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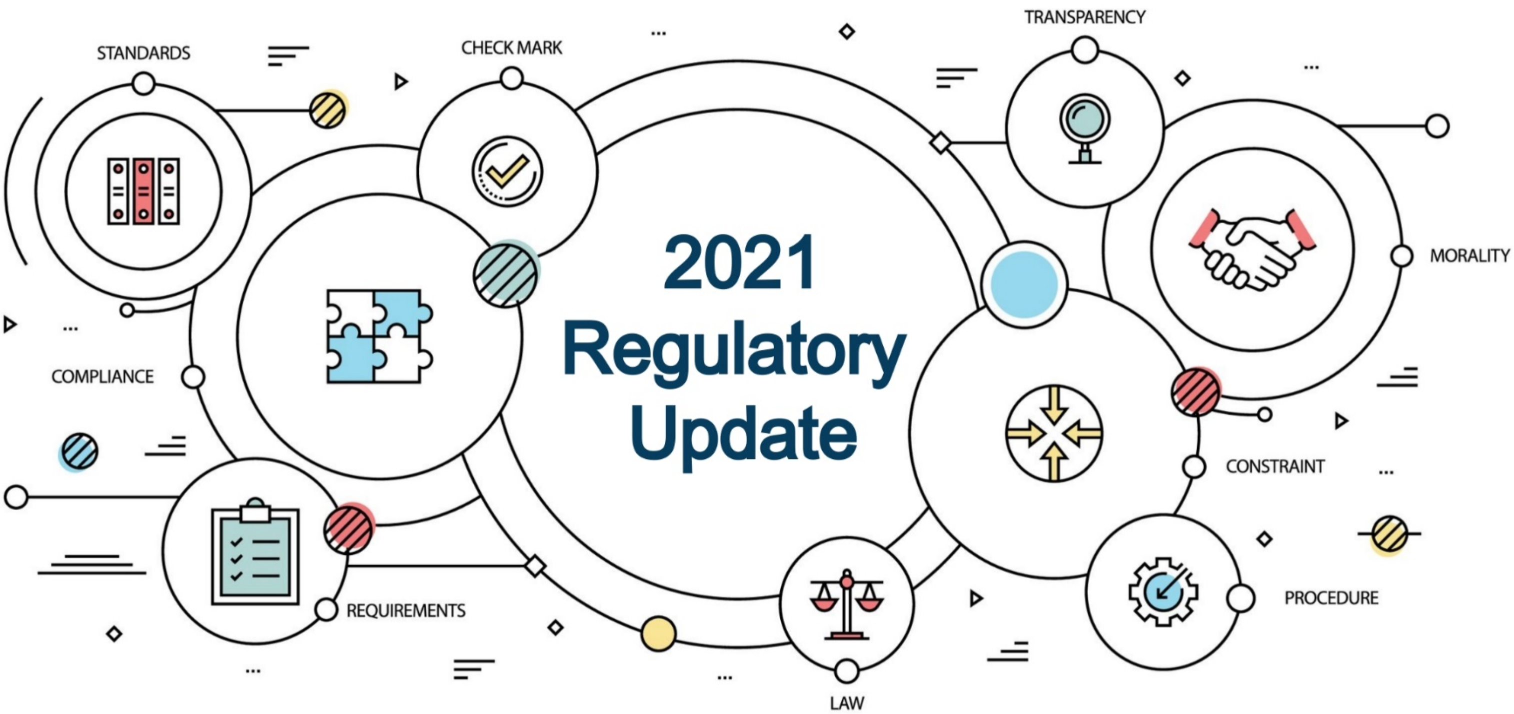

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From Our Technical Services Committee

While businesses and the people they employ continued to navigate the ever-changing landscape of COVID-19, 2021 has brought new and refurbished legislature top of mind for plan sponsors.

Despite the SECURE Act's debut nearly two years ago, many plan sponsors are just now contemplating whether to adopt some of the provisions. Meanwhile, plan sponsors are gearing up for the House of Representative's proposed SECURE 2.0 bill.

We cover this development, the IRS' EPCRS changes, updates from the DOL, a review of notable updates in retirement plan fee litigation cases, plus much more in this edition of our yearly Regulatory Update.

LEGISLATIVE UPDATE

SECURE Act Update

In December of 2019, before the coronavirus pandemic, the Setting Every Community Up for Retirement Enhancement (SECURE) Act was passed. This Act was one of the more substantive enhancements to the retirement system in over a decade.

The changes and enhancements made available through this new law were overshadowed in 2020 by the coronavirus pandemic and the resulting relief available through the Coronavirus Aid, Relief, and Economic Security (CARES) Act. While the SECURE Act is over 18 months old, many plan sponsors are just now contemplating whether to adopt some of the provisions. Also, in the time since its introduction, some provisions have been clarified and updated.

Expanded availability of Multiple Employer Plans through open MEPs

The Act removes the requirement that employers seeking to establish a Multiple Employer Plan (MEP)

must share a commonality of interest. This change will allow more employers to combine into one plan and could result in reduced cost and reduced administrative burden. This new type of plan, called a "Pooled Employer Plan" (PEP), became available this year. To offer a PEP, an organization must register with the Department of Labor (DOL).

It is unclear how popular PEPs will become, but as of August 2021, 117 organizations have registered to offer a PEP. Most of which are financial institutions, broker/dealers, registered investment advisors, and recordkeepers. Some local chambers of commerce have also registered.

Tax incentives for small employers

To encourage small employers (100 employees' or less) to add and expand their retirement plan offer, the Act provided two new tax incentives:

- The possible tax credit for starting a new retirement plan was increased from $500 to $5,000.
- A new $500 tax credit was introduced for small employers electing to add auto-enroll to an existing plan.

Lifetime Income Illustrations

The Act requires employers to provide plan participants with two illustrations showing the monthly payments they could receive if they annuitized their full plan balance.

These illustrations must be provided at least once a year and include one projecting a single-life annuity and a second projecting a qualified joint and survivor annuity (payments for the lifetime of the participant and the participant's spouse).

A recent FAQ issued by the DOL addressed some plan sponsor questions about this requirement.

A few of the answers on the FAQ include:

- The effective date for participant-directed individual account plans is Sept. 18, 2021, which means the latest a plan sponsor can include their first illustration is the second quarter 2022 statement.
- Additional illustrations using a different methodology that are being provided by a recordkeeper are allowed. Many providers currently include more comprehensive illustrations than the DOL requirements, adding a projection of future earnings. These illustrations may still be provided, but the FAQ did not state that the additional illustration can replace the illustrations required under the SECURE Act.

Safe-harbor for In-plan Lifetime Annuities

This new safe harbor seeks to increase plan sponsors' willingness to offer a lifetime annuity option within their plan. Without the safe harbor, plan sponsors had been reluctant to offer in-plan annuities due to concerns over the liability associated with their selection of annuity provider.

Adoption of in-plan annuities has been low since the SECURE Act's passage, possibly due to the distractions caused by the pandemic.

Adoption will remain slow but will likely increase over time for two reasons:

1. Insurance companies will likely introduce and market new annuity products with features to make them more attractive to plan sponsors.
2. As more employees retire, plan sponsors will begin to have an increased focus on the decumulation options available in their plans.

Penalty Free Withdrawals for Birth or Adoption of a Child

Participants are allowed to withdraw up to $5,000 of their retirement savings following the birth or adoption of a child without paying the 10% early withdrawal penalty. Parents have one year following the birth or adoption to complete the withdrawal. Also, the exemption is available for each parent (from their separate accounts) and each child.

Parents having or adopting twins could potentially withdraw up to $20,000 under this provision. While the withdrawal avoids the 10% early withdrawal penalty, the distribution is still taxable.

Participants can repay any amounts distributed, although it is not particularly clear how this is tracked.

Participants are allowed to **withdraw up to $5,000 of their retirement savings following the birth or adoption of a child** without paying the 10% early withdrawal penalty.

This provision seems to be getting more attention in 2021 as employers seek to add this option. There is proposed legislation that would require repayment within three years included in the Securing a Strong Retirement Act.

If this Act were to pass, it would make the option of taking these withdrawals much less attractive.

Additional SECURE Act Enhancements

- Extends the age participants must begin taking Required Minimum Distributions (RMDs) from the year the participant turns 70 ½ to the year they turn 72.
- Changes the RMD rules for non-spouse beneficiaries of deceased participants by requiring all distributions be completed within 10 years of the participant's death.
- Requires employers to allow long-term part-time employees the opportunity to make voluntary contributions to the retirement plan. This does not include employer contributions and does not apply to 403(b) or governmental plans.
- Increases the maximum percentage contribution an employer can require through AutoEnroll and AutoSave from 10% to 15%.
- For employers offering safe-harbor nonelective contributions, the Act simplifies the reporting requirements and makes it easier to add or amend the safe-harbor contributions during the plan year.
- Prohibits plan loans through credit cards.
- Increases penalties for failing to file certain plan returns and for providing required withholding notifications.
- Allows an employer that terminates a 403(b) custodial account to distribute the account 'in-kind' to the participant through an individually owned contract.

Proposed Legislation

Securing a Strong Retirement Act (SECURE Act 2.0)

This House bill has been nicknamed "Secure 2.0" due to its clarification and expansion of many SECURE Act provisions. SECURE 2.0 also has new provisions that would continue to improve the retirement system. Many provisions focus on improving plan administration and reporting requirements, which should make retirement plans more efficient to manage.

Some of the other substantive changes include:

- Changes to Required Minimum Distributions (RMDs)
  - The SECURE Act extended the age for starting RMDs from 70 ½ to 72. This proposal would expand this over time, getting to age 75 by 2032.
  - A reduction in the penalty for failing to take an RMD from 50% of the shortfall to 25% of the shortfall and 10% of the shortfall if the RMD error is corrected within two years.
- For long-term, part-time employees, the SECURE Act requires them to be provided the opportunity to contribute elective deferrals after *three years* of working at least 500 hours. This proposal reduces the time to *two years*.
- Any **NEW** plan established after 2021 would be required to include a mandatory employee pre-tax contribution of at least 3% of compensation, increasing by 1% annually up to 10%.
- Significant changes to catch-up contributions
  - Beginning in 2022, all catch up contributions would be required to be made as after-tax Roth contributions.

    This will generate additional revenue now to help cover the expense of other provisions.
    - Individuals over age 50 are currently eligible to contribute up to $6,500 in catch up contributions. Beginning in 2023, individuals age 62-64 could contribute up to $10,000 in catch-up contributions.
    - Plan sponsors could amend their plans to allow employees to elect to treat employer matching contributions as after-tax Roth contributions. This would result in employer contributions being included as taxable income in the year contributed.
- Plan sponsors could make matching contributions to the retirement plan based on an employee's student loan repayments. An employee might not be contributing to the retirement plan but could still receive the benefit of the employer match.
- Plan sponsors would be allowed to offer employees small financial incentives to employees joining the retirement plan.
- Expands the type of investments allowed to be offered through 403(b) plans to include collective investment trusts (CITs). CITs can be a lower-cost alternative to mutual funds and are currently available in 401(k) plans.

Plan sponsors could make **matching contributions to the retirement plan based on an employee's student loan repayments**. An employee might not be contributing to the retirement plan but could still receive the benefit of the employer match.

Plan sponsors would be allowed to **offer employees small financial incentives** to employees joining the retirement plan.

The proposal includes provisions for creating a **national database to identify lost retirement accounts, expanded self-correction procedures for plan sponsors**, and efforts to increase public awareness of the availability of the saver's credit for lower-paid employees.

In addition, the proposal includes provisions for creating a national database to identify lost retirement accounts, expanded self-correction procedures for plan sponsors, and efforts to increase public awareness of the availability of the saver's credit for lower-paid employees.

The Senate has retirement legislation of its own, the **Improving Access to Retirement Savings Act.** This bill mirrors several aspects of the Securing a Strong Retirement Act with many provisions addressing the same issues with differences in the extent and timing of changes. Should both bills be passed, a compromise piece of legislation would likely be prepared and re-introduced to both the House and Senate.

Additional Retirement Proposals

Enhancing Emergency and Retirement Savings Act

This bill seeks to encourage participation in retirement plans by offering access to withdrawals to cover emergency expenses. The bill would allow for one emergency distribution of up to $1,000 each year.

In an effort to avoid abuse, the participant would be required to repay the money before taking future emergency withdrawals from the same plan. The repayment requirement may make this a very attractive means of filling the emergency savings gap so many Americans currently experience.

Keeping Your Retirement Act

Similar to provisions in the larger retirement bills, this Act focuses solely on expanding the age for starting required minimum distributions to age 75 immediately.

Increasing Retirement Amount Act

This bill seeks to enhance savings opportunities for individuals who do not have access to a retirement plan through their employer.

This would increase the IRA contribution limit from $6,000 per year to $12,000 per year. This would also increase the age 50 catch-up amount from $1,000 to $3,000, allowing individuals over age 50 to contribute as much as $15,000 to an IRA.

