MULTNOMAHGROUP

2026 Regulatory Update

Agenda

Today's webinar highlights notable developments in the retirement plan industry in 2026. It is designed to update plan sponsors on current developments and provide guidance in the future management of their own plans.

Topics include updates on:

- Department of Labor
- Internal Revenue Service
- Legislation
- Litigation
- Industry Update

Department of Labor

Proposed Rule: Fiduciary Duties in Selecting Designated Investment Alternatives

- Six factors plan sponsors should consider when selecting investments:
  - Performance
  - Fees
  - Liquidity
  - Valuation
  - Performance Benchmarks
  - Complexity
- Final rule expected in 2027
- Plan sponsors may need to review investment oversight practices
  - Update IPS to articulate the six factors used in making investment decisions
  - Clearly articulate the use of the six factors when investments are reviewed and possibly changed

Department of Labor

Use of Forfeitures Litigation

- Challenges plan sponsors' use of forfeitures to reduce employer contributions rather than distributing to participants

- DOL has taken a strong pro-employer approach
  - Amicus briefs filed in favor of Defendants
  - Participated in oral arguments for three of the cases

- Arguments for defense include:
  - Long accepted practice that does not violate ERISA
  - Use of forfeitures is a settlor function, not a fiduciary function
  - Participants received all of the benefits promised under the plan document

Department of Labor

Employee Benefits Security Administration 2026 Priorities

- Focus investigations on the most egregious conduct
- Focus on rulemaking and regulatory guidance to avoid regulation through enforcement
- Significant enforcement actions subject to EBSA leadership review
- Ensure enforcement actions are responsive and timely

Environmental, Social, and Governance Investing Update

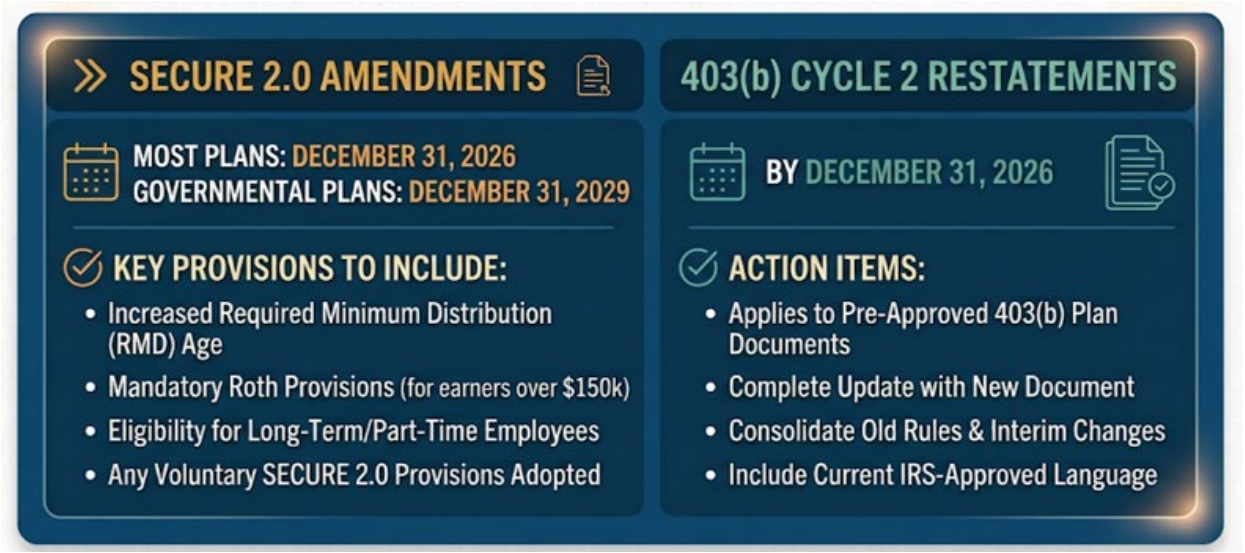
- Replacement rule to the Biden-era rule submitted to the White House
- Rule expected to be similar to the previous rule
  - Plan sponsors may only consider ‘pecuniary factors’ when selecting investments
  - ESG funds are not allowed as the default investment vehicle

