

2025 Employee Benefits Webinar



Private Sector Employers

FEBRUARY 5, 2025

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L.A. Wildfire Resources and Upcoming Seminar

- [LA Wildfires Resource Page](#)
- [Employee Benefits Legal Alert](#)
- Wednesday, February 19 | 3:30 -5:00 PM:
 - RSVP here: [Navigating Insurance Claims and Maximizing Recoveries after the LA Wildfires.](#)

Agenda

Health and Welfare Plan Update

Qualified Plan Update

Cybersecurity

Legislative and Regulatory Outlook

Health and Welfare Plan Update

Affordable Care Act (ACA) Updates

ACA Updates: Legal Challenge to Employer Penalties; Reporting Relief

- Lawsuit filed in Texas challenging ACA employer penalties, aka “employer shared responsibility payment” or ESRP (*Faulk Co. v. HHS*, 4:24-cv-00609)
 - ESRPs can be assessed if IRS determines applicable large employer failed to offer qualifying coverage to at least 95% of full-time employees and at least one full-time employee obtains premium tax credit for “Exchange” coverage
 - Employer argues IRS lacks authority to assess penalties if HHS does not provide right to appeal determination of employee’s eligibility for premium tax credit
- Two laws enacted last year provide some employer reporting and other relief – see our Client Alert: [Affordable Care Act Reporting Changes – Some Good News for Employers](#)

ACA Updates: U.S. Supreme Court to Hear Preventive Care Case

- Lawsuit filed in Texas in 2022 challenged ACA requirements that non-grandfathered plans offer certain preventive care in-network without cost sharing
 - See our update from last year for more background on the case: [2024 Employee Benefits Webinar](#)
- Fifth Circuit ruling in 2024 held appointment of members of one of three entities authorized to determine covered preventive services was unconstitutional
 - Court limited application of ruling to plaintiffs in the case
- HHS under prior administration appealed and last month Supreme Court agreed to hear case: *Becerra v. Braidwood Mgmt., Inc.*, U.S., No 24-316
- Unclear how HHS under new administration will proceed

HIPPA Reproductive Health Rule

Modifications to Privacy Rule to Support Reproductive Health Care Privacy

- HHS issued final rules to address concerns that PHI could be used to conduct investigations or impose liability on individuals seeking lawful reproductive health care or persons assisting them
- Preamble cites US Supreme Court's 2022 ruling in *Dobbs v. Jackson Women's Health Organization*, after which many states imposed bans on abortion and other restrictions on reproductive health care
 - Potential use and disclosure of PHI related to reproductive health care could undermine access to and quality of health care

Modifications to Privacy Rule to Support Reproductive Health Care Privacy

- Reproductive Health Care Privacy rules' protections only apply when the reproductive health care is lawful.
- A covered entity may not disclosure reproductive health care PHI for non-health care purposes:
 - To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care;
 - To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care; or
 - To identify any person for such purposes.

Modifications to Privacy Rule to Support Reproductive Health Care Privacy

- A covered entity must receive an attestation from the person requesting the use or disclosure of reproductive PHI for certain purposes.
 - Must clearly attest to the fact that the requested use or disclosure is not for a prohibited purpose.
 - [HHS Model Attestation](#)
- Clarifies when a covered entity may disclose reproductive health care PHI pursuant to an administrative request (e.g., an administrative subpoena or summons)
 - Must be required by law and not subject to a prohibited use for non-health care purposes.

Next Steps for Compliance

Provide updated training to employees;

Review and, if necessary, revise business associate agreements;

Adopt a standard attestation form; and

Review and update HIPAA Notice of Privacy Practices by February 16, 2026.

IRS Guidance Expands List of Preventive Care for High Deductible Health Plans

IRS Guidance Expands List of Preventive Care for High Deductible Health Plans

- Notice [2024-75](#) expands the list of preventive care for that can be covered by a high deductible health plan (HDHP) under the health savings account (HSA) rules without a deductible, or with a deductible below the IRS minimum annual HDHP deductible:
 - Over-the-Counter Oral Contraceptives (including emergency contraceptives); and
 - Male Condoms.

IRS Clarifies Preventive Care Coverage

- Notice 2024-75 clarified that, under the HDHP/HSA preventive care rules:
 - All types of breast cancer screening for individuals who have not been diagnosed with breast cancer are treated as preventive care.
 - Continuous glucose monitors are preventive care under the same circumstances as other glucometers if they use similar methods to measure glucose levels.
 - Selected insulin products are preventive care, even if the product is not prescribed to treat an individual diagnosed with diabetes or for preventing the exacerbation of diabetes or a secondary condition.



Teleheath No Longer Be Covered Before Deductible is Met

- In 2022, the CARES Act added an exception to the general rule that an individual must meet the annual deductible before benefits are covered under an HDHP for telehealth and remote care services.
- Subsequent legislation extended the exception for telehealth through the end of 2024.
- Congress did not extend the exception for plan years beginning on or after **January 1, 2025**.
- Sponsors of HDHPs with plan years beginning before **January 1, 2025** may continue to cover telehealth before the deductible is met through the end of the plan year.

