Q2 2025 Regulatory & Legislative Update

Overview

As the executive branch continues to focus its efforts on cutting government programs to reduce spending, these initiatives are having an impact on the departments that oversee employer-sponsored retirement plans. And although passing an all-important budget bill is keeping federal legislators busy, some are still introducing separate retirement plan bills that may gain traction. Whatever the final budget bill contains, it is sure to impact—in some ways yet undetermined—how plan sponsors operate their plans.

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Legislative Update

Retirement Savings for Americans Act

U.S. Senators John Hickenlooper (D-CO) and Thom Tillis (R-NC), along with Representatives Lloyd Smucker (R-PA) and Terri Sewell (D-AL) recently reintroduced the Retirement Savings for Americans Act (RSAA) (H.R.2696), which is designed to help low- and middle-income working Americans build wealth and save for retirement. The RSAA is essentially a federal retirement savings plan that is modeled on the state-facilitated retirement plans that numerous state governments have adopted. This bill includes the following provisions.

Eligibility and Auto Enrollment: Full- and part-time workers, as well as independent workers (including gig workers), who lack access to an employer-sponsored retirement plan would be eligible for an RSAA account, and they would be automatically enrolled at a contribution rate of 3% of their income. They could choose to increase or decrease their withholding—or opt out entirely, at any time.

Federal Contribution: Low- and moderate-income workers would be eligible for a 1% automatic contribution (as long as they remain employed) and up to a 4% matching contribution through a refundable federal tax credit. This would begin to phase out at median income.

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Portability: Accounts would be portable and remain attached to workers throughout their lifetimes, and workers would be able to stop and start contributions at will.

Private Assets: The accounts would be the property of the worker, and the assets could be passed down to beneficiaries to help them build financial security.

Investment Options: Participants would be given a menu of basic, low-fee investment options to choose from, including lifecycle/target date funds tied to a worker's estimated retirement date, or index funds composed of stocks and bonds.

Other Key Provisions: One important change from the previous versions of the bill is a clarification that RSAA balances would be excluded from means testing for federal benefits programs until a saver reaches age 65. Then the account balance would factor into their eligibility for certain federal benefits programs. The bill's authors expect that the potential increase in wealth accumulation during participants' working years may lessen their need for such benefits programs in retirement. In addition, the bill contains language ensuring that a business enrolling an independent contractor in the RSAA plan will not be penalized by having to factor the enrollment into the employer-employee test.

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Helping Young Americans Save for Retirement Act

Another retirement bill was recently reintroduced in the U.S. Senate. Senators Bill Cassidy (R-LA) and Tim Kaine (D-VA), both members of the Senate Health, Education, Labor, and Pensions (HELP) Committee, are sponsoring the Helping Young Americans Save for Retirement Act (S.3305), which would help more workers aged 18 to 20 years old gain access to employer-sponsored retirement plans.

This bill would amend the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code to lower the minimum participation age from 21 to 18 in certain circumstances. Specifically, this will allow these younger workers to contribute earlier when they are long-term, part time employees. The bill also eases plan audit and testing provisions that are normally required when these younger workers are allowed to participate in a plan, thus reducing plan costs and making it easier for plan sponsors to comply with the new rule.

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Two Bills May Impact the Department of Labor

Two separate bills have been introduced by members of the House Education and Workforce Committee. Both would require more transparency when the Department of Labor (DOL) investigates ERISA-covered plans. The EBSA Investigations Transparency Act (H.R. 2869) was introduced by Rep. Lisa McClain (R-Mich.) and would require the Employee Benefits Security Administration (the EBSA, a DOL agency) to update Congress each year on the status of its investigations. The bill would also require the DOL to report whether an investigation has been concluded within 36 months, and if not, why.

The second bill, the Balance the Scales Act (H.R. 2958), was introduced by Rep. Mike Rulli (R-Ohio). If passed, this bill would require the EBSA to file an annual report with Congress regarding "common interest agreements" (CIAs). These CIAs include information that is specifically directed to legal counsel, who can then use it in an ERISA civil action. This bill seeks to address concerns that the DOL has been cooperating with plaintiffs' legal counsel in lawsuits brought against plan sponsors and fiduciaries.

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Federal Budget Bill Contains a Retirement-Related Provision

Federal lawmakers are working to craft a budget bill that will, among other things, preserve the Tax Cuts and Jobs Act of 2017, which is slated to sunset at the end of 2025. This major spending bill, cited in the recently passed House version as the "One Big Beautiful Bill Act," is proceeding to the Senate using the reconciliation process, which requires a simple majority in both chambers of Congress. This avoids the possibility of a filibuster in the Senate, which could derail a budget bill if the usual process were used.

Because there is typically broad bipartisan support for many retirement reform measures, such bills are passed through the usual legislative process. For example, the SECURE 2.0 Act of 2022 was enacted as part of a larger omnibus spending package and not through the reconciliation process. So normally retirement plan provisions do not find their way into a reconciliation bill. But this time there is an exception.

Although there is no guarantee that this provision will remain in the bill that is finally enacted, for now "Trump Accounts" remain in this legislation. Trump Accounts would receive $1,000 credit from the federal government for U.S. citizens born between January 1, 2024, and December 31, 2028. These accounts could receive up to $5,000 each year for a child's future educational, homeownership, or entrepreneurial expenses, and the assets would be invested in a diversified fund that tracks an established U.S. equities fund. Accountholders would be able to take distributions when they reach age 18. Withdrawals for qualified expenses, such as college tuition or funding a first-time home purchase, would be taxed at capital gains rates; other distributions would be taxed as ordinary income, and a 10 percent penalty would apply for nonqualified distributions before age 30.