Guidance for Qualified Long-term Care Distributions

- Optional provision to allow penalty-free withdrawals to purchase long-term care policies
- Limited to the lesser of $2,600 or 10% of vested benefit
- Guidance on reporting requirements
  - Insurance provider must provide plan sponsor documentation that includes
    - Owner and issuer of the coverage
    - Description of the coverage
  - Distributions are not treated as rollovers

Internal Revenue Service

Plan Document Compliance



Proposed Legislation

Continued industry support to allow CITs in 403(b) Plans

- Legislation to address securities laws that prevent their use
- Over 30 retirement company CEOs and several industry groups support the legislation

Charity Parity Act

- Allow tax-free charitable donations from employer retirement plans
- Currently allowed for IRAs

Benefits of Charitable Donations from Retirement Plans

- Avoids counting distribution as income, lowering AGI
- Lower income may reduce Medicare premiums and any Social Security Taxes
- Counts towards annual required minimum distributions

Proposed Legislation

Saver's Match Available in 2027

- Replaces Saver's tax credit for low-to-moderate income workers
- 50% match of first $2,000 contributed made to a retirement account
- Optional plan provision – If not offered in the plan, match goes to an IRA
- Further guidance expected before first contributions begin in 2028

Form 5500 Simplification Act

- Legislation to extend the deadline from July 31 to October 15
- Allow for electronic signature for 5500 and related reports

Litigation

Defining a ‘meaningful benchmark’ – *Anderson v. Intel*

- Use of a custom target date suite with private equity and hedge fund exposure
- Lower court ruled that comparator funds were not a ‘meaningful benchmark’
- Supreme Court heard oral arguments in October and is expected to rule in 2027

Lawsuits target voluntary employee benefits

- Allegations of excessive fees and failure to monitor
- Current focus is on supplemental insurance programs
- Programs are 100% optional
- Suggest any product or service offered as a benefit is subject to fiduciary oversight

Process over performance – *Johnson v. Quest Diagnostics*

General Investment Monitoring

- Plaintiffs targeted two fund options for underperforming
- Court applied a two-step review
  - Did the plan fiduciary follow a prudent process?
  - If not, would a prudent plan fiduciary have made the same decision?
- Defendants had ongoing oversight of all investments
  - Quarterly fiduciary committee meetings
  - Annual fiduciary training
  - Use of a third-party consultant
  - Use of an investment policy statement

Process over performance – *Johnson v. Quest Diagnostics*

Fund Specific Monitoring

- Defendants detailed monitoring of the targeted funds
  - Fidelity Freedom Funds
    - Compared challenged target date funds to funds with different strategies
    - Met with the fund provider to review target date strategy
  - Invesco Global Real Estate Fund
    - Fund had been placed on the committee's watch list
    - Met with Invesco to review the investment strategy
    - Elected to retain the fund as a diversifier during down markets

Litigation

Hollis Tedford v. Equitable Financial

- Suit targeted alleged underperformance of plan's stable value fund
- Judge ruled "Hindsight is an insufficient foundation to show imprudence"
- Plaintiffs must point to process rather than relying solely on underperformance

Litigation

Accelerated Recovery Centers v. Jan Watkins

- Watkins sued by the employer and her ex-husband for an alleged affair with the plan's advisor
- Watkins served as a plan fiduciary for two plans
- Alleged breach of fiduciary duty included:
  - Gross mismanagement and self-dealing
  - Prioritizing the relationship over the interests of plan participants
  - Failure to evaluate the advisor's investment performance and fees
  - Directing the advisor to move assets in one plan to benefit her over her ex-husband
  - Deleting e-mails and text messages
  - Executing false non-disclosure agreements