Building Back Better Act

This proposed legislation contains several retirement plan provisions. All employers with five or more employees would be required to provide access to some type of retirement savings and would auto-enroll employees at a 6% rate. There would also be auto-escalation to increase the contribution by 1% each year up to 10%. Employees could opt out of the auto enroll. Small employers who establish a new plan or adopt plan enhancements to an existing plan would have increased tax incentives and would modify the saver's credit to allow up to $500 to be credited to the individual's retirement savings plan.

INTERNAL REVENUE SERVICE UPDATE

IRS Extends Temporary Relief from 'Physical Presence' Requirement

On June 24, 2021, the Internal Revenue Service (IRS) issued Notice 2021-40, which provides a 12-month extension, until June 30, 2022, of the temporary relief from the requirement that participant elections are required to be witnessed by a plan representative or a notary public. The IRS initially issued this temporary relief in the early days of the coronavirus pandemic lockdown. The Notice provides that, in the case of a remote electronic notarization, the physical presence requirement can be satisfied if it is executed via live audio-video technology that otherwise satisfies the requirements of participant election.

IRS Announces Changes to Correction Programs

On July 16, 2021, IRS announced changes to the Employee Plans Compliance Resolution System (EPCRS). The updates, found in Revenue Procedure 2021-30, supersede the previous version outlined in Revenue Procedure 2019-19 and includes changes applicable to both defined benefit and defined contribution plans. Highlights include:

- Extending the Self-correction Program (SCP) correction period for significant failures from two to three years. As a result, the last day of the correction period is now the last day of the third plan year, following the plan year during which the failure occurred.
- Eliminating the requirement that an amendment to fix an operational failure under SCP that increases a benefit right or feature must apply to all participants. Previously, EPCRS required a corrective amendment to result in an increase of a benefit, right, or feature applicable to all employees eligible to participate in the plan. The updated version provides that a corrective amendment must still result in an increase of a benefit, right or feature. Still, it no longer requires that the increase is applicable to all eligible employees.

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- Effective Jan. 1, 2022, the anonymous submission procedure under the Voluntary Correction Program (VCP) is eliminated. On that date, a new anonymous no-fee VCP pre-submission conference procedure will take effect. During this conference, an IRS representative will provide oral feedback on the proposed correction methods. However, any discussion of substantive issues will be advisory only and will not be binding on the IRS.

Corrections of Overpayments (Defined Benefit and Defined Contribution)

The revised EPCRS provides two new correction methods defined benefit plans may use to address overpayments. The "Funding Exception Method" is available to both single-employer and multi-employer plans, while the "Contribution Credit Correction Method" is only available to single employer plans.

Expanded correction principles allow plan sponsors to fix operational failures when plan participants or beneficiaries receive payments that are in excess of the plan's written terms, effective July 16, 2021. The new principles reduce the need to seek repayment from participants or beneficiaries who received overpayments and, in some cases, do not require the plan sponsor to reimburse the plan for overpayments to participants.

For Defined Benefit Plans:

- **The Funding Exception Method**
  For plans subject to Code Section 436 funding requirements, no corrective payment is necessary if the Adjusted Funding Target Attainment Percentage (AFTAP) applicable on the date of correction is at least 100%. While future benefit payments to the affected participant must be reduced to the correct amount, no further corrective payments from any party are required, and no further reductions to future benefit payments are permitted.

- **The Contribution Credit Correction Method**
  Under this method, the amount of overpayments required to be repaid to the plan is the amount of overpayments reduced by a contribution credit equal to (i) increase in minimum funding requirements due to the overpayments plus (ii) certain additional contributions to the plan in excess of the minimum funding requirements:

  - For purposes of EPCRS, if the amount of the overpayments is reduced to zero after the contribution is made, then no additional corrective action needs to be taken to recover the overpayment. If a net amount is owed to the plan, then the plan sponsor or participant must reimburse the plan for the net amount owed.
  - If the plan sponsor chooses to seek recovery from the overpayment recipient, it must provide written notice, and three repayment options must be offered:
    - Installment agreement
    - Adjusting future benefit payments
    - Single sum payment

For Defined Contribution Plans:

- Increases the de minimis threshold for what is considered insignificant overpayments. Under the new guidance, a plan sponsor is not required to seek the return of an overpayment if the overpayment totaled $250 or less and guidance now permits plan sponsors to seek recoupment of an overpayment by entering into an installment agreement with the recipient of the overpayment. This threshold was previously set at $100.