Final MHPAEA regulations

Final MHPAEA Regulations

- Notably, the final MHPAEA regulations the IRS, DOL, and HHS issued last September:
 - Do not finalize the proposed rule that would have required the predominant NQTL apply to at least 2/3 of M/S benefits before it can apply to MH/SUD benefits
 - BUT retain the general rule: an MH/SUD NQTL cannot be more restrictive than the predominant NQTL applicable to substantially all M/S benefits in the same classification
 - Provide that an MH/SUD NQTL is more restrictive if the plan fails to meet:
 - The design and application requirements, or
 - The relevant data evaluation requirements
 - Eliminate proposed exceptions for independent professional medical or clinical standards and fraud and abuse measures, but explain how to analyze and account for them
 - Confirm the Departments may direct a plan that has received a comparative analysis review process final determination of noncompliance not to apply an impermissible NQTL

Final MHPAEA Regulations

- New two-part NQTL test:
 - Design and application:
 - Plans can't impose NQTL on MH/SUD benefits, unless (as written and in operation) the processes, strategies, evidentiary standards, or other factors used in designing and applying it are comparable to and applied no more stringently than those for M/S benefits in same classification
 - Plans can't rely on any factor or evidentiary standard, if the information, evidence, sources, or standards on which it is based discriminate (biased or not objective) against MH/SUD benefits versus M/S benefits
 - Relevant data evaluation:
 - Plans must collect and evaluate "relevant data" in a manner reasonably designed to assess the NQTL's impact on relevant outcomes related to access to MH/SUD and M/S benefits and consider the impact as part of the plan's evaluation
 - *Material differences:* To extent relevant data show material differences in access to MH/SUD benefits, the differences would be a *strong indicator* of noncompliance with the NQTL rule
 - Plan must:
 - » Take reasonable action to address material differences to ensure compliance; and
 - » Document in comparative analyses any such action taken

Final MHPAEA Regulations

- Network composition: the Departments did not finalize the proposed per se violation rule for any material differences in access to MH/SUD v. M/S benefits related to network composition NQTLs
 - Instead, the final regulations provide the same analyses apply to all NQTLs, including those related to network composition
- Like the proposed rules, the final regulations:
 - Prohibit financial requirements and treatment limitations that apply only to MH/SUD benefits and not to any M/S, benefits in the same classification
 - Require a plan that provides any MH/SUD benefits in any classification to provide *meaningful benefits* for the treatment of that MH/SUD condition in each classification
 - Require that MH/SUD and M/S benefits be assigned to the six classifications

Final MHPAEA Regulations

- Applicability dates
 - The final regulations generally apply to GHPs on the 1st day of the 1st plan year beginning on or after **January 1, 2025**
 - The meaningful benefits standard, prohibition on discriminatory factors, relevant data evaluation, and related requirements apply on the 1st day of the 1st plan year beginning on or after **January 1, 2026**



No Surprises Act update

No Surprises Act Update

- Recent Agency victory in lawsuit challenging Agency QPA calculation rules
 - Last October, the Fifth Circuit Court of Appeals upheld several provisions of the Agency QPA calculation rules under the NSA. *See Texas Medical Association v. United States Department of Health and Human Services*, 140 F.4th 494 (5th Cir. 2024)
- Recent victory for plans and insurers in provider lawsuit to enforce IDR awards
 - In May, the court in *Guardian Flight LLC v. Health Care Serv. Corp*, 2024 WL 2786913 (N.D. Tex. 2024) held the NSA doesn't confer private cause of action on providers to enforce IDR awards
- Agencies issue updated GCPCA guidance
 - [Gag Clause Prohibition Compliance Attestation - Annual Submission Instructions](#)
 - [Gag Clause Prohibition Compliance Attestation User Manual](#)
 - [FAQs Part 69 issued January 14, 2025](#)

Health Plan Litigation

Health Plan Litigation Update

- **Johnson & Johnson Litigation**

- In 2024, a Johnson & Johnson employee brought a class action alleging ERISA fiduciary breaches related prescription drug coverage under J&J's self-funded group health plan (*Lewandowski v. Johnson and Johnson et al*, U.S. District Court, District of New Jersey, Case No. 3:24-CV-00671)
- This lawsuit, new for health plans, applied arguments used in retirement plan excessive fee cases (e.g. failure to monitor the pharmacy benefits manager)
- The lawsuit was dismissed on **January 24, 2025**, based on the **claims regarding higher premiums, higher deductibles, higher coinsurance, and lower wages being too speculative and ,based on these particular facts, claims regarding higher out-of-pocket costs for prescription drugs was not shown; reasoning is likely deterrent to future class action status for cases**