Industry Update – Alternative Investments

History

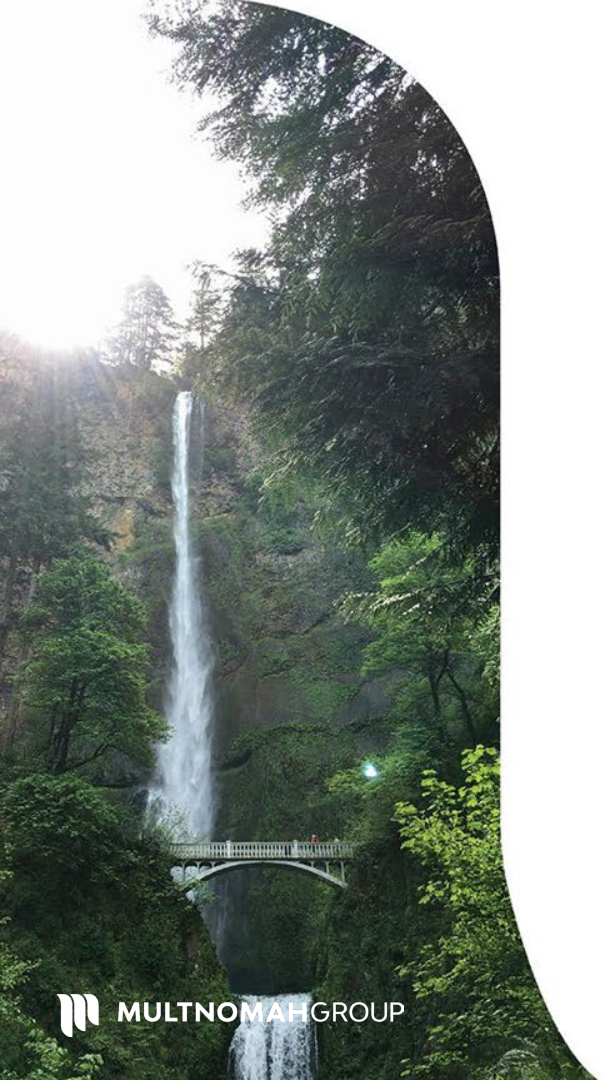
- Never prohibited in retirement plans
- Executive Order 14330 required agencies to review their policies regarding alternatives
- DOL proposed rule developed in response to the executive order
- Variety of new products being developed with an alternative sleeve

Challenges with alternatives for DC plans

- Liquidity
- Valuation
- Fees
- Benchmarking
- Structure

Industry Update – Alternative Investments

Manager	Partner(s)	Category	Wrapper	Status
Goldman Sachs Asset Mgmt	Great Gray (Panorix TDF)	Private credit	CIT	Debuted 2025–26
PGIM (Prudential)	Prudential Trust Co.	Investment-grade private credit	CIT	Launched May 2026
Invesco	—	Private real estate	CIT (daily-valued)	Launched Feb 2026
Blue Owl	Voya	Private markets/credit	CIT / managed vehicles	Partnership announced
BlackRock	Great Gray	Private equity + private credit	CIT within TDF	Available
State Street	Apollo	Private markets (90% public / 10% private)	Target-date fund	Launched
KKR	Capital Group	Private markets (credit & equity)	Blended funds	In development
Wellington	Vanguard / Blackstone	Private equity + private credit	Target-date fund	In development
AllianceBernstein	Brookfield / Carlyle (“ABC ONE”)	Private markets incl. private credit	Sleeve alongside TDF / managed acct	Launched
Vanguard	TIAA	In-plan lifetime income (annuity)	Target-date CIT	Rolling out through 2026
BlackRock (LifePath Paycheck)	Group annuity insurers	In-plan lifetime income (annuity)	Target-date fund	Available
Fidelity (Freedom Lifetime)	Nationwide / New York Life	In-plan deferred income annuity	CIT within TDF	Expected early 2027



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