Quick Takes:

Q4 2024 Review of Defined Contribution Regulation, Legislation, & Litigation

endeavor retirement

Regulatory Updates

Internal Revenue Service (IRS) Issues Guidance for Long-Term, Part-Time Employees (LTPTE)

The Treasury Department and IRS have issued guidance on LTPTE in 401(k) and 403(b) retirement plans under Section 125 of SECURE 2.0, effective for plans beginning in 2025. Published in Notice 2024-73, the guidance includes a Q&A section on applying the nondiscrimination rules for 403(b) plans for LTPTEs, addressing the exclusion of part-time and student employees. The notice clarifies that a reasonable interpretation of the statute can be used until the final IRS rules take effect in 2026. The guidance clarifies that student workers, union employees, and non-resident aliens are excluded from this new eligibility requirement. Practically speaking, plan sponsors should review their plan documents to determine what eligibility criteria is included for part-time employees and, if necessary, ensure there is a way to track hours.

IRS Issued New Guidance for Inadvertent Benefits Overpayments

As a follow-up to SECURE 2.0, the IRS issued guidance to clarify the treatment of inadvertent benefits overpayments as well as ways to correct them. The guidance clarified that while plan sponsors are allowed to recoup overpayments from recipients, they are not required to do so. If the plan sponsor chooses not to pursue the recovery of the overpayment or if the recovery efforts are unsuccessful, the plan sponsor or another responsible party must generally cover the shortfall to ensure the plan is fully reimbursed. The guidance also noted that a plan sponsor may self-correct an inadvertent benefit overpayment if certain requirements are met.

Retirement Savings Gets a COLA Bump for 2025

On November 1, the IRS announced its annual update to contribution limits for retirement plans for the 2025 tax year. Individuals can contribute $23,500, up from $23,000 for 2024, to their 401(k), 403(b), 457(b), or the federal government's Thrift Savings Plan. The IRS also issued technical guidance[i] in Notice 2024-80 regarding all cost-of-living adjustments (COLA) affecting dollar limitations for pension plans and other retirement-related items for tax year 2025. This year, the IRS Notice includes several new categories due to changes from the SECURE Act of 2019 and SECURE 2.0, notably new contribution levels for catch-up contributions for those aged 60-63.

The catch-up contribution limit that applies for employees aged 50 and over will remain the same as the 2024 limit at $7,500. Participants aged 50 and older can contribute up to $31,000 in 2025. Not all plans allow the age 50 catch-up contribution, so plan sponsors should check their plan document to determine which limits apply to their plan and participants.

Section 109 of SECURE 2.0 has introduced a new catch-up option that is available for participants aged 60-63. If adopted by the plan, this "super catch-up" option allows employees aged 60, 61, 62, and 63 to contribute an additional $3,750 on top of the age 50 catch-up contribution, making their catch-up total $11,250 for 2025. Plan sponsors should coordinate with their recordkeeper and payroll provider to ensure the plan is set up with the "super catch-up" option if the plan intends to add this provision.

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[i] See Section 415 of the Internal Revenue Code, which provides for limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limitations for cost-of-living increases. Under section 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

Legislative Updates

Legislation to Ban Arbitration Clauses Resurfaces

Legislation introduced by Rep. Mark DeSaulnier (D-CA) in the House of Representatives (H.R. 9820), and by Sen. Tina Smith (D-MN) in the Senate (S. 5169), aims to amend the Employee Retirement Income Security Act (ERISA). This amendment would prevent plan sponsors from including mandatory arbitration clauses, class action waivers, and representation waivers in ERISA-covered employee benefit plans, and the legislation would make pre-dispute forced arbitration clauses, class action waivers, and representation waivers unenforceable under ERISA Section 502. Claims and common law claims related to a plan or benefits when brought by or on behalf of a plan participant or beneficiary would also be unenforceable. Additionally, post-dispute forced arbitration clauses, class action waivers, and representation waivers would be unenforceable unless certain conditions are met. These conditions include ensuring that a participant or beneficiary understands the agreement and has a fair opportunity to consider it without the threat of retaliation for failure to agree.

