms, some as standalone suits, others with those charges appended to other allegations (typically excessive fee cases).

What's the latest? The last quarter brought the dismissal of several of these suits (Knight-Swift, Kaiser Permanente, Sonoco Products, Ferguson Enterprises, and most recently JP Morgan and Wells Fargo) — generally on the grounds that the Internal Revenue Service (IRS) permits the use of forfeitures for payment

of employer contribution, and that the plan document supported it as well. Meanwhile, the suit filed against Intuit was settled for a cash settlement of just under $2 million, though firms like Amazon and AT&T filed motions to dismiss similar suits filed against them in the first quarter.

What's the fiduciary consideration? For now, at least, fiduciary decisions about forfeiture reallocations appear to be fertile ground for litigation. As a result, even though these choices are legal under well-established IRS guidance, and widely accepted industry practices, prudent plan fiduciaries should be looking for ways to remove discretion from fiduciaries in these decisions (and leaving only discretion up to the settlor — or business — when setting up the plan document).

Jury Awards $39M in MEP Excessive Fee Case

What happened? A rare jury trial in an ERISA case has produced a $39 million damages award for the plaintiffs.

What's the latest? in the case against Pentegra, the allegations were similar to those in other excessive fee suits; arguing that rather than "using the Plan's bargaining power to benefit participants and beneficiaries, Defendants acted to enrich themselves by allowing exorbitantly unreasonable expenses to be charged to participants for administration of the Plan." The suit also alleged that the defendants "profit from collecting additional fees directly from employers who participate in the Plan — putatively to pay for "outsourced" fiduciary responsibility — but act directly contrary to that assumed fiduciary responsibility by draining the retirement assets of Plan participants to enrich themselves."

What's the fiduciary consideration? Jury trials in ERISA cases are rare because many courts have ruled that ERISA lawsuits seek equitable remedies that must be tried by a judge, rather than legal remedies — like money damages — that can be submitted to a jury. With this result, there might be more situations where those filing suit request jury trials as this case shows that some judges may be willing to grant these requests — even in an ERISA case. However, that might not always be a negative result given that in the Vellali v. Yale University case, the jury found for the plaintiffs and found that Yale violated its fiduciary duties yet awarded $0 in damages.

Lack of Standing Stymies Pension Risk Transfer Suit

What happened? A suit alleged that "through four separate transactions completed between 2018 and 2022, Defendants offloaded over $2 billion of Alcoa's pension obligations, which affected over 28,000 Alcoa retirees and their beneficiaries." It went on to note that "defendants offloaded these obligations to Athene Annuity and Life Co. or Athene Annuity & Life Assurance Company of New York, a private equity-controlled insurance company with a highly risky offshore structure." They further argued that this effectively meant that their pensions were "worth far less" than if they had been transferred to a "traditional insurer of high credit quality."

What's the latest? The judge in this case concluded that the plaintiffs here had not seen any reduction in benefits because of the transaction — and having suffered no injury that could be redressed, lacked the grounds to bring a suit. "Tellingly, not a single Plaintiff alleges that he or she has received a lower benefit payment than before the PRT transactions," he wrote. "Thus, even if Plaintiffs could demonstrate a failure on the part of their fiduciaries, they have not suffered an actual harm that would confer standing."

What's the fiduciary consideration? While most of these types of suits are still being processed through the courts, the issue of no standing and no injury has been consistently raised by plan fiduciaries. Participants and beneficiaries in defined benefit plans have had trouble overcoming that argument threshold.

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