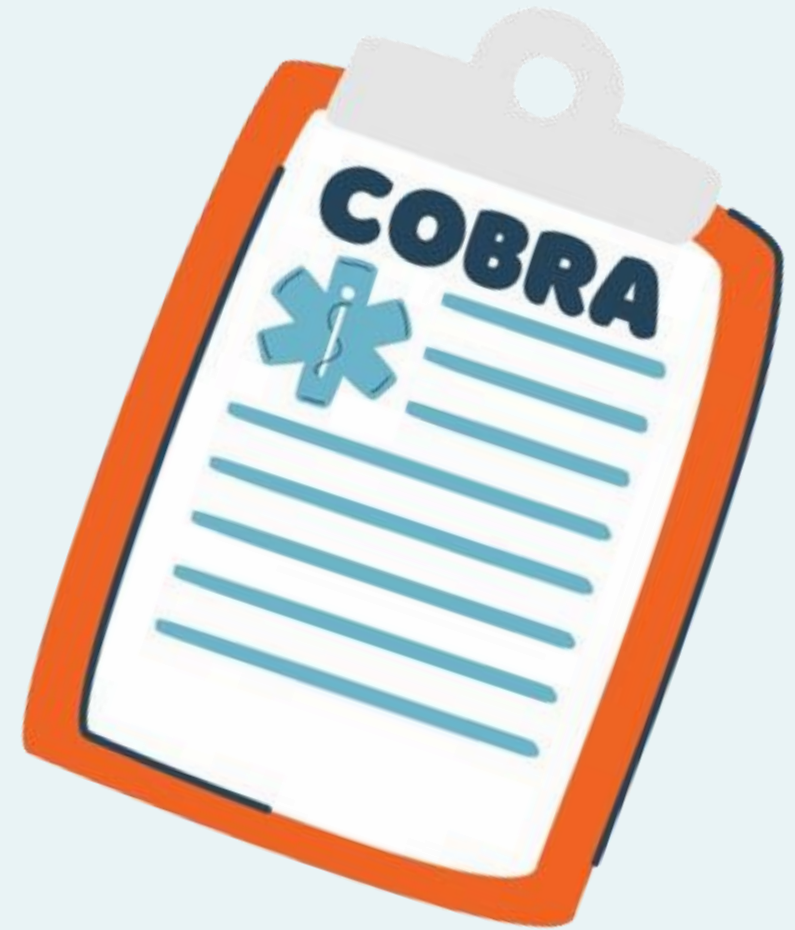
Health Plan Litigation Update

- **Tobacco Surcharge Litigation**

- In 2024 new ERISA class action litigation appeared primarily targeting large, self-funded group health plans that charge an additional amount on insurance premiums (known as “surcharges”) for participants who use tobacco products
- The litigation, also including DOL enforcement actions, claimed the surcharges are discriminatory in violation of ERISA non-discrimination requirements and the DOL’s implementing regulations (See *Sec’y of Labor v. Macy’s, Inc.*, No. 1:17-cv-00541, 2024 WL 4302093 (S.D. Ohio **Sept. 26, 2024**)
- In its order denying Macy’s motion to dismiss the DOL action, the district court indicated, however, that the impact of *Loper Bright* on the DOL regulations at issue required further consideration; stay tuned for developments in this area!

Health Plan Litigation Update

- **Starbucks COBRA Notice Arbitration Ruling**
 - On **December 16, 2024**, the Eleventh Circuit ruled that a lawsuit would proceed against Starbucks challenging the validity of its COBRA notices
 - The court ruled that provisions requiring arbitration of claims was not binding on the dependents of former workers, and that the surviving spouse of a former employee “never signed or otherwise agreed” to the arbitration requirements



2025 Health & Welfare Plan Limits

2025 Health & Welfare Plan Limits

Health FSAs, EBHRA, Qualified Transportation Fringe Benefit & Qualified Parking Limits

Health Flexible Spending Accounts	2024	Trend	2025
Maximum salary deferral limit	\$3,200	Up	\$3,300
Health FSA Carryover limit	\$640	Up	\$660

Dependent Care Flexible Spending Accounts – Annual Contribution Limits	2024	Trend	2025
Maximum salary deferral (single taxpayers and married couples filing jointly)	\$5,000	Same	\$5,000
Maximum salary deferral (married couples filing separately)	\$2,500	Same	\$2,500

EBHRA; Qualified Transportation & Parking Limits	2024	Trend	2025
Maximum amount made newly available for the plan year for Excepted Benefit Health Reimbursement Arrangements (EBHRA)	\$2,100	Up	\$2,150
Qualified mass transportation fringe benefit & Qualified commuter parking (monthly limit)	\$315	Up	\$325

2025 Health & Welfare Plan Limits

High Deductible Health Plans (HDHP) and Health Savings Accounts (HSA)

HDHP – Maximum annual out-of-pocket limit (excluding premiums)	2024	Trend	2025
Self-only coverage	\$8,050	Up	\$8,300
Family coverage	\$16,100	Up	\$16,600

HDHP – Minimum annual deductible	2024	Trend	2025
Self-only coverage	\$1,600	Up	\$1,650
Family coverage	\$3,200	Up	\$3,300

HSA – Annual contribution limit	2024	Trend	2025
Self-only coverage	\$4,150	Up	\$4,300
Family coverage	\$8,300	Up	\$8,550
Catch-up contributions (age 55 or older by the end of the year)	\$1,000	Same	\$1,000

Appendix

APPENDIX

Health and Welfare Plan Updates

- DOL ACA FAQs Part 64 on coverage of contraceptive preventive care:
<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-64>
- DOL ACA FAQs Part 68 on coverage of PrEP drugs as preventive care:
<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-68>
- Proposed rule on religious objections to covering contraceptives withdrawn:
<https://www.govinfo.gov/content/pkg/FR-2024-12-30/pdf/2024-31239.pdf>
- Proposed rule on covering OTC contraception without cost-sharing withdrawn:
<https://www.govinfo.gov/content/pkg/FR-2025-01-15/pdf/2025-00774.pdf>