Finally, the updated version of EPCRS extends the sunset date of the safe harbor correction method for certain employee elective deferral failures relating to employees who are subject to an automatic contribution feature in a 401(k) plan or a 403(b) plan. The previous version of EPCRS provided that the safe harbor for the correction method would sunset on Dec. 31, 2020. Effective Jan. 1, 2021, the new sunset date is Dec. 31, 2023.

Under this safe harbor, elective deferral failures can be corrected with reduced qualified non-elective contributions (QNECs) by certain deadlines. Elective deferral failures that do not exceed three months can be corrected without any QNEC under some circumstances. Failures that exceed three months but do not exceed the SCP correction period for significant failures may be corrected with a 25% QNEC

IRS Priority Guidance for 2021-2022

On Sept. 9, 2021, the IRS issued their Priority Guidance Plan on a variety of topics, including retirement benefits. There were 19 priorities for retirement benefits covering both DB and DC plans. A few key areas being prioritized include:

- Guidance on e-delivery rules for notices and participant elections
- Regulations and guidance on several modifications included in the SECURE Act
- Guidance on student loan payments
- Guidance on addressing missing participants and uncashed checks
- Regulation and guidance related to the 10% early withdrawal penalty

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DEPARTMENT OF LABOR UPDATE

Guidance for Lost & Missing Participants

In January, the DOL released guidance on the steps plan fiduciaries should take to find lost or non-responsive participants.

This guidance is part of a larger initiative by the Employee Benefits Security Administration (EBSA) to help plan fiduciaries focus on complete census information, appropriately communicate with participants and beneficiaries, and implement efficient policies.

The guidance did not include any bright line requirements; however, it did include a list of best practice steps for keeping track of participants and locating those who become lost or nonresponsive. As is common, proper documentation of the actions taken is a key piece of the guidance.

As part of the broader initiative, EBSA has started a letter campaign urging plan fiduciaries to locate and consolidate uncashed checks at legacy recordkeepers.

Cybersecurity Guidance

In April, the DOL released guidance on cybersecurity related to retirement plans for the first time. The guidance consisted of three forms:

- **Tips for Hiring Service Providers**, for use by plan sponsors
- **Cybersecurity Program Best Practices**, for use by all plan fiduciaries, including recordkeepers
- **Online Security Tips**, for participants to reduce the risk of fraud

The tips for hiring service providers includes questions to ask of the plan's recordkeeper as well as recommendations on contracting. These tips have prompted many in the industry to release guides on how current cybersecurity programs address these concerns.

ESG & Proxy Voting Rule Updates

March brought updates to two final rules from the prior year. In late 2020, the Trump Administration finalized two separate rules:

1. Financial Factors in Selecting Plan Investments

2. Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

The first rule focused on a plan sponsor's ability to use Environmental, Social, and Governance (ESG) impacts in making investment decisions. The rule did not specifically mention ESG but stated that only 'pecuniary factors' could be used in making decisions related to investment options offered in a retirement plan. The rule also suggested that investments using social criteria or other non-pecuniary factors may not be appropriate as Qualified Default Investment Alternative (QDIA) investments.

The second rule is related to the fiduciary duties for plan sponsor proxy voting. This rule required fiduciaries to put the economic interest of participants first and to ensure that any vote advances those economic interests. Also, like the ESG rule, it indicated that fiduciaries must not use non-pecuniary objectives or goals. If the vote will have no impact on participants' economic interest or cost, then the fiduciary should not vote the proxy.

One of President Biden's first executive orders directed the DOL to review the Financial Factors rule. On March 10, the DOL announced it would not enforce either rule.

In August, the DOL sent its new proposed rules relating to ESG to the Office of Management and Budget for review.

Retirement Plan Fees

In July, the Government Accountability Office (GAO) released a study on retirement plan participants' understanding of the fees they pay within their retirement plan.

The report included five recommendations to the DOL:

1. Require the use of consistent terminology for asset-based investment fees.
2. For quarterly fee disclosures, provide the actual cost of any asset-based investment fees that are paid.
3. Provide participants information detailing the cumulative effects of fees on total savings over time.
4. Require fee disclosures to include fee benchmarks for in-plan investment options.
5. Include ticker information for all in-plan investments (when available).

The DOL is not required to act on any of the recommendations in the report but may choose to update disclosure and communication requirements.

