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Plan Sponsor Quarterly Update

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What's New In Washington: Legislative Update

The retirement plan policy landscape is ever-evolving, requiring plan sponsors to stay informed about passed and pending legislation and policy updates. While major retirement policy reform generally takes time to move through Congress and the administrative agencies, it is important to take note of proposed legislation that may impact plan design and administration. Below are summaries of a few key bills to keep an eye on this year:

1. **Retirement Fairness for Charities and Educational Institutions Act:** This Act, originally introduced as H.R. 1013 and later included in the House-passed INVEST Act (H.R. 3383), would amend securities laws to facilitate 403(b) plan investments in collective investment trusts (CITs) and insurance company separate accounts. The House passed the INVEST Act on December 11, 2025, and it is now awaiting action in the Senate.

2. **Automatic IRA Act of 2025:** This bill, proposed by Ways and Means Committee Member Richard Neal, would impose an excise tax on certain employers that have more than 10 employees (generally counting employees who received at least $5,000 of compensation in the prior year), unless they provide for automatic enrollment of employees in an IRA or another automatic contribution vehicle, like a 401(k) plan. As proposed, the bill would provide a new $500 tax credit for small employers to help offset the costs of implementing an automatic contribution plan/arrangement. The bill is currently awaiting action in the House Committee on Ways and Means.

3. **Unclaimed Retirement Rescue Plan:** This bipartisan bill, proposed by two former state treasurers, would facilitate transfers of unclaimed retirement benefits to states' unclaimed property programs. Under this bill, plan administrators would be permitted to transfer unclaimed retirement distributions for ongoing plans (generally limited to obligations up to $5,000 that have remained unclaimed for 12 months), to such unclaimed property programs. This bill is currently awaiting action in both the House Education and Workforce Committee and the House Ways and Means Committee.

These proposed bills and any others introduced prior to the end of this Congress are important to watch because they may affect your plan costs and administrative obligations. Staying abreast of policy changes will help plan sponsors stay compliant, adapt, and leverage opportunities as the legislative and regulatory environment evolves.

Best Practices: Are You Ready?
Key SECURE 2.0 Amendment Reminders for 2026

The SECURE 2.0 Act of 2022 brought a number of changes to retirement plans, many of which have been phased in over several years. While plan sponsors have already worked to implement many of the SECURE 2.0's provisions discussed below, 2026 represents a critical year for mandatory plan amendments. Here is a quick guide to certain key amendments that will be due for many plans by December 31, 2026.

- **Eligibility and participation amendments:**
  - If you established a new Section 401(k) or 403(b) plan after December 29, 2022, SECURE 2.0 generally requires the plan to include an automatic enrollment feature with specific default contribution rate and escalation provisions for plan years beginning after December 31, 2024. Certain exceptions apply.
  - Section 401(k) and 403(b) plans must adopt language to reflect SECURE 2.0's expansion of long-term, part-time employee eligibility.
- **Contribution-related amendments:**
  - Defined contribution plans that allow catch-up contributions must be amended to require that catch-up contributions for high earners are made as designated Roth contributions in plan years beginning after December 31, 2025.
  - SECURE 2.0 allows a higher catch-up contribution limit for participants who are ages 60-63, which many plans have chosen to implement. Affected plans will need to be amended.
  - Plans that allow employer contributions to be made as Roth contributions and plans offering student-loan matching contributions will need to be amended accordingly.
- **Distribution-related amendments:**
  - Plans must adopt amendments addressing the updated RMD age increases. The RMD age increased from 72 to 73 in 2023 and will increase to 75 in 2033.
  - Defined contribution plans must be amended to eliminate RMDs for designated Roth accounts during a participant's lifetime.
  - If plans allow qualified birth or adoption distributions (QBADs), the plan must be amended to address the three-year repayment limit for distributions made after December 29, 2022.
  - If plans allow emergency personal expense distributions or distributions for victims of domestic violence, the plan must be amended to reflect these provisions.

Be sure to work with your partners to ensure formal plan amendments are adopted by December 31, 2026, unless a later deadline applies to your plan (e.g., governmental and collectively bargained plans).

Hot Topic:
Fiduciary Breach Litigation

ERISA Litigation: Some Recent Updates: For years, plaintiffs have brought lawsuits against plan sponsors and fiduciaries over a variety of issues, including plan fees and expenses, and investment selection and monitoring. Below is a brief overview of a few notable litigation developments from 2025, as well as some key takeaways for plans.

In *Cunningham v. Cornell University*, the U.S. Supreme Court unanimously held that a plaintiff asserting an ERISA 406 prohibited transaction claim generally does not have to plead around ERISA 408 exemptions at the pleading stage. That is, exemptions operate as affirmative defenses for defendants to raise and prove, not as issues plaintiffs must disprove at the pleading stage. This decision makes it easier for plaintiffs to survive a motion to dismiss.

The trend of cases in which plaintiffs challenged the use of forfeitures to offset employer contributions continued. Many plaintiffs alleged that the decision to use forfeitures to offset employer contributions was harmful to participants and beneficiaries because it prevented those funds from being used to increase allocations to participant accounts. To date, courts have largely been skeptical of such claims, with many lawsuits dismissed on various grounds. Clear plan language allowing the challenged use of forfeitures (e.g., to reduce employer contributions or pay plan expenses) has proven to be a favorable factor for plan sponsors and fiduciaries.

Although not itself litigation, a development worth tracking is the ERISA Litigation Reform Act, H.R. 6084 (introduced November 18, 2025), which, if enacted, would increase the pleading standard for certain ERISA prohibited transaction claims and would stay discovery while Rule 12 motions are pending.

Key Notes for Plan Sponsors and Fiduciaries: Given the expanding scope of fiduciary litigation, plan sponsors and fiduciaries should continue to work proactively to manage risk. Thoughtful governance, well-supported decisions, and ongoing compliance reviews help plan fiduciaries fulfill their duties and protect participants and beneficiaries.

- As always, fiduciaries should continue to review and document fiduciary processes since clear records can assist in demonstrating a prudent, reasoned decision-making process.
- Plan sponsors should ensure plan documents match plan practices, especially regarding forfeiture allocation.
- Sponsors and fiduciaries should review and understand service provider contracts and monitoring protocols, especially for service providers acting in a fiduciary capacity, such as ERISA 3(38) investment managers.
- Sponsors and fiduciaries should continue to stay informed of regulatory and litigation developments that may impact fiduciary practices and exposure.

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