2026 Employee Benefits Webinar

HansonBridgett

Mid-Year Fiduciary Update

Private Sector Employers

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Agenda

- ERISA Fiduciary Rules
- Legislative and Regulatory Update
- Litigation Update
- Annual Review of Plan Document and Operational Compliance

ERISA FIDUCIARY RULES

Who Is an ERISA Plan Fiduciary?

- Who is a Fiduciary under ERISA?
  - Any Person or Entity that:
    - Is named a fiduciary in plan documents
    - Exercises any authority or control over the management or disposition of plan assets
    - Exercises any discretionary authority or responsibility over administration of the plan
      - **Interpreting plan terms, deciding claims, etc.**
    - Renders investment advice for a fee

What are the ERISA Fiduciary Duties?

- Four main fiduciary duties under ERISA
  - Duty of Loyalty
    - Exclusive benefit rule
    - Act for the sole purpose of providing benefits to plan participants
    - Only pay reasonable plan expenses
  - Duty of prudence
    - Act with the care, skill, and diligence that a prudent person who is **familiar with the matter** would use under similar circumstances
  - Duty to Diversify Plan Investments
  - Duty to administer the plan in conformity with the plan document
    - Includes the trust document, investment policy statements, etc.

ERISA: Why We Care

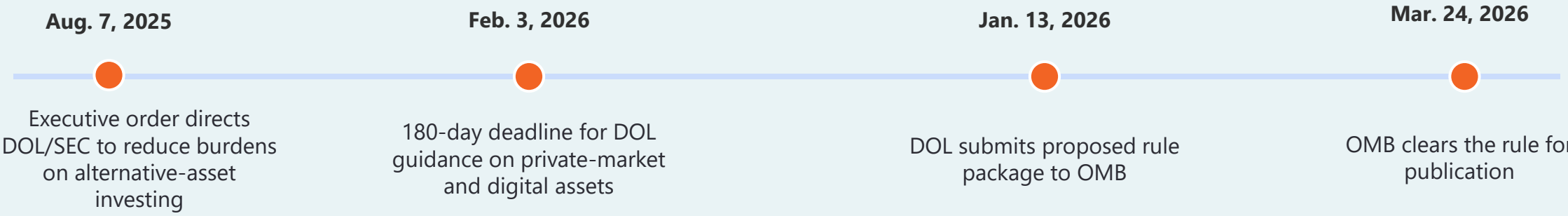
- ERISA § 409: Personal Liability for Losses When Fiduciaries Breach their Fiduciary Duties
- Penalties:
  - Civil penalties
  - Excise taxes
  - Equitable remedies
  - Criminal penalties
- Government Agency Audit Risk
- Litigation Risk

Legislative and Regulatory Update

Defined Contribution Plan Investments Update

Regulatory developments in alternative investments, ESG, proxy advisory guidance, and CIT pricing trends

DOL Initiative to Promote Alternative Investment Products



- Stems from President Trump's August 7, 2025, executive order directing DOL and SEC to relieve regulatory burdens and litigation risk impeding alternative-asset investment by DC plan participants
- EO directed DOL to clarify guidance on private-market and digital investments in retirement plans within 180 days (by Feb. 3, 2026) — covering private equity, private credit, infrastructure, and cryptocurrency
- Secretary Chavez-DeRemer: goal is a retirement system that allows more Americans to retire with dignity through greater investment diversity

DOL Proposed Regulation re Fiduciary Duties in Selecting DIAs

Published March 31, 2026 — creates a process-based safe harbor and a legal presumption of prudence, built on six required factors, considered objectively, thoroughly, and analytically:

1. **Performance**
   Track record and expected returns relative to stated objectives

2. **Fees**
   Cost relative to value and services provided

3. **Liquidity**
   Ability to redeem/trade within a reasonable time and without excessive cost, particularly relevant for private/illiquid assets

4. **Valuation**
   How and how often the investment is priced, and whether that methodology is reliable and defensible

5. **Benchmarking**
   Availability of a "meaningful" comparison to assess risk-adjusted returns against similarly-mandated strategies

6. **Complexity**
   How difficult the investment is for a fiduciary to understand, explain to participants, and monitor over time

Criticism of the Proposed Regulations

- The rule is broader than expected. It's just a restating of general fiduciary investment duties, with a strong inference that private-markets investments can satisfy these rules or should not be viewed as barred from satisfying the rules
- Published criticism generally converges on the same core gap: the rule assumes benchmarking infrastructure the private-markets industry hasn't built yet
  - No standardized private-market benchmarks exist industry-wide, unlike public stock/bond indexes — without a "meaningful benchmark," fiduciaries can't reliably invoke the safe harbor
  - Existing benchmark providers (e.g., Morningstar) haven't converged on one standard — and the benchmarks they do have were built for old-style, closed-end funds, not the new ongoing, open-ended DIA funds now being proposed to offer to 401(k)s. The comparison tools just don't fit the product
  - Conflict-of-interest risk: a manager's proprietary benchmark, paired with its own funds sold to the plan, could itself invite litigation

Criticism of the Proposed Regulations

- Fees relative to performance comparisons are hard to defend given the typical lack of historical track records
- Liquidity risk is untested inside 401(k) structures; valuation mismatch (daily-priced funds holding quarterly-valued illiquid assets) creates litigation exposure in volatile markets
- Complexity may itself deter adoption — fiduciaries may avoid complex products simply to sidestep litigation risk, even where the rule doesn't disqualify complexity outright