JUDICIAL UPDATE: RETIREMENT PLAN LAWSUITS

College and University ERISA 403(b) Litigation Update

New York University ERISA 403(b) Excessive Fee Lawsuit

Sacerdote v. New York University is one of the only higher education fee lawsuits that went to trial and received a decision. In July 2018, following a bench trial, a U.S. District Court judge issued an order in favor of New York University.

The plaintiffs appealed the dismissal of several claims to the 2nd U.S. Circuit Court of Appeals. Two of the six challenges to the decision were affirmed and were remanded to a lower court for further review. The two claims that were revived were: "(1) the dismissal of their claim that NYU breached its duty of prudence by offering particular share classes of mutual funds in the retirement plan, (2) the denial of leave to amend their complaint to name additional defendants…"

Offering the Lowest Cost Share Class

The appellate court determined that the dismissal of the share class claim prior to the bench trial was in error. The dismissal in the original decision indicated that the prudence of each investment did not need to be assessed individually but rather looked at the investments available in the plan collectively. Taken as a whole, it determined that the presence of the retail share-classes of some investments was not sufficient to taint the entire plan. The two plans in question both offered 63 retail share class options out of 103 options in the Faculty Plan and 84 offered in the Medical Plan.

In the original complaint, the plaintiffs alleged that lower share classes were readily available and that a simple review of an investment's prospectus would have uncovered the lower-cost alternatives. The appellate court ruled that the plaintiffs had sufficiently alleged that NYU acted imprudently in offering the number of retail-class shares within the plans.

The decision was based on several factors:

- The plaintiffs' pleadings generated plausible inferences of the claimed misconduct and should not have been dismissed on the notion that prudent fiduciaries may elect to offer retail over institutional share classes.
- The lower court relied too heavily on cost ranges from other ERISA cases.
- Assessing the mix of investments in the plan as a whole is generally acceptable but does not preclude the assessment of individual funds, especially in a case where the decision is based on investments whose only differentiation is cost.

Amending Claim to Add Additional Defendants

Prior to the bench trial, the plaintiffs' motion to add 17 individuals who had served as fiduciary committee members during the class period was denied. The appellate court ruled that the denial was based on the wrong legal standard and that the denial was not harmless to the plaintiffs' case.

The original complaint named the NYU Committee as the defendant rather than the individual members. The trial court had criticized two committee members as incompetent in performing their roles as fiduciaries. These were two of the individuals that the plaintiffs sought to add to the complaint. Because the committee was the defendant, decisions were made based on the collective performance of the full committee rather than on the performance of individual committee members. The analysis and decisions may have been different had the individual committee members been named as defendants in the case.

Columbia University Settles ERISA 403(b) Lawsuit

In May of this year, the terms of the settlement in the case of *Cates v. The Trustees of Columbia University in the City of New York* were disclosed. The allegations against Columbia University were similar to most other higher education ERISA lawsuits. The plaintiffs' claimed Columbia breached their fiduciary duty by selecting and retaining poor performing and expensive investments within the plan and causing the plan to pay excessive fees to service providers.

In electing to settle the case, Columbia University agreed to a $13 million monetary payment. In addition, similar to the other settlements, there were several non-monetary provisions. These provisions are worth noting as plan sponsors review their own fiduciary oversight.

These provisions include:

- Mandatory annual training for the plan fiduciaries related to their ERISA responsibilities
- Price recordkeeping fees on a per participant or per account basis
- Maintain the lowest available share class for each investment option offered through the plan
- Continue to use an independent investment consultant to participate in quarterly meetings
- Conduct a request for proposal for recordkeeping and administrative services
- Inform current recordkeepers that they may not use plan data to sell non-plan products and services to plan participants
- Inform participants of their ability to redirect assets from frozen investment options to the new updated investment options

The non-monetary provisions of *Cates v. The Trustees of Columbia University in the City of New York* are worth noting as plan sponsors review their own fiduciary oversight.