APPENDIX

Health and Welfare Plan Updates

- Final regulations on short-term, limited duration insurance & fixed indemnity excepted benefits coverage: <https://www.govinfo.gov/content/pkg/FR-2024-04-03/pdf/2024-06551.pdf>
 - Includes new fixed indemnity notice requirement for group health plans
 - Proposed rules regarding tax treatment of fixed indemnity payments were NOT finalized, to give agencies more time to study concerns raised in comments
 - CMS fact sheet available at: <https://www.cms.gov/newsroom/fact-sheets/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage-cms>

APPENDIX

Health and Welfare Plan Updates

- IRS guidance on Educational Assistance Plans issued:
<https://www.irs.gov/newsroom/frequently-asked-questions-about-educational-assistance-programs>
 - IRS also issued sample employer plan: <https://www.irs.gov/pub/irs-pdf/p5993.pdf>
- Legal challenges to ACA § 1557 nondiscrimination rules applicable to plans receiving federal funds (e.g., retiree drug subsidy) involving gender identity & sexual orientation discrimination
 - *Neese v. Becerra*, 123 F.4th 751 (5th Cir.) (vacated for lack of standing)
 - *Tennessee v. Becerra*, 2024 WL 3283887; *Texas v. Becerra*, 2024 WL 3297147 (issuing nationwide stays of provisions in 2024 regulations)
 - Executive Order issued on **Jan. 20** regarding gender identity signals shift in HHS policy

Qualified Plan Update

Secure 2.0 Act

Final (and Proposed) RMD Regulations

- The final regulations published last July:
 - Effective **January 1, 2025**; reasonable, good-faith standard for prior years
 - Mostly track the 2022 proposed regulations; incorporate SECURE 2.0 RBD changes
 - Don't include a uniform 70½ RBD option, but state a plan could continue to require one
 - Confirm DB of DC participant who dies after RBD must continue annual distributions and receive full distribution by end of 10th calendar year after participant's death
 - The IRS issued Notice 2024-35 last April to extend transition relief to 2024

Final (and Proposed) RMD Regulations

- Clarify DC plans must continue annual distributions to EDB using LE rule until interest fully distributed; pay any remaining RMD for year EDB dies to EDB's DB
- Eliminate proposal that would have required full distribution to EDB by end of year EDB's life expectancy ends (i.e., if EDB older than participant)
- Clarify proposal to treat part of distribution to surviving spouse using the 5 or 10-year rule as rollover-ineligible "hypothetical" RMD applies only to spouse subject to DC 10-year rule

Final (and Proposed) RMD Regulations

- The new proposed regulations would (if finalized):
 - Confirm that the applicable age for participants born in 1959 is age 73, not 75
 - Provide operational rules for the partially annuitized DC account aggregation option
 - Clarify the treatment of corrective distributions of missed RMDs for excise tax reduction
 - Clarify SECURE 2.0 Act § 325 elimination of lifetime RMDs for designated Roth account
 - Would provide that distributions from designated Roth account are not treated as RMDs

Final (and Proposed) RMD Regulations

- Clarify SECURE 2.0 Act § 327 spousal election to be treated as participant for RMDs
 - If participant dies before RBD, election will apply automatically
 - If participant dies on or after RBD, election will not automatically apply, but may be default
 - If applies, would use ULT, but if participant dies on or after RBD, participant's LE if greater
 - Available only if 2024 or later the first year RMD required to surviving spouse
- Provide an outright distribution exception for see-through trusts divided immediately upon death

IRS Guidance re EPEDs and DAVDs

- Notice 2024-55 (**June 20, 2024**):
 - What is an EPED?
 - Unforeseeable or immediate financial need relating to personal or family emergency expenses
 - » Facts and circumstances: generally, any necessary emergency personal expenses qualify
 - EPEDs and DAVDs are optional
 - A participant may self-certify EPED or DAVD eligibility
 - EPEDs and DAVDs meet 401(k) and 403(b) (but not MPPP) distribution restrictions

IRS Guidance re EPEDs and DAVDs

- A plan must accept EPED or DAVD repayment if:
 - The plan permits EPEDs or DAVDs, and
 - The individual received one from, and is eligible to make a rollover contribution to, the plan
- Participants of plans that don't permit EPEDs or DAVDs may treat otherwise permissible distributions that qualify as EPEDs or DAVDs on their federal income tax returns

IRS Guidance re Student Loan Match

- Notice 2024-63 (8/19/24) – Qualified student loan repayment (QSLP) match
 - Can't limit QSLP match to only certain qualified educational loans (QELs)
 - All employees eligible for deferral match must be eligible for QSLP match and vice versa
 - BUT can limit QSLP match only to mandatory 410(b) disaggregation population
 - QSLP match for plan year cannot be based on QELPs made during a different plan year