Senate GOP Members Introduce (Another) Bill Allowing Collective Investment Trusts (CITs) in 403(b)s

A provision in a new bill – the Empowering Main Street in America Act of 2024 (S. 5139) – would allow 403(b) s to invest in CITs. This bill is part of the unfinished business left over from the enactment of the SECURE 2.0 Act of 2022, which had included a provision to allow 403(b)s to use CITs but lacked the legislative language to make it fully effective. Additional legislation is already pending in the Senate that would allow 403(b)s, as well as church plans, to include CITs as an investment menu option.

Litigation Updates

Supreme Court to Weigh in on ERISA Burden of Proof Case

Participant-plaintiffs in a long-standing excessive fee suit have persuaded the United States Supreme Court to weigh in on a case that could resolve the question of which party bears the burden of proof in ERISA litigation. Federal district courts are split on the issue as the Eighth and Ninth Circuits have ruled in favor of the defendants, while the Second, Third, Seventh, and Tenth Circuits have required plaintiffs to allege additional elements to state a claim. The Department of Labor has weighed in suggesting that the fiduciary defendants should have the burden of proof. This is not the first time this issue has come before the nation's highest court, though the United States Supreme Court has yet to squarely address it.

UnitedHealth Settles 401(k) Lawsuit

UnitedHealth has agreed to a $69 million settlement to resolve class-action claims. This settlement comes after over three years of litigation, during which plaintiffs alleged that UnitedHealth breached its fiduciary duties by retaining underperforming Wells Fargo target date funds in its retirement plan. The settlement is significant given the magnitude of the settlement. The court still needs to approve the settlement, but if approved, participants in the plan will receive payments for the losses incurred.

This case highlights the importance of plan sponsors' fiduciary duty under ERISA. Plan sponsors have a fiduciary duty to act in plan participants' best interests, which includes regularly reviewing and replacing underperforming investment options within the retirement plan. As learned in the Tibble case, this is an ongoing duty. Plan sponsors should consider maintaining thorough documentation of decision-making processes, including the rationale for selecting and retaining investment options within the plan.

Forfeiture Reallocation Suits Continue to Proceed

Nearly two dozen suits have been filed challenging the use of forfeitures to offset employer contributions, rather than using the forfeiture funds to reduce plan expenses or reallocate to remaining participants. The latest case, involving the Clorox 401(k) plan, a federal judge found that plaintiffs had standing to bring suit, but that the decision on forfeitures was a fiduciary decision. The judge also determined that the forfeited monies were plan assets. However, the judge found that the claims were "impermissibly broad" and noted that the plaintiffs did not explain how the law would permit the use to offset employer contributions without constituting a fiduciary breach. The judge has given the plaintiffs time to amend their suit. At present (and it's a moving target), three of these suits have been dismissed, two have been allowed to proceed to discovery, and one has been directed to arbitration.

Federal Courts Continue to Insist on More Than Size-Based Comparables

Excessive fee suits continue to be filed, but federal courts have lately expected more specific allegations regarding comparisons to establish a basis for fees being "excessive." Most recently, an excessive fee suit was filed against the $22 billion Pfizer Savings Plan for "failure to state a claim." The case was dismissed in federal court as the judge noted that the methodology used to determine comparator plans was flawed and that the plans presented as comparable were not actually comparable. Similarly, another suit against the $700 million Mitsubishi Chemical America Employees' Savings Plan (with 4,600 participants) was dismissed. The judge commented that without describing the 'basket of services' provided to each plan, the plaintiff's comparison was an "apples-to-apples" comparison in name only.

However, a recent case involving Parker-Hannifin's 401(k) in the Sixth Circuit (Michigan, Ohio, Kentucky and Tennessee) on appeal rejected the dismissal of a similar case by the district court finding the allegations of lower-priced alternatives "feasible" and ruling that a case to the contrary would be better made at trial rather than at the motion to dismiss phase.