- **Mandatory annual training for the plan fiduciaries** related to their ERISA responsibilities
- Price recordkeeping **fees on a per participant or per account basis**
- **Maintain the lowest available share class** for each investment option offered through the plan
- Continue to **use an independent investment consultant** to participate in quarterly meetings
- Conduct a **request for proposal for recordkeeping and administrative services**
- **Inform current recordkeepers that they may not use plan data** to sell non-plan products and services to plan participants
- **Inform participants of their ability to redirect assets from frozen investment options** to the new updated investment options

Supreme Court to Review Dismissal of Northwestern University ERISA 403(b) Excessive Fee Case

Hughes v. Northwestern University is an excessive investment and recordkeeping fee case similar to several other higher education, breach of fiduciary duty cases. This case was dismissed by the district court for failing to sufficiently plead a breach of fiduciary duty. On appeal, the Seventh Circuit Court affirmed the dismissal. This is the opposite result from the Second Circuit Court in *Sacerdote v. New York University* discussed earlier. In addition, in early 2020, the Third Circuit Court reversed a portion of the dismissal of another higher education lawsuit with similar claims against the University of Pennsylvania.

The Supreme Court was asked to hear the Northwestern case to resolve the inconsistent Circuit Court rulings on similar if not identical claims. The Supreme Court will have the opportunity to clarify and set a standard to determine what is sufficient to state a claim for a breach of ERISA's duty of prudence related to selecting investments and monitoring plan expense. The Supreme Court will hear the case during its next term in October 2021 and a decision would be expected in 2022.

401(k) Litigation Update

Breach of Fiduciary Duty and Loyalty Claims Move Forward Against Investment Consultant

In *Turner v. Schneider Electric Holdings, Inc.*, Schneider Electric and their investment consultant, AON Hewitt, were named defendants for ERISA claims of breach of fiduciary duty and prohibited transactions. Both defendants filed motions to dismiss and in May 2021 a federal judge dismissed some of the claims but allowed several to proceed.

The plaintiffs claimed the retirement plans included AON Hewitt's proprietary collective investment trusts (CITs) as investment options. This included transferring assets from Vanguard's target date funds to a suite of proprietary target date funds that did not have an extensive track record. The ruling indicated that while the claim would not survive based on a retroactive comparison of the AON investment performance to similar options, it would survive on the assertion that they were improper due to an insufficient track record to properly judge adequacy for the plan.

> The **plaintiffs claim both defendants breached a duty of loyalty and a duty of prudence** for including the investments. The judge denied AON's motion to dismiss on both claims because it was possible that **AON failed to act solely in the interest of plan participants in promoting the use of their funds.**

It is alleged that the use of the funds resulted in financial gain to AON and financial loss to plan participants. The plaintiffs claim both defendants breached a duty of loyalty and a duty of prudence for including the investments. The judge denied AON's motion to dismiss on both claims because it was possible that AON failed to act solely in the interest of plan participants in promoting the use of their funds. Interestingly, the judge granted Schneider Electric's motion to dismiss the duty of loyalty claim but not the duty of prudence. The duty of loyalty claim will only proceed as it relates to AON while the duty of prudence claim will proceed against both defendants.

The judge also allowed claims to proceed against Schneider that it failed to include the lowest share class of investments available and failed to put the plan services through a competitive bidding process.

The ruling pointed to other cases that have been allowed to proceed with similar share class and RFP allegations.

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DEFINED BENEFIT PLANS

American Rescue Plan Act Includes Defined Benefit Funding Relief

The American Rescue Plan Act (ARPA) included provisions that will impact defined benefit funding requirements. The bill provides funding relief in two ways.

1) continued interest rate relief through 2030.
2) Increase in the amortization period for funding shortfalls.

Interest Rate Stabilization

Pre-ARPA law included interest rate relief that would have fully phased out by 2023. ARPA extends that relief by reducing the corridor around each funding segment rate to 5% and extends the phase-out period through 2030. In addition, ARPA added a new 5% floor on the 25-year average funding segment rates.

This relief applies retroactively to 2020, but plan sponsors can elect to disregard it for either (or both of) 2020 or 2021.

Funding Shortfall Amortization Period

The legislation also permanently extended the amortization period to recognize any funding shortfalls from seven years to 15 years. All prior existing shortfall amortization bases are eliminated in the first year the new amortization period applies. This change is effective for the 2022 plan year but can be retroactively applied for plan years beginning in 2019-2021.

These changes will materially reduce funding requirements for plan sponsors and allow greater flexibility in funding a plan and responding to actuarial losses (many of which have been the result of interest rate declines).

The significant flexibility permitted by ARPA results in a complex combination of elections and, to the extent applied retroactively, raises many questions that will need to be addressed by the IRS.

MULTNOMAHGROUP

111 SW 5th Avenue, Suite 4000
Portland, Oregon 97204
T: (888) 559-0159
F: (971) 269-0154
multnomahgroup.com