IRS Guidance re Student Loan Match

- Employee must self-certify (1) LP amount, (2) LP date, (3) EE made LP, (4) loan is a QEL used to pay EE's or EE's spouse's or dependent's QHEEs, and (5) EE incurred loan
 - Affirmative EE cert. (w/ or w/out loan registration for (4) and (5), but annually if w/out or if info. changes); or passive EE cert. or independent ER verification for (1), (2), and (3) (annually)
 - Plan may require a separate certification for each QELP or permit an annual certification for all
- May establish one or more QSLP match claim deadline(s); annual deadline up to 3 months after PYE
- Optional separate ADP testing for employees who receive QSLP match – 2 methods
- Employer may add QSLP match mid-year to safe harbor plan or establish different QSLP match frequency (if at least annually), but need not correct QSLP match based on incorrect EE certification

IRS Guidance on Disaster Relief

SECURE 2.0 Act, Section 331

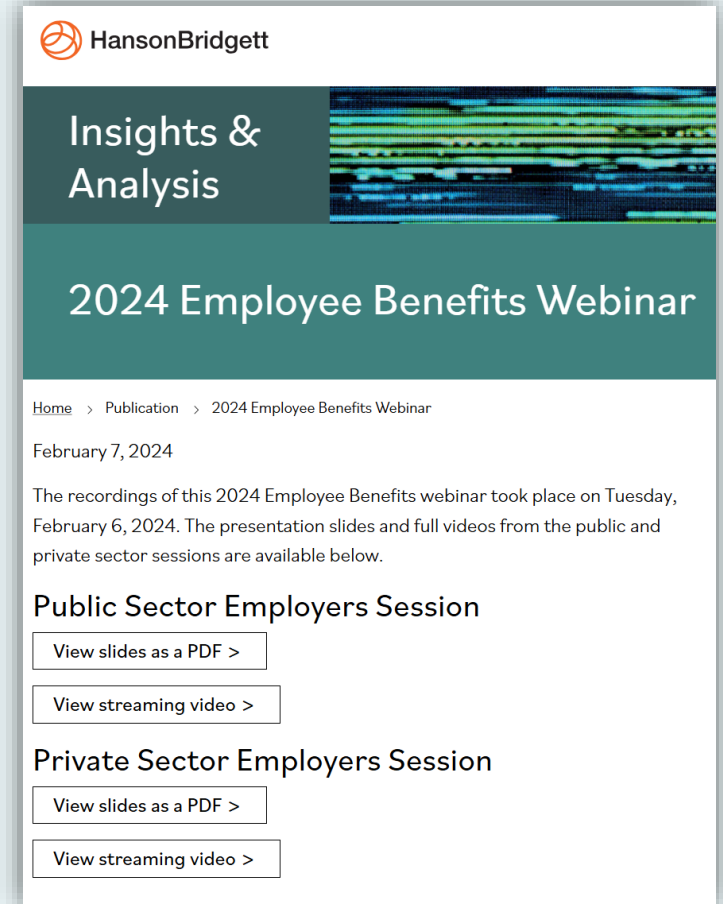
- If plan includes, favorable tax treatment for up to \$22,000 of “qualified disaster” recovery distribution from eligible retirement plans to “qualified individuals,” including special rollover and repayment rules
- Plan may provide increase in plan participant loan limit (up to \$100,000) and may provide one year extension of repayment period for loans received for principal residence purchase or construction (not used due to federally declared disaster)
- For further information on other potential benefits see our client Alert at: [Southern California Wildfires: Employers Should Be Aware of Potential Financial Resources for Employees](#)

Long-Term, Part-Time Employees Proposed Regulations

- Under the SECURE Act, beginning in 2024 401(k) plans were required to permit part-time employees who perform work for at least 500 hours of service over three consecutive years to contribute to a 401(k) plan
- SECURE 2.0 expanded those rules to allow part-time employees who work for at least 500 hours of service over two consecutive years to contribute to a 401(k) plan beginning in 2025
- SECURE 2.0 also extended the rules to 403(b) plans beginning in 2025

Long-Term, Part-Time Employees Proposed Regulations (continued)

- IRS Notice 2024-73 issued in October 2024 clarified the new eligibility rules that apply for long-term, part-time ("LTPT") employees under 403(b) plans in 2025
- Notice 2024-73 also extended the application of the proposed 401(k) regulations until plan years beginning on or after [January 1, 2026](#)
- In last year's webinar we covered the details of the new eligibility rules [2024 Employer Benefits Webinar](#)



DOL Lost and Found

- The Retirement Savings Lost and Found Database was established as of December 2024 to serve as a centralized location to find lost or forgotten benefits and learn how to obtain those funds
- The DOL Database was expected to be compiled with data received from the IRS but the IRS declined to assist with this project
- As a result, the DOL released its Information Collection Request
- The Lost and Found is operational, but not fully functional
- Proposed regulations are anticipated in **July 2025**

Proposed IRS Regulations-Roth Catch-Up & New Enhanced Catch-Up Rules

- On **January 10, 2025**, the IRS issued proposed regulations addressing several SECURE 2.0 Act provisions relating to catch-up contributions
 - SECURE 2.0 provided that participants under 401(k), 403(b) and governmental 457(b) plans with FICA wages over \$145,000 (indexed) in the prior year can make age-based catch-up contributions only on a post-tax “Roth” basis AND allows new additional catch-ups for employees ages 60-63 (“enhanced catch-ups”)
 - Proposed regulations did not further extend the mandated Roth catch-ups effective date
 - Roth catch-up mandate is based only on FICA wages, so would not apply to self-employed or certain state and local government employees who do not have FICA wages

Proposed IRS Regulations-Roth Catch-Up & New Enhanced Catch-Up Rules

- No aggregation of multiple employers (even if aggregated for nondiscrimination testing purposes)
- Two ways of correcting errors in applying Roth mandate: (1) If W-2 not issued, can recharacterize as Roth and report it on employee's W-2; (2) Correct by an in-plan Roth conversion (e.g. by April 1 of year following year of the failure)
- OK not to offer Roth at all, but cannot require that all catch-ups be Roth; could still allow pre-tax catch-ups for those not subject to the Roth mandate
- Can treat employees to have "deemed" to elect Roth if they elected catch-ups and are subject to the Roth mandate
- OK not to offer new enhanced catch-ups for employees ages 60-63

IRS Guidance: Inadvertent Overpayments

- On **October 15, 2024**, the IRS issued Notice 2024-77, to provide the first round of interim guidance to help plan sponsors and fiduciaries comply with new SECURE 2.0 rules on inadvertent overpayments
 - Allows good faith, reasonable compliance standard prior to **October 15, 2024**
 - Makes clear plans may continue to recoup inadvertent overpayments from participants and beneficiaries (but must consider ERISA 206(h) restrictions on recoupments)
 - Except for errors related to IRC section 401(a)(17) (compensation limit), 415 (contribution and benefit limits), and 436 (non-governmental defined benefit plan funding-based restrictions), no requirement to restore the overpayment
 - Generally inadvertent overpayments treated as eligible rollovers (except 401(a)(17) or 415 errors)

IRS Guidance: Inadvertent Overpayments

- Errors involving violation of the 401(a)(17) or 415 limits require a corrective payment to the plan under the current EPCRS (Rev.Proc. 2021-30) rules; any amounts not recouped from participant are not eligible rollovers
- Cannot correct errors involving violation of the 401(a)(17) or 415 limits or 436 by retroactive amendment
- Conflicting portions of EPCRS as provided under Rev. Proc. 2021-30 are no longer applicable
- Helpful guidance for updating plan error correction policies

IRS 2024 Required Amendments List

- On **December 5, 2024**, the IRS issued Notice 2024-82 , which outlines the 2024 Required Amendments List ("RAL") for 401(a) tax-qualified plans and 403(b) plans
 - The RAL is an annual list of changes in statutory and regulatory requirements that plans must adopt to maintain their tax-qualified status
 - The RAL now contains 3 parts:
 - Part A: changes that generally would require an amendment to most plans
 - Part B: changes that the IRS believes will only require amendment in unusual circumstances
 - New Part C: changes that relate to optional provisions previously adopted

IRS 2024 Required Amendments List

- Because of the delayed effective dates for SECURE 2.0 and other law changes, again this year no Part A amendments required
- For Part B: very limited changes only affecting rural electric cooperatives and new family attribution rules under IRC 414
- New Part C: Interestingly provides a list of 14 optional amendments that impact plan documents where the IRS generally anticipates issuing no further guidance (e.g. age 59 ½ in-service distributions for pension plans, emergency personal expense distributions)
- Since deadline for ERISA-covered plans (other than multi-employer) is **December 31, 26**, IRS likely will be releasing more guidance and possible model language during 2025

401(k), HRA, HSA and Educational Assistance Programs

IRS Guidance on Choice Between Health, Retirement and Student Loan Benefits

- IRS continued its expansion of ability for participants to choose between benefits when it issued Private Letter Ruling (“PLR”) 202434006 on **May 20, 2024**
- While PLRs can only be relied upon by the recipient, they do give insight on whether the IRS is likely to challenge a similar arrangement involving other plans
- This 2024 PLR allows an annual irrevocable election during open enrollment to allocate employer contributions among the following retirement and health & welfare plans:
 - A defined contribution plan account
 - A retiree health reimbursement arrangement
 - A health savings account
 - An employee’s student loan reimbursements through an educational assistance plan
 - Could not receive in cash or any other taxable benefit

DOL Allows Transfer of ERISA Small Plan Accounts to State Unclaimed Property Funds

- Does NOT apply to governmental plans
 - State statutes may require transfer of lost participant accounts to state unclaimed property funds in some situations
- On **January 14, 2025**, the DOL announced in Field Assistance Bulletin No. 2025-01 that it would not take fiduciary breach actions against fiduciaries who transfer entire benefit payments owed to missing participants of \$1,000 or less to state unclaimed property funds if certain conditions are met
- Some interesting things to consider in restrictions to avoid fiduciary liability in making transfer since CA Constitution Article XVI, Section 17 fiduciary duties are virtually identical to ERISA

DOL Allows Transfer of Small Accounts to State Unclaimed Property Funds

- Conditions under DOL guidance:
 - The fiduciary must find the state unclaimed property fund is a prudent destination
 - Must have followed the DOL's best practices for finding missing participants
 - Must select the state unclaimed property fund consistent with the participant's last known address
 - SPD must explain that benefits may be transferred to a state unclaimed property fund and identify a plan contact to receive further information regarding the eligible state funds to which benefit payments are transferred
 - State unclaimed property fund qualifies as "eligible"