Whether this provision survives in the final reconciliation bill remains to be seen. The cost is relatively low—about $17.3 billion over the next 10 years—but the current name of the accounts may diminish support from certain legislators.

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Administration's Proposal Includes a 26% Cut to DOL's Budget

Last year, the then acting Secretary of Labor, Julie Su, pushed for an increase in the department's 2025 budget to, among other things, implement the many provisions contained in the SECURE 2.0 Act of 2022. Instead, the current administration proposes cutting $3.63 billion of the DOL's $13.9 billion budget, or approximately 26 percent.

In the midst of these potential budget cuts, approximately 20 percent of the Employee Benefits Security Administration employees have recently accepted resignation or retirement offers. This rate is slightly higher than the acceptance rate for this same offer to the DOL's employees as a whole, which is around 18.5 percent. According to the DOL, projects like completing the retirement plan lost and found, providing technical guidance on future ERISA legislation, and implementing SECURE 2.0 Act guidance could be put in jeopardy. Although some of the administration's budget reductions are targeted at specific DOL programs, it seems likely that the combination of less money and fewer employees will have an impact on the DOL's capacity to fulfill its mandates.

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Trends to Watch

“Perfect Storm” of Factors May Make This a Good Time for New Plan Adoption
The convergence of at least three factors may convince business owners to establish a retirement plan—now more than ever.

1) Former independent contractor rules are being reinstated. On May 1, 2025, the DOL’s Wage and Hour Division (WHD) issued Field Assistance Bulletin (FAB) No. 2025-01. This FAB states that the WHD is reverting to an earlier test (at least for enforcement purposes) in determining whether workers are independent contractors or employees. A 2024 rule under the previous administration made it easier to classify a worker as an employee. At least until further guidance is released, the WHD will again rely on the 2008 “economic realities test,” which considers multiple factors. In many cases, this test will make it easier for workers to be considered independent contractors. As a result, these workers normally will be able to establish retirement plans for their businesses.
2) Tax credits for new retirement plans. Under the SECURE 2.0 Act, plan sponsors with 50 or fewer employees are entitled to a 100 percent credit for their start-up costs when establishing a new retirement plan. In addition, employer contributions (e.g., profit sharing or matching contributions) up to $1,000 per employee may also qualify for a refundable credit. Although these tax credits are more generous than in the past, plan sponsors should seek sound advice when determining their eligibility.

3) State and federally facilitated retirement programs. Numerous states have implemented—or are in the process of implementing—mandatory programs that require employers to enroll employees if they are not covered by an employer-sponsored retirement plan. The U.S. government also seems to be moving in this direction with a national program (discussed above). So employers may be more inclined than ever to sponsor a retirement plan on their own, rather than having to comply with a federally or state-mandated plan.

Providing meaningful retirement plan benefits to employees has long been considered an important factor in attracting and retaining a productive and stable workforce. These additional factors may nudge employers toward establishing a plan. And one more factor might help gig workers adopt a retirement plan for themselves—as independent contractors. The federal budget bill discussed above also currently contains a provision that would exclude tips from taxable income. If enacted, this provision could free up substantial assets for small business owners, such as delivery drivers, to put toward their retirement savings either through an IRA or through an IRA-based plan or qualified plan.

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Plan Sponsors May Need to Address Roth Catch-Up Contributions Soon

The SECURE 2.0 Act requires certain higher-paid plan participants to treat any catch-up contributions that they make as Roth contributions. Participants who made more than $145,000 (indexed) in wages from the plan sponsor in the previous year are subject to this rule.

This provision was originally slated to become effective for 2024 plan years. But the IRS delayed this start date until taxable years beginning in 2026. Proposed regulations on this Roth catch-up requirement were published earlier this year and clarified several IRS positions. For example, these regulations point out that if any catch-up eligible participant who is subject to this new rule is allowed to make Roth catch-up contributions, then all participants who are catch-up eligible must be allowed to make Roth catch-up contributions. In other words, plan sponsors cannot permit only those who are subject to this rule to make Roth deferrals; all participants—even lower-paid ones—must be allowed to make Roth deferrals, including catch-up contributions.

Recent surveys estimate that approximately three-quarters of 401(k) plan sponsors offer a Roth contribution option. Those who do not may want to consider whether to reconsider this in light of the upcoming Roth catch-up rule. In addition, plan sponsors will want to work with their service providers to prepare for the transition to mandatory Roth catch-up contributions for their affected participants in 2026.

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Supreme Court Case Settles Lower Courts' "Split" on Pleading Standards

A recently decided U.S. Supreme Court case has resolved disparate rulings by various appellate courts throughout the nation. The Cunningham v. Cornell University case involved a plaintiff's allegation that the university's ERISA-covered retirement plan had engaged in a prohibited transaction by retaining certain service providers that charged unreasonably high fees. This case was just one of many lawsuits that have been filed recently against plan sponsors and fiduciaries. But depending on where the cases were filed, different jurisdictions applied different requirements regarding the facts that must be pleaded to withstand a defendant's motion to dismiss the case.

Some jurisdictions required a relