Quick Takes:

Q2 2025 Review of Defined Contribution Regulation, Legislation, & Litigation

endeavor retirement

Regulatory Updates

Crypto Guidance for 401(k) Plans Rescinded

The Department of Labor's Employee Benefits Security Administration (EBSA) announced on May 28 that it has rescinded a 2022 compliance notification that previously discouraged fiduciaries from including cryptocurrency options in 401(k) plans.

EBSA claimed in the newly released guidance (Compliance Assistance Release No. 2025-01) that the language deviated from the Employee Retirement Income Security Act (ERISA) requirements and marked what is claimed to be a departure from the department's "historically neutral, principles-based approach to fiduciary investment decisions." For plan fiduciaries, this means that the Department of Labor (DOL) does not encourage, nor discourage, use of cryptocurrency in 401(k) plans but reaffirms the duty of care and loyalty when selecting investments.

IRS Announces 2026 HSA Limits

The Internal Revenue Service (IRS) has announced a modest increase for the health savings account and high-deductible health plan (HDHP) limits for 2026. The announcement came in IRS Revenue Procedure 2025-19 issued on May 1. While the 2026 limits represent an increase over 2025, the adjustment is more modest compared to the larger increases seen in prior years.

For calendar year 2026, the annual limitation on deductions for an individual with self-only coverage under a HDHP is $4,400. The annual limitation on deductions for an individual with family coverage under an HDHP is $8,750.

DOL Asks for Another Delay in Retirement Security Rule Litigation

In April, the DOL requested additional time to evaluate its next steps in the consolidated federal court cases challenging the retirement security rule, finalized under the Biden administration in 2024. The following day, the U.S. Court of Appeals for the Fifth Circuit granted the DOL's request, allowing an additional 60-day extension through June 16, 2025. This marked the second extension granted by the court. As the June deadline approached, the DOL submitted a third request for an additional 60 days, signaling that the agency is still weighing its options in response to the ongoing litigation.

Those requests have been made in recognition of the need for "new agency officials" to decide how to proceed in these appeals, "because any action taken by the agency could affect the litigation.

DOL Reveals Plan to Reconsider, Possibly Rescind, ESG Rule

Like the fiduciary rule noted above, the Trump-led DOL in April asked the court overseeing the litigation filed by twenty-six state Attorneys General challenging the Biden-era ESG final regulation to pause the ongoing proceedings. The DOL's motion explained: "Now that its new leadership has had the requisite time to gain familiarity with the issues in this case, the [DOL] 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."

EBSA Nominee Promises Change if Confirmed

In June, Daniel Aronowitz, President Trump's nominee to lead the EBSA, appeared before the Senate Health, Education , Labor & Pensions (HELP) Committee for his confirmation hearing. Aronowitz, a seasoned attorney and founder of fiduciary insurance provider Encore Fiduciary (formerly Euclid Fiduciary), pledged that if confirmed, he would work tirelessly to "unleash and unlock the creativity and full potential of America's employee benefits system." During his testimony, Aronowitz outlined three core priorities for his leadership at EBSA: (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 he would end "the practice of open-ended investigations that go on for years, the bias against ESOPs, and the regulatory abuse of common-interest agreements with plaintiff lawyers. The HELP Committee has not yet voted on his nomination, which will then also need to be confirmed by a full vote of the U.S. Senate.

Legislative Updates

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

The Auto Reenroll Act introduced by Senate HELP 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.

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

H.R. 1013, which was reintroduced on Feb. 5 would amend Federal securities laws to allow 403(b) plans to invest in collective investment trusts (CITs) and unregistered insurance contracts that currently may be invested in by comparable retirement plans, such as 401(k)s. Sens. Katie Britt (R-Al.) and Raphael Warnock (D-Ga.) have introduced companion legislation in the Senate.

RSAA Reproposed in the House

Rep. Lloyd Smucker, R-Pa., in April reintroduced the Retirement Savings for Americans Act (RSAA), a bicameral, bipartisan bill that supporters said would give uncovered private-sector workers access to a federally run retirement plan. First introduced in December 2022 and then again in October 2023, the federal retirement plan would include a matching contribution for low- and middle-income workers, but only for those who participate in the plan.

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

Retirement plan eligibility would expand to those in the age group between 18 and 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. The bill would reduce the participation age in ERISA-governed plans, currently set at 21 years old, to 18 years old. The purpose of the bill is to expand retirement savings to younger workers. ERISA plans would still be permitted to set a minimum age that is younger than eighteen.

Senators Introduce Bill to Protect Retirement Savings in Bankruptcy

Senators Josh Hawley (R-MO) and Dick Durbin (R-IL) in April reproposed the Protecting Employees and Retirees in Business Bankruptcies Act. The bill would provide greater protection for employee wages and retirement assets if the employer that sponsors the plan files for bankruptcy. The bill would double "the maximum value of employee wage claims entitled to priority payment," from $10,000 to $20,000. It would also permit all wages and benefits earned to be pursued in bankruptcy, and not just those earned within 180 days of bankruptcy.

Litigation Updates

Supremes Clarify Burden of Proof in ERISA Litigation

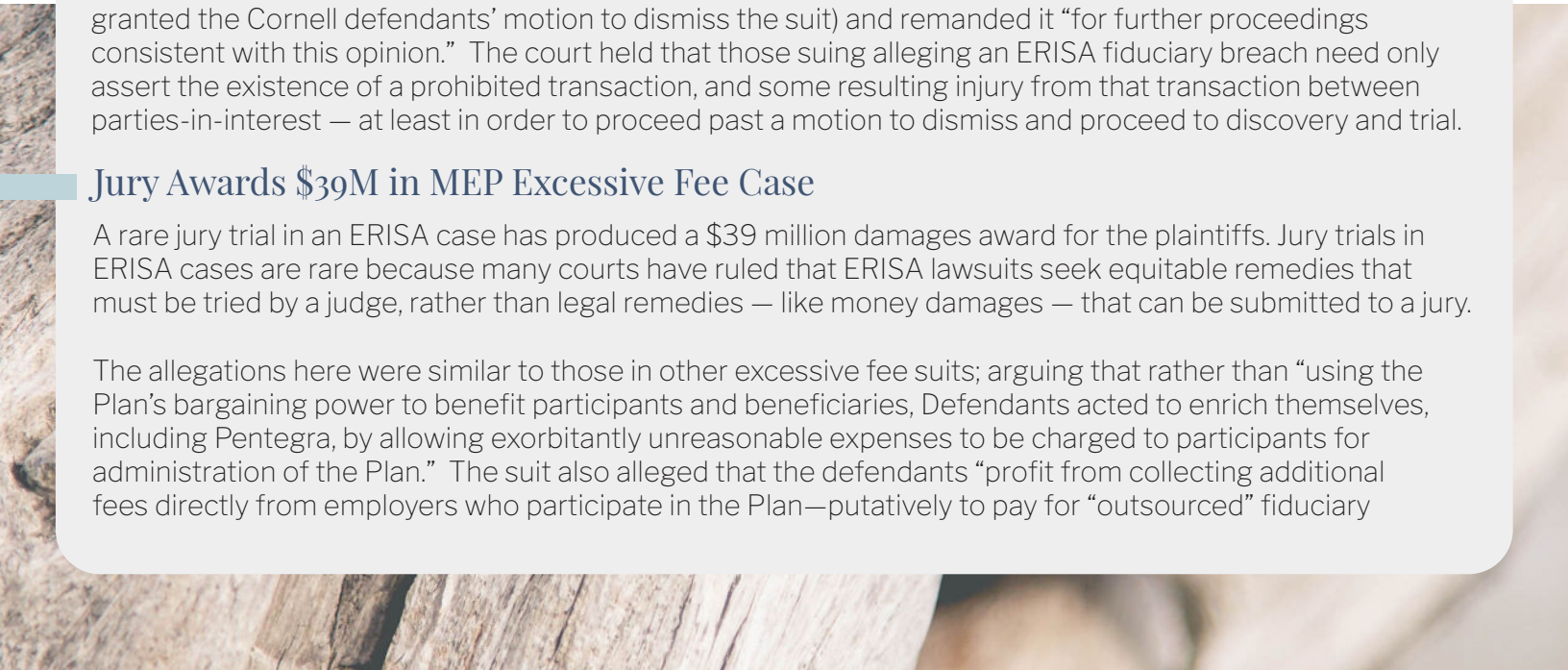
In a unanimous decision, the nation's highest court made a clear delineation as to who bears the burden of proof in ERISA litigation. The case — Cunningham v. Cornell University — was one of the first of the genre of 403(b) university excessive fee suits filed in 2016. While there have been several interim decisions in the case (most decided in favor of the Cornell fiduciary defendants), the issue presented to the Supreme Court was about how much a plaintiff must allege and prove to move a suit about a breach of fiduciary duty to trial. In other words, which party must prove that a loss to the plan and participants was the result of bad action(s) by the plan fiduciary.

In that unanimous decision (authored by Justice Sotomayor, who had been one of the more vocal justices during the oral arguments in January), the court reversed the decision of the Second Circuit (which had granted the Cornell defendants' motion to dismiss the suit) and remanded it "for further proceedings consistent with this opinion." The court held that those suing alleging an ERISA fiduciary breach need only assert the existence of a prohibited transaction, and some resulting injury from that transaction between parties-in-interest — at least in order to proceed past a motion to dismiss and proceed to discovery and trial.

Jury Awards $39M in MEP Excessive Fee Case

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

The allegations here 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, including Pentegra, 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."

While that's a common refrain in excessive fee suits, the multiple employer plan (MEP) structure did come in for some particular scrutiny. And while the damages assessment - $39 million – was significant, the plaintiffs had been seeking damages ranging from $33 million to $115 million on this claim.

Forfeiture Allocation Suits

During the quarter, several more suits related to forfeitures were filed, including cases against firms such as Amazon, UBS, Northrup Grumman, W.W. Grainger, Elevance Health, and Cigna. At present, more than 50 of those types of suits have been filed by multiple law firms; some as a standalone suit, others with those charges appended to other allegations (typically excessive fee). Specifically, these cases are alleging that the decision to reallocate plan forfeitures by offsetting them against employer contributions, rather than offsetting plan expenses or remitting back to participants, was a breach of the duty to act only in the best interests of participants.

However, the quarter also brought the dismissal of several of those suits (Knight-Swift, Kaiser Permanente, Sonoco Products, Ferguson Enterprises, and most recently JP Morgan), generally on the grounds that the 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.

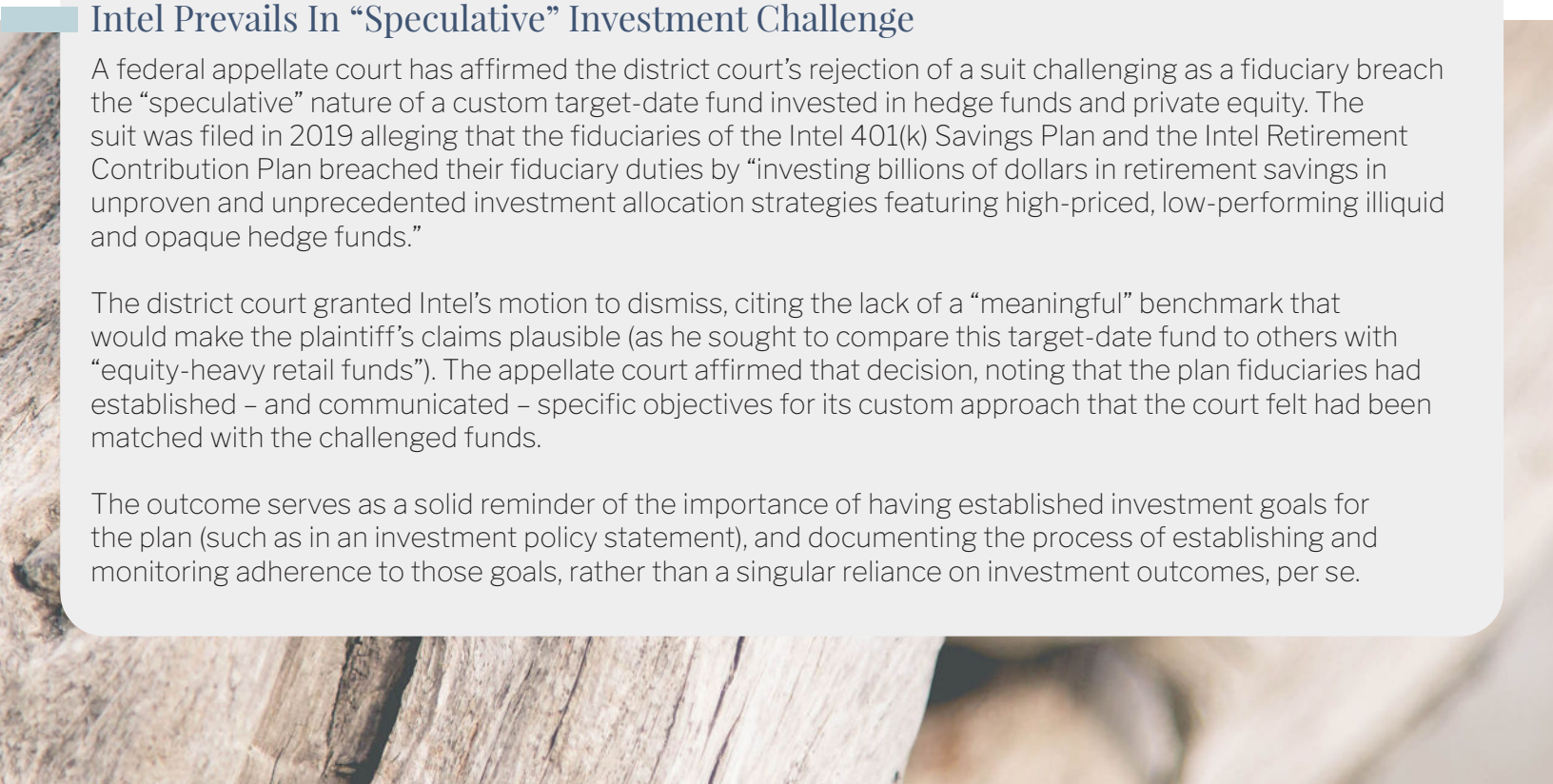
For now, at least, fiduciary decisions about forfeiture reallocations appear to be fertile ground for litigation. As a result, even though these choices are clearly legal under well-established IRS guidance, and widely accepted industry practices, prudent plan fiduciaries should be looking for ways to remove discretion from these decisions.

Intel Prevails In "Speculative" Investment Challenge

A federal appellate court has 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 suit was filed in 2019 alleging 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."

The district court granted Intel's motion to dismiss, citing the lack of a "meaningful" benchmark that would make the plaintiff's claims plausible (as he sought to compare this target-date fund to others with "equity-heavy retail funds"). 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.

The outcome serves as a solid reminder of the importance of having established investment goals for the plan (such as in an investment policy statement), and documenting the process of establishing and monitoring adherence to those goals, rather than a singular reliance on investment outcomes, per se.



Lack of Standing Stymies Pension Risk Transfer Suit

During the quarter plan fiduciaries prevailed in the first of several pension risk transfer (PRT) suits to come to trial. This 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."

However, 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."