DOL Plans to Revamp Prohibited Transaction Exemption Program

- Per DOL's 2026 regulatory agenda: EBSA updating the PTE Procedures Regulation (29 CFR part 2570) to reduce regulatory burdens on exemption applicants
- Updates guidance issued January 2024 under the Biden administration
- Proposed rulemaking targeted by August 2026
- Framed as part of the broader deregulatory push alongside the DIA safe harbor rule

EBSA Chief Vows Focus on ESG in 401(k)s

- FAB 2026-01 (April 2026): EBSA will prioritize investigations evidencing loyalty breaches, including "conduct designed to enrich themselves or other goals unrelated to participants' best interests, such as the promotion of environmental, social, or governance objectives." Assistant Secretary Aronowitz reinforced this in May 2026 remarks at The ESOP Association's National Conference, saying EBSA will target "disloyal pursuits of" ESG or DEI
- Analytical note: this framing collapses two distinct Fiduciary inquiries into one — considering ESG becomes a per se prudence violation (non-pecuniary factor) and, simultaneously, a deemed loyalty violation (a non-pecuniary goal, even where no bias or self-interest) — triggered by the same single fact, with no good-faith defense available under either theory. Notably, the FAB pairs “enrich themselves” (self-dealing) and ESG-promotion in the very same clause — direct support that the DOL is treating utilization and self-dealing as equivalent

EBSA Chief Vows Focus on ESG in 401(k)s

- This blurs a distinction found in the recent *Spence v. American Airlines* case — the actual case underlying this impetus for this enforcement position — that case required proof of a genuine conflict (BlackRock's own equity and debt stake in American) to establish disloyalty, and found no prudence violation at all; EBSA's per se framing above requires neither showing
- Speculative rationale: loyalty violations require no showing of financial harm — a *per se* loyalty theory is far more efficient to enforce than prudence claims, which require proving a comparative financial loss under a "process, not results" standard that favors fiduciaries

DOL Proposed ESG Investing Rule

- "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" — submitted by EBSA to OIRA June 30, 2026
- Revises the 2022 rule so fiduciaries select investments/exercise shareholder rights based only on financial considerations, never to advance social causes—thus replacing the current rule allowing ESG as a tiebreaker between financially identical options
- **TAKEAWAY**: the 2026 proposed rule reaffirms the always-existing statutory duty of loyalty (i.e., best interest of the participant — unchanged, not something the rule can alter) while substantively redefining the duty of prudence to require investment and proxy-voting decisions be based solely on pecuniary factors (financial only, i.e., not social, etc. — a regulatory standard DOL can and does change by administration). practical effect: loyalty gives plaintiffs a conflict-of-interest theory that's always been available but nonetheless equates ESG with a loyalty violation; prudence, once redefined in final form as pecuniary-only, gives them a second, easier-to-prove categorical theory layered on top. The latter will still likely change from administration to administration
- Congress in parallel: House passed the "Protecting Prudent Investment of Retirement Savings Act"
- The FAB and the proposed rule pursue the same substantive policy goal: restricting (or eliminating) ESG-based decision-making

DOL Technical Release re Proxy Advisors

Issue 1 — Fiduciary Status

- Proxy advisors exercising authority over shareholder rights, or providing fee-based proxy-voting advice, must meet ERISA's functional fiduciary requirements
- Disclaimers of fiduciary status are not determinative

Issue 2 — Preemption

- State laws requiring proxy-advisor disclosure — when recommendations aren't aimed at maximizing risk-adjusted return — are generally not preempted by ERISA

Committee Takeaway

Direct the 3(21) or 3(38), whichever applies, to confirm at least annually — as a standing agenda item — that proxy voting affecting plan assets is in participants' best financial interest and is not conflicted, by virtue of not considering ESG/DEI factors, based on the current enforcement and regulatory climate discussed above.

Recent Trend: CIT "Relationship Pricing" and the 3(38) Connection

- **Documented:** CIT asset managers are increasingly offering discounted CIT share classes to large distribution partners (i.e., investment advisory firms, broker-dealers, recordkeepers, etc.) who commit to minimum asset thresholds over time
- **Anecdotally:** CIT asset managers negotiating these relationship-pricing agreements with large advisory firms (e.g., Mercer Advisors, CAPTRUST, etc.) may count only the advisor's discretionary (3(38)) assets under management in the aggregate toward the volume threshold — presumably because only discretionary assets are reliably deliverable; a 3(21) advisor can only recommend, not move assets unilaterally across its book
- The result creates a potential fiduciary quandary: is the 3(38) being selected, or an investment being retained, partly because of the fee-discount access it unlocks — rather than purely on its merits?

Recent Trend: CIT "Relationship Pricing" and the 3(38) Connection

- **PRACTICAL TAKEAWAY FOR FIDUCIARIES (e.g., Committees)**
  - **Identify these relationship-pricing models and document that:**

1. The primary basis for the selection of the 3(38) is their qualifications as an advisor, not their access to investments, and;

2. As part of their ongoing monitoring duties, the 3(38) is required by the fiduciary to demonstrate that any decision to maintain an investment is pecuniary and in the best interest of participants — not on account of the 3(38) advisor's access to the discounts

DOL Field Advisory Bulletin 2026-02

- Section 338(a) of SECURE 2.0 Act of 2022 amended section 105(a)(2) of ERISA to require defined contribution plans to provide a paper benefit statement each calendar year (or every 3 years for defined benefit plans), effective for plan years beginning after December 31, 2025
- On Feb. 25, 2026, DOL published a notice of proposed rulemaking ("NPRM"), which would amend DOL's 2002 and 2020 electronic disclosure safe harbor rules to conform with the paper benefit statement rule
- Until DOL issues a final regulation or other applicable guidance, DOL will not enforce the paper benefit statement rule, so long as plan administrators comply in good faith with a reasonable interpretation of the provisions of the NPRM

CA AB 3275 – Claims Payment Reform (fully insured plans only)

- **Faster payment deadlines effective January 1, 2026**: Health insurers and health care service plans (including Medi-Cal managed care) must reimburse claims within 30 calendar days of receipt — replacing the prior "working days" standard and the HMO 45-day extension
- **Prompt notice on incomplete or contested claims**: If a claim doesn't meet "complete claim" criteria, the carrier must notify the claimant as soon as practicable, but no later than 30 calendar days — with no additional window after receipt of missing information
- **Complaints treated as grievances**: A complaint about a claim delay/denial must be handled through the plan's formal grievance process, giving employees a structured escalation path
- **ERISA preemption — self-insured plans are not affected**: The law applies to fully-insured plans regulated by California. Law does not apply to self-insured employer plans, including plans subject to ERISA preemption
- **Practical takeaway**: Audit your fully-insured carrier contracts and service agreements; confirm carriers have updated their workflows and grievance procedures, and consider communicating the new dispute rights to employees enrolled in fully-insured coverage

PBMs - DOL Proposed Rules

- **Expanded disclosure requirements for PBMs**. Requires PBMs and related brokers/consultants to disclose detailed compensation and service information to self-insured health plans
- **Applies to "covered service providers".** Includes entities contracting with plans to provide PBM services, whether directly or through affiliates or subcontractors
- **Upfront disclosure of services and compensation**. Must be provided before entering into or renewing contracts, including direct and indirect compensation (e.g., manufacturer payments, spread pricing, claw-backs)
- **Ongoing semiannual reporting**. Providers must disclose actual compensation received every six months to support continuous fiduciary oversight
- **Audit rights for fiduciaries**. Plans must be given the ability to audit the accuracy of disclosed compensation information

PBMs – CAA 2026

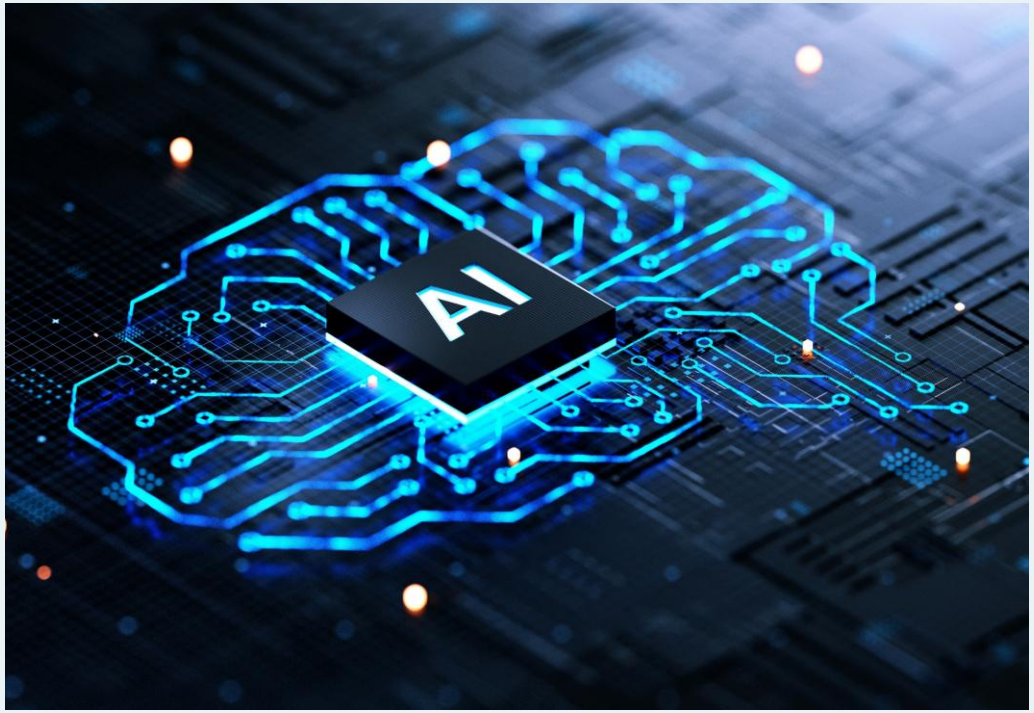
- **Expands PBM transparency requirements**. Applies to large self-insured plans, with compliance beginning in 2029 (or later based on plan year)
- **Enhanced fee disclosure requirements with penalties**. Requires detailed PBM compensation disclosures and participant-facing summaries; significant penalties for noncompliance ($10,000/day) or false reporting ($100,000/item)
- **Mandatory 100% rebate pass-through**. PBMs must remit all rebates and related compensation to the plan quarterly, with required recordkeeping and audit access
- **Stronger fiduciary oversight tools**. Includes independent annual audit rights and prohibits contractual limits on access to necessary plan information
- **Fiduciary protections with governance expectations**. Provides relief for "innocent fiduciaries" if issues are timely addressed, reinforcing the need for formal governance and documentation

PBMs - State Investigations

- **Trend**. State agencies and state attorneys general continue to investigate and bring enforcement actions against pharmacy benefit managers. Employers are affected when investigative agencies require the PBM to disclose plan specific information
- **Preemption**. Self-insured, ERISA-covered group health plans have declined to provide plan specific information claiming ERISA preemption
- **Settlements**. Louisiana settled with CVS Caremark for $45M. West Virgina settled with Express Scripts and Express Scripts agreed to reimburse pharmacies with interest and implement policy changes
- ***Pharmaceuticals Care Management Assoc. v. Bonta***. The pharmaceutical industry in California challenged a state law imposing fiduciary duties on PBMs. The California Federal District Court in the Central District dismissed the PCMA's complaint with leave to amend

Impact of AI on Health Plans and Fiduciary Duties

- **Cybersecurity**. AI tools can identify potential cybersecurity breaches. Uploading plan data to AI tools creates additional risk of unintended disclosure of personal health information
- **Duty to Monitor**. Monitor known us of AI tools in plan administration. Ask vendors and service providers how they use AI tools
  - Take advantage of the right to audit service providers.
  - Review service agreements.
  - Involve technical experts if needed.



Litigation Update

Anderson v. Intel Corp. Investment Policy Committee

- In *Anderson v. Intel Corporation Investment Policy Committee,* 137 F.4th 1015 (9th Cir. 2025), Plaintiffs sued for breach of fiduciary duty, challenging the inclusion of hedge funds and private equity funds in Intel's target dates funds
- The 9th Circuit Court of Appeals upheld the lower court's decision, finding Plaintiffs had failed to plausibly allege that the funds underperformed as compared to other similar funds, failed to state a claim for breach of prudence by causing the plans to incur higher fees, and failed to adequately plead an ERISA claim for breach of duty of loyalty
- Court noted that inclusion of hedge funds and private equity was not per se imprudent, and emphasized the need for Plaintiffs to provide specific and plausible allegations, and use meaningful comparable benchmarks when comparing performance and fees
- In January 2026, the Supreme Court granted certiorari to consider whether allegations of fund underperformance, without a meaningful benchmark, are sufficient to state a claim that an ERISA fiduciary breached the duty of prudence

DOL Amicus Brief – *Anderson v. Intel Corp. Investment Policy Committee*

- On July 10, 2026, the DOL filed an amicus brief in support of the 9th Circuit's decision in *Anderson*
- The DOL argued in the brief that contrary to the plaintiffs' claims, Intel diversified its retirement plan investment funds into these assets to make their employees' retirement income safer during market downturns, and the investment strategy the plaintiffs seek would force Intel to make significantly riskier investments for superficially higher returns
- The DOL emphasized that ERISA is a law of process, not results. Underperformance alone does not show imprudence; plaintiffs must have a "meaningful benchmark" with similar goals and strategies
- Brief is part of a broader DOL effort to curb what the agency views as overuse of ERISA litigation against plan fiduciaries

In re Quest Diagnostics ERISA Litigation

- *In re Quest Diagnostics Litigation*, 2026 WL 1783204 (3d Cir. 2026), plaintiffs alleged the Quest Diagnostics investment committee breached its fiduciary duties by failing to remove two underperforming funds from the 401(k) plan
- The 3rd Circuit Court of appeals upheld the lower courts decision, finding that the committee followed a prudent process, including quarterly meetings, retention of an outside consultant, annual fiduciary training, and direct engagement with the underperforming funds, and that this process satisfied ERISA's duty of prudence regardless of the funds' performance
- Court applied a two-step framework: First, was the process prudent, and if not, was the decision still objectively reasonable
- Court held found that the process used to assess the funds performance was reasonable, and that underperformance must be "severe and sustained" to support an imprudence claim

Target Date Fund Litigation Update

- Claims alleging breach of fiduciary duties related to Target Date Funds (Tdfs) continue to be a leading source of ERISA class action suits in 2026
- Recent wave of suits targeting American Century TDFs, with a small number of plaintiffs' firms appearing to drive most of the filings
- Suits allege a variety of complaints, including inferior performance, high investor turnover, and challenges to the TDFs' glidepath design
- *McGeathy v. Reinalt-Thomas Corp.* (D. Ariz., March 2026) (Discount Tire case): court denied a motion to dismiss, finding it plausible that fiduciaries imprudently retained American Century target date funds that lagged peer funds for more than 15 years

Trauernicht v. Genworth Fin. Inc

- In *Trauernicht v. Genworth Fin. Inc.*, 2026 WL 667917 (4th Cir. 2026), Plaintiffs alleged that Genworth Financial breached its fiduciary duties by offering and retaining BlackRock LifePath target date funds that underperformed alternative options, and the district court certified a mandatory class of participants invested in those funds since 2016
- The 4th Circuit Court of Appeals reversed the mandatory class certification, holding that ERISA claims for investment losses in defined contribution plans are individualized monetary claims that cannot be certified as a mandatory class
- Instead, classes in such cases should be certified based on a showing that common questions predominate over individual ones and that a class action is the superior method of resolving the dispute, which carries mandatory notice and opt-out rights for class members

401(k) Forfeiture Litigation – Overview

- **Background.** Since Fall 2023, just over 30 class action lawsuits alleging that an employer's use of 401(k) forfeitures to offset future employer contributions (which benefits the employer/plan sponsor by reducing future contributions) rather than to offset plan administrative expenses (which would benefit plan participants) violates ERISA
- **Most common theories of liability**
  - Fiduciary breach: using forfeited funds to offset company contributions rather than pay plan expenses otherwise paid by plan participants
  - Prohibited transaction: using forfeitures to offset future employer contributions amounts to self-dealing by reducing the contributions an employer must make to that plan
  - Anti-inurement: using forfeitures to offset future employer contributions causes plan assets to "inure" to the benefit of the employer, not participant

401(k) Forfeiture Litigation (cont.)

- **About 80% of the written decisions to-date have favored employer/plan-sponsors.**
- **Some initial decisions favored plaintiffs, but overwhelming trend in recent decisions in 2025 and 2026 is in favor employer/plan sponsors.**
  - Fiduciary breach. Theory generally rejected as overbroad and "implausible".
    - ERISA does not require fiduciaries to "maximize pecuniary benefits" or "resolve every issue of interpretation in favor of plan participants."
    - One court observed that plaintiffs were essentially asking the court to read a new benefit into their plan's own terms: "paying [p]laintiffs' administrative costs."
    - Many courts have also pointed to informal Treasury Department Guidance as well a proposed Treasury Regulation applicable to defined benefit plans on the use of forfeitures.
  - Prohibited transaction: Except for two early-2024 decisions, courts have rejected (generally) on ground that reallocation of forfeited funds within a plan to offset employer contributions does not constitute a "transaction" as that term is used in Sections 406(a) or 406(b) of ERISA
  - Anti-inurement: Except for two early decisions, courts have rejected (generally) on ground that anti-inurement claim requires plaintiffs to allege plan assets reverted-back to the plan sponsor.

401(k) Forfeiture Litigation – Eighth Circuit Decision

- *Matula v. Wells Fargo & Co.*, 175 F.4th 958 (8th Cir. 2026) is only Circuit Court of Appeals decision to date
  - **District court dismissed** underlying complaint for failure to state a claim **with prejudice**, finding the Wells Fargo 401(k) plan "does not authorize Wells Fargo to use forfeited funds to pay optional services and operating expenses of the Plan or to make arbitrary payments to participants' individual accounts when there is no error to correct."
  - **Eighth Circuit affirmed dismissal but remanded to district court to give plaintiff-appellants opportunity to file amended complaint**
    - Held that because 401(k) plan document allowed Wells Fargo to "pay expenses of the plan" or "make corrective adjustments" using forfeited funds, the plaintiffs did not suffer an injury-in-fact and therefore lack standing to sue Wells Fargo related to its use of forfeitures
    - Found district court abused its discretion by dismissing complaint with prejudice and not allowing the plaintiffs to amend their complaint

401(k) Forfeiture Litigation – Pending Circuit Appeals

- **Numerous active appeals** in other forfeiture cases in Third, Fourth, Sixth, and Ninth Circuit arising from orders granting motions to dismiss in favor of employers/plan-sponsors
  - Third Circuit (Barragan v. Honeywell and Cain v. Siemens) – fully-briefed and argued on May 27, 2026
  - Fourth Circuit (Garner v. Northrop Grumman Corp. and Jacob v. RTX Corp.) – partially briefed; not yet argued
  - Sixth Circuit (Donelson v. Meijer Inc.) – fully-briefed; not yet argued
  - Ninth Circuit (Hutchins v. Hewlett Packard) – fully-briefed and argued on May 20, 2026
- **DOL has weighed in in-favor of employers/plan sponsors.** DOL submitted amicus briefs and argued in favor of employers/plan sponsors in Third and Ninth Circuits

401(k) Forfeiture Litigation – Pending Circuit Appeals

- **Future Expectations.** Absent Supreme Court decision, forfeiture lawsuits will likely continue to be filed in district courts in Circuits where there is not clear precedent
  - **Some cases have settled.** 10 or so of these lawsuits have been (or appear to have been) settled, with announced settlements ranging from $1.15M to almost $10M
  - **Only one case has gone trial.** *See Stephan v. Trader Joe's Company*, No. 1:25-cv-10212 (D. Mass.). After the plaintiffs finished presenting their evidence, the defendants moved and the court entered judgment in favor of defendants on all forfeiture-based claims in oral ruling from the bench

Voluntary Benefit Program Litigation

- **Background.** Three late-2025/early-2026 lawsuits allege that employers breached their fiduciary duties under ERISA by allowing excessive commissions, failing to monitor insurers and brokers, and engaging in conflicted arrangements within employer-sponsored voluntary benefits programs
- **Fiduciary Theory.** Complaints are designed to undermine employer reliance on DOL's voluntary plan safe harbor and aim to establish fiduciary status under ERISA § 3(21) through allegations that employers:
  - Selected insurers and brokers, controlled enrollment/eligibility, and played active role in plan administration
  - Filed Form 5500s acknowledging ERISA coverage
  - Allowed embedded commissions and revenue sharing
- **Theory of Liability**. Breach allegations are compelling and may support breaches of duties of loyalty and prudence and prohibited transactions (e.g., failure to monitor insurance loss ratios, failure to benchmark premiums, failure to evaluate reasonableness of compensation/potential conflicts related to commission-based compensation)

Voluntary Benefit Program Litigation – Current Cases

- The wheels of justice are moving slowly in these cases. No substantive decisions to date
  - ***Brewer et al v. Community Health Systems, Inc., et al,*** No. 1:25-CV-15578 (N.D. Ill.)
    - Filed December 2025; motion to dismiss fully-briefed as of July 10, 2026
  - ***Braham et al v. Laboratory Corporation of America Holdings et al,*** No. 1:25-CV-15583 (N.D. Ill.)
    - Filed December 2025; motion to transfer case to Middle District of Tennessee granted
  - ***Pimm et al v. United Airlines, Inc. et al,*** No. 1:25-CV-15583 (N.D. Ill.)
    - Filed December 2025; motion to dismiss filed, but briefing not yet completed
  - ***Sabrina Fellows et al v. Universal Services of America,*** No. 25-CV-10659 (S.D.N.Y)
    - Filed December 2025; discovery stayed, motion to dismiss filed but not yet fully-briefed
  - ***Hannum v. Banner Health,*** **Case No. 2:26-CV-02944** (D. Ariz.)
    - This is a consolidated case involving lawsuits against Banner Health filed in April and May 2026; parties recently stipulated to the filing of a consolidated and amended class action complaint

Voluntary Benefit Program – Helpful Tips

1. **Inventory and classify each offering** — Determine product by product whether each voluntary benefit is meant to meet the safe harbor or be run as an ERISA plan and make sure that classification is reflected consistently across plan documents, enrollment materials, websites, contracts, payroll, and Form 5500s
2. **Test safe-harbor practices** — Where non-ERISA treatment is intended, review employer contributions, voluntariness, logo and messaging use, enrollment platform presentation, carrier selection, negotiation, claims assistance, and any consideration or ancillary services received from insurers and brokers
3. **Use a fiduciary process when ERISA applies** — Identify responsible fiduciaries and make sure they periodically assess carrier choice, policy terms, premiums, commissions, loss ratios, claims experience, support, and complaints, documenting what was reviewed, alternatives considered, and decision-making
4. **Disclose and analyze compensation** — Require written disclosures of all compensation; assess whether "free" services are funded by voluntary benefit commissions or tied to decision-maker incentives
5. **Preserve the record and review risk protection** — Ensure governance committee minutes capture the information reviewed and basis for decisions, retain RFPs, benchmarking, contracts, and corrective-action records, and periodically review fiduciary-liability coverage, indemnification, and retention policies

Williams v. Lawrence Livermore Nat'l Sec., LLC, N.D. Cal., No. 24-cv-07593

- After 30 years of employment, Williams were offered 3 choices of benefits: retire, or enroll in one or both of two disability programs offered by LLNS. Following consultation with two benefit personnel at LLNS, and based on their advice, Williams chose to enroll in both traditional LTD and "Defined Benefit Eligible Disability" programs. The benefit personnel led Williams to believe the second program would permit him to receive service credit for the time on disability, which would increase his pension payment upon retirement. This turned out to be incorrect. Williams sued for breach of fiduciary duty based on misrepresentation.
- LLNS moved for summary judgment, Williams cross-moved for summary judgment and equitable relief

Williams v. LLNS (con't)

- An ERISA breach of fiduciary claim based on misrepresentation is established when the plaintiff demonstrates that:
  - The defendant was an ERISA fiduciary and was acting as a fiduciary;
  - The defendant made a material misrepresentation to plaintiff; and
  - The plaintiff reasonably relied on the misrepresentation to their detriment
- LLN argued the 2 employees were not fiduciaries. The court held no – actions of employees who perform fiduciary functions can be "imputed to the delegating fiduciary" (e.g., individualized consultations with benefits advisors)
- LLNS argued making an error in counseling does not amount to material misrepresentation when plan language on the same topic is ambiguous. The court held no – fiduciaries owe an affirmative responsibility to "convey complete and accurate information material to the beneficiary's circumstance, even when a beneficiary has not specifically asked for the information"

Williams v. LLNS (con't)

- Even if plan language were ambiguous, relevant portions of plan language may be a separate breach of fiduciary duty for LLNS's failure to correct
- LLNS argued Williams should have consulted the Plan Document. Court said no – the fiduciary duty to provide complete and accurate information falls on fiduciaries, not beneficiaries
- Equitable relief:
  - Equitable estoppel remedy: Placing the plaintiff in the position as if the representations were true
  - Surcharge remedy: Placing the plaintiff in the position prior to reliance on misrepresentations
  - Trial required to prove both remedies

Williams v. LLNS (con't)

- **Key Takeaways**

Ambiguous plan language is <u>not</u> a defense to unintentional fiduciary misrepresentation

HR benefit counselors may be functional fiduciaries under ERISA section 3(21)(A)

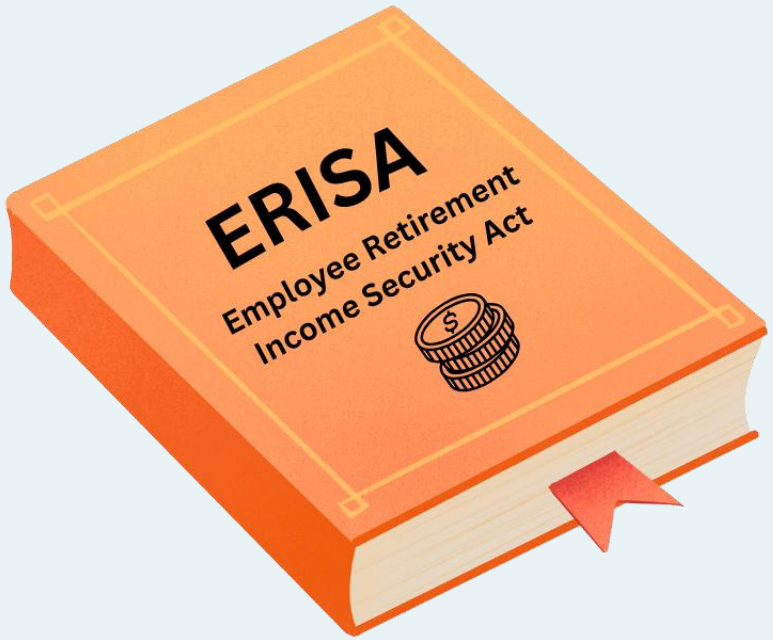
Internally inconsistent plan provisions create litigation risk and may constitute a fiduciary breach

Zavislack v. Netflix, Inc. ERISA Document Disclosure Litigation

- Plaintiff Mark Zavislak sued Netflix under ERISA Section 104 seeking disclosure of claims administration agreements (CAAs) between Netflix and its third-party administrators (Collective Health Administrators, LLC, Anthem Blue Cross Life & Health Insurance, Delta Dental of California, and Vision Service Plan) and internal documents (the "Ancillary Documents")
- **Ninth Circuit's ruling**
  - Netflix had no obligation to disclose the CAAs or Ancillary Documents
  - $765 statutory penalty against Netflix vacated
- **Legal Standard**
  - ERISA Section 104 requires disclosure of documents that tell a participant "exactly where he stands with respect to the plan" — what benefits he may receive, what could preclude them, and what procedures apply. It is not a generalized disclosure law

Zavislack v. Netflix, Inc. ERISA Document Disclosure Litigation

- **CAAs and Ancillary Documents Fell Outside Section 104's Scope**
  - The four CAAs primarily governed the relationship between Netflix and those vendors providing various claims-related services, not the actual benefits or the processes Plan participants must follow to obtain them
  - The nine Ancillary Documents the plaintiff sought were either already available to him or were internal materials that had no bearing on his standing under the Plan
- **Petition for a writ of certiorari is pending at the Supreme Court**
  - *Zavislak v. Netflix, Inc.*, No. 24-4156, 2025 WL 2717422 (9th Cir. Sept. 24, 2025)



Johnson & Johnson PBM Litigation

- **First wave of welfare fiduciary litigation**
  - The lawsuit signaled an expected increase in claims alleging breaches of fiduciary duty in selecting and monitoring health plan vendors
- **Focus on PBM selection and oversight**
  - The case alleges fiduciaries failed in their duty by selecting a PBM imprudently, relying on a conflicted consultant, and not negotiating favorable terms
- **Shift from retirement plans to health plans**
  - Similar to past 401(k) fee litigation, scrutiny is now expanding to health and welfare plans, particularly vendor fees and pricing practices
- **Transparency laws are driving litigation risk**
  - New requirements under laws like the Consolidated Appropriations Act, 2021 have increased access to pricing and fee data, enabling plaintiffs to challenge fiduciary decisions
- **Dismissal is being appealed in the Third Circuit Court of Appeals**

Lewandowski v. Johnson & Johnson, No. 24-671, 2025 WL 3296009 (D. NJ Nov. 26, 2025)

Wells Fargo PBM Litigation

- Plaintiffs alleged fiduciaries failed to ensure prescription drug costs and PBM fees were reasonable
- **Prohibited transaction claim**
  - Plaintiffs argued excessive PBM administrative fees (over $25M) constituted unreasonable compensation and a prohibited transaction
- **Claims of participant harm**
  - Alleged breaches resulted in higher premiums and out-of-pocket costs for plan participants
- **Case dismissed due to lack of standing/causation**
  - Court found allegations of harm were too speculative to establish causation or concrete injury
- **Dismissal is being appealed in the Eighth Circuit Court of Appeals**

Navarro v. Wells Fargo & Co., No. 24-cv-3043, 2026 WL 591454 (D. Minn. Mar. 3, 2026)

JPMorgan Chase PBM Litigation

- **Alleged fiduciary breach in PBM management**
  - Plaintiffs claim JPMorgan mismanaged its prescription drug plan and failed to control excessive costs
- **Conflict of interest concerns**
  - Lawsuit highlights JPMorgan's business relationship with CVS as influencing plan decisions and limiting cost containment efforts
- **Failure to negotiate favorable contract terms**
  - Alleged inability to remove unfavorable ("bad") PBM contract provisions or secure better pricing structures
- **Vertical integration risks**
  - Claims JPMorgan failed to address CVS's ties to affiliated drug manufacturers, resulting in higher-cost formulary decisions
- **First PBM case to survive a motion to dismiss**

Stern v. JPMorgan Chase & Co., No. 25-cv-02097, 2026 WL 654714 (S.D.N.Y. Mar. 9, 2026)

Northwestern Breach of Fiduciary Litigation

- **Court allows health plan fiduciary case to proceed**
  - A federal judge denied Northwestern's motion to dismiss, allowing the ERISA fiduciary breach claims to move forward. The court declined to consider the settlor, rather than fiduciary, nature of the decision to offer a second medical plan option
- **Allegations of imprudent plan design and oversight**
  - Plaintiffs claim Northwestern failed to prudently select and monitor plan options and did not adequately disclose key information
- **Focus on higher premiums**
  - Participants allege they suffered financial harm by paying higher premiums for inferior plan options with no added value
- **Lower hurdle for standing**
  - Court found that paying too much for benefits alone can establish injury, even if participants received promised coverage

Barbich v. Northwestern University, No. 25-cv-06849, 2026 WL 1552506 (N.D. Ill. Apr. 2, 2026)

Guardian Flight, LLC No Suprises Act Litigation

- Two air ambulance providers sued health insurer Health Care Service Corporation (HCSC) for failing to timely pay Independent Dispute Resolution (IDR) awards under the No Surprises Act (NSA), denying ERISA benefits to plan beneficiaries, and unjust enrichment under Texas quantum meruit law
- **Fifth Circuit Affirmed Dismissal of all three claims**
  - **NSA claim:** Dismissed because no private right of action existed to enforce IDR awards
    - The NSA expressly barred judicial review of IDR awards except under specific provisions described in the Federal Arbitration Act and provides for HHS enforcement of non-compliance with the NSA's provisions

Guardian Flight, LLC No Suprises Act Litigation

- **ERISA claim:** Dismissed for lack of standing. Providers, as assignee of the individual plan beneficiaries, failed to show that the beneficiaries suffered a concrete injury
  - The NSA shielded beneficiaries from any financial liability, so they have not suffered, and could not suffer, any concrete injury
- **Quantum meruit claim:** Dismissed because the providers failed to allege they provided a direct benefit to HCSC, as the services were rendered for the patients, not HCSC.

- On January 12, 2026, the Supreme Court denied the providers' petition for a writ of certiorari

Guardian Flight, L.L.C. v. Health Care Service Corporation, 140 F.4th 271 (5th Cir. 2025), *cert. denied*, 146 S.Ct. 1493 (2026)

Annual Review of Plan Document and Operational Compliance

Amendment Deadlines

- Private sector employers must generally amend their plans for SECURE Act, SECURE 2.0 Act, and CARES Act this year
- But there are no required amendments for governmental plans this year, even if they must implement changes operationally
- Notice 2024-2, which remains in effect, extended amendment deadlines for the Acts until:
  - 12/31/29 for governmental plans
  - 12/31/26 for non-governmental and non-collectively bargained qualified plans
  - 12/31/28 for applicable collectively bargained qualified plans
  - 12/31/29 for public school 403(b) plans (12/31/26 for non-public school plans; 12/31/28 for applicable collectively bargained plans of 501(c)(3) organizations)

Operational Compliance List

- The IRS publishes an Operational Compliance List that it updates periodically to help plan sponsors achieve operational compliance with law changes
- The IRS last updated the OC List in 2023, and it doesn't include routine annual, monthly or other periodic changes
- The IRS hasn't added any changes to the OC List effective in 2026 yet, and it doesn't include any SECURE 2.0 Act changes yet
- Most of the SECURE 2.0 Act changes have already become effective
  - Notable Exception: the Roth catch-up contribution requirement is effective in 2026

Operational Compliance Required Before SECURE 2.0 Amendment Deadline

- Private sector plan sponsors must generally amend their plans this year
  - Extended amendment deadline for private sector plans remains generally 12/31/26
- **But** plans must also comply operationally with changes effective in 2023, 2024, 2025, and now 2026 even before you amend them
  - When you amend your plans, you will update participant communications in the form of SMMs or updated SPDs that reflect the changes

SECURE 2.0 Act Additional Operational Compliance Concerns for 2026

- Age-50 catch-up contributions for certain highly paid participants must be Roth
  - The IRS published final regulations re Roth catch-up contributions on 9/16/25
  - Highly paid: more than $150,000 in Social Security wages in prior year (as indexed in 2025 for 2026))
  - Doesn't apply if employee had no Social Security wages for prior year (e.g., a partner who had only self-employment income)
- Notice 2026-13 – Updated safe harbor notices for SECURE 2.0

Operational Compliance—Continuous Efforts

- Review operational compliance with continuous requirements annually:

Have you updated the plan's Code section 402(f) notice per IRS guidance?

Have you limited contributions or benefits in accordance with Code section 415?

Have you limited compensation used to calculate contributions or benefits under Code section 401(a)(17)?

Do you have procedures in place to verify compliance with changes made to the Code section 401(a)(9) required minimum distribution rules?

Have you established procedures to document error self-correction compliance with EPCRS rules for future audit?

Plan Operational Compliance –IRS Pilot Audit Program Still In Place

- 2nd Phase of IRS Pilot Audit Program began in 2024
- Make sure appropriate representatives have been alerted to notify leadership immediately of receipt of a plan audit notice
- IRS pilot program gives the plan only 90 days to make all needed corrections following receipt of notice or full audit begins

Summary of Annual Review Process

Review information on monitoring of federal and state law tax and fiduciary compliance requirements with plan counsel

Determine any required or desired plan document changes

Plan for any required or desired changes in coming year that could affect operational requirements

Review best practices (look back at what you learned today and at other fiduciary education programs or reading you have done) and recommend adoption of those that are reasonable and appropriate for your plan

Summary of Annual Review Process

Verify that any periodic reports due to an appointing authority to support appropriate oversight have been filed

Document reviews of vendor performance completed during year (administrative, legal and investment)

Determine any necessary or desirable participant communications (including updates to your website)

Have counsel review with fiduciaries (try to maintain attorney-client privilege for discussion) any areas of risk or exposure for litigation that should be addressed

Thank You!