Qualified Plan Limits

2025 Qualified Plan Limits

Retirement Plan Limits	2024	Trend	2025
Elective deferral limit for 401(k), 403(b), and eligible 457(b) plans	\$23,000	Up	\$23,500
The catch-up contribution limit for those aged 50 or older	\$7,500	Same	\$7,500
Optional catch-up contributions for those aged 60-63	N/A	N/A	\$11,250
Dollar limit on annual benefit under a defined benefit plan	\$275,000	Up	\$280,000
Dollar limit on annual allocations under a defined contribution plan	\$69,000	Up	\$70,000
Annual compensation limit	\$345,000	Up	\$350,000
Threshold for “highly compensated employee” status used in nondiscrimination testing	\$155,000	Up	\$160,000
Threshold for “key employee” status for officers used in performing “top-heavy” testing	\$220,000	Up	\$230,000

Social Security Wage Base	2024	Trend	2025
Social Security Maximum Taxable Earnings	\$168,600	Up	\$176,100

Retirement Plan Litigation

ESG Investing: Fiduciaries Breach Duty Hiring Investment Manager with ESG Tilt

- *Spence v. American Airlines, Inc.* (N.D. Tex. Jan. 10, 2025)
- AA and EB Committee breached their fiduciary duty of loyalty by failing to act solely in the interest of the plan participants and their beneficiaries
 - Investment Manager, selected by AA and the Committee, pursued socio-political outcomes rather than exclusively financial returns
- No breach of fiduciary duty of prudence because AA and the Committee acted according to prevailing industry practices
- Court deferred rulings on losses and remedies
- Next steps: wait and see

Motion to Dismiss Pleading Standards: Supreme Court Addresses Split

- *Cunningham v. Cornell University*, 86 F. 4th 961 (2d Cir. 2023)
- Second, Third, Seventh and Tenth Circuits hold that participants must plausibly allege that services provided by service provider were unnecessary or involved unreasonable compensation
- Eighth & Ninth Circuits hold entering into or amending a recordkeeping agreement is a prohibited transaction because RK is a party in interest
 - Plan fiduciaries must show transaction is exempt by showing (i) the contract is necessary for the establishment or operation of the plan, (ii) the contract is reasonable, and (iii) no more than reasonable compensation is, or will be, paid

Arbitration Update: Still Waiting for the Supreme Court to Address the Split

- Supreme Court denied a petition from Argent Trust Co. on November 4, 2024
 - *Cedeno v. Sasson*, 100 F.4th 386 (2d Cir. 2024)
- Tenneco Inc. filed a petition with the Supreme Court on November 15, 2024 asking again for the Court to review the Sixth Circuit's denial of a motion to compel arbitration
 - *Parker v. Tenneco, Inc.*, 114 F.4th 786 (6th Cir. 2024)
- Supreme Court denied Tenneco's petition on January 13, 2025
- Arbitration provisions are still enforceable in California; *Dorman v. Charles Schwab Corp.*, 934 F.3d 1107 (9th Cir. 2019)

Forfeiture Litigation Update

- Introductory note: current regulations provide forfeitures must be used as soon as possible to reduce employer contributions and proposed IRS regulations allow plans to use forfeitures to offset future employer contributions, pay plan expenses or allocate as additional contributions
- So far decisions have been a mixed bag at the motion to dismiss level: some courts have allowed participants to move forward with their litigation; other courts have found (i) plan gave employer discretion, (ii) forfeitures used to pay benefits, (iii) payment of benefits is not a transaction, so no prohibited transaction exists
- Next steps: check plan documents, then wait and see

DOL Updates the Voluntary Fiduciary Correction Program

- Correct delinquent participant contributions and loan repayments using new self-correction program
 - Earnings not more than \$1,000
 - Delinquent amount is deposited into the plan within 180 days
 - Pay IRS excise tax
 - File notice with the DOL
- Correct eligible inadvertent participant loan failures through EPCRS and file a notice with the DOL (SECURE 2.0 Section 305)
- Effective March 17, 2025

Cybersecurity

Compliance Assistance Release No. 2024-01

DOL published Compliance Assistance Release No. 2024-01

- Clarifies that the cybersecurity guidance issued by the Employee Benefits Security Administration (“EBSA”) in April 2021 applies to all types of plans covered by ERISA, including health and welfare plans – not only retirement plans
- EBSA updated guidance for plan participants, plan sponsors, fiduciaries, and recordkeepers/administrators to follow to make prudent decisions on cybersecurity issues:
 - Tips for Hiring a Service Provider
 - Cybersecurity Program Best Practices
 - Online Security Tips

Tips for Hiring a Service Provider

DOL's tips for hiring a service provider with strong cybersecurity practices:

- Evaluate Security Standards
 - Verify the provider's security policies, practices, and audit results against industry standards
- Third-Party Validation
 - Find providers with annual third-party audits confirming compliance with cybersecurity standards
- Review Industry Track Record
 - Assess public information on the provider's history with security incidents, litigation, and legal issues
- Address Past Breaches
 - Ask about prior breaches, the provider's response, and lessons learned
- Insurance Coverage
 - Require insurance coverage for losses caused by cybersecurity breaches or identity theft
- Contract provisions
 - Ensure contracts mandate compliance with security standards and avoid limiting the provider's responsibility for breaches
- Confidentiality & Data Use
 - Require protection of confidential information and restricting unauthorized disclosure or misuse
- Incident Response & Notification
 - Define clear timelines and cooperation expectations for breach notifications and investigations

Cybersecurity Program Best Practices

DOL issued cybersecurity program best practices:

- Formal Cybersecurity Program
 - Maintain a documented program to assess and address cybersecurity risks, with policies approved and reviewed annually
- Annual Risk Assessments
 - Conduct regular risk assessments to identify, evaluate, and mitigate cybersecurity risks
- Third-Party Audits
 - Require annual third-party audits of security controls to verify cybersecurity measures
- Access control
 - Implement strong access control measures, including multi-factor authentication and role-based access
- Cloud and Third-Party Security
 - Ensure assets and data managed by third-parties undergo security reviews and assessments
- Cybersecurity Training
 - Conduct annual training for all personnel, updated to address evolving risks
- Data encryption
 - Encrypt sensitive data both in transit and at rest to ensure its confidentiality and integrity
- Incident response & resilience
 - Establish a robust business resiliency program, including disaster recovery, business continuity, and incident response plans

Online Security Tips

DOL issued tips on how participants can protect their online retirement savings accounts:

- Register, set up, and routinely monitor online account
- Use sophisticated passwords & update regularly
- Use multi-factor authentication
- Update contact information, provide multiple communication options, close old accounts
- Be wary of free Wi-Fi
- Beware of phishing attacks
- Install antivirus software and keep software current
- If participant is a victim of a cybersecurity attack, participant should contact the FBI or DHS



New DOL Audit & Enforcement Issues

- **Subpoenas issued in connection with DOL investigations include documentation related to:**
 - The Plan's cybersecurity program, access control procedures
 - Roles and responsibilities of each person handling the Plan's information security, cybersecurity or security controls
 - Risk assessments of the Plan's cybersecurity system
 - Internal and third-party audits of the Plan's cybersecurity system or security controls, including annual or periodic audits
 - Security reviews and/or independent assessments related to data stored on cloud or managed by third-party providers
 - Cybersecurity awareness training

New DOL Audit & Enforcement Issues

- Business resiliency or continuity program relating to the Plan's cybersecurity, including processes for business continuity, disaster recovery, and incident response
- Plan's implementation of technical controls for its cybersecurity program
- The implementation and/or management of a secure system development life cycle ("SDLC") program
- Any cybersecurity incidents, breaches, or suspected incidents or breaches, and the actions taken in response to each
- The Plan's processes for the encryption of sensitive data, stored and in transit
- Contracts with third-party service providers relating to the Plan's information security, cybersecurity, or security controls

Cybersecurity Breaches - Litigation

- *Sherwood v. Horizon Actuarial Servs., LLC*, No. 1:22-CV-01495-ELR, 2022 WL 18460459 (N.D. Ga., 2022)
 - **4/2022:** multiple complaints filed arising from a massive data breach in 2021 that exposed employer benefit plan members' sensitive data claiming negligence and injunctive & declaratory relief requiring security protocols
 - **4/2024:** \$8.7M class action settlement agreement of up to \$5,000 per individual for losses from identify fraud, credit repair services, freezing credit cards
- *Disberry v. Employee Relations Committee of Colgate-Palmolive Company*, 646 F.Supp.3d 531 (S.D.N.Y., 2022)
 - **7/2022:** former Colgate executive subject to cyber breach filed complaint alleging breach of fiduciary duty where hacker stole over \$750,000 of retirement savings from executive's account, alleged that cybersecurity was not a priority for ex-employer or its retirement plan administrator
 - **9/2024:** Parties settled
- *In re: HealthEquity, Inc. Data Security Incident Litigation*, Case No. 2:24-cv-00528 (D. Utah, 2024)
 - **3/2024:** HealthEquity – health benefits administrator of health saving accounts, flexible spending accounts, health reimbursement arrangements, and COBRA benefits – detected a cybersecurity breach exposing personal identifying information ("PII") and protected health information ("PHI") of 4.3 million plan participants
 - **8/2024:** Court granted motion to consolidate class action lawsuits alleging that provider failed to implement reasonable data security practices resulting in a breach and disclosure of plan participants' PII and PHI; provider filed motion to dismiss

Legislative and Regulatory Outlook

Reverse Regulations on DOL Fiduciary Rule and ESG

- Intersection of Supreme Court ruling in Loper Bright and Project 2025/America First Policy Institute
- Action by Executive Order and Executive Proclamation will usurp judicial activism

What's on the Table if Deficit Offsets are Needed to Pass Tax Reform Legislation

- Elimination of Roth conversions and back-door Roth contributions
- Elimination of catch-up contributions for high earners
- Roth-only contributions

Possible Regulatory Action

- Brokerage window reporting on ESG
- Private equity investments in retirement plans
- Cryptocurrency investments in retirement plans
- SECURE 2.0 regulations more plan sponsor friendly

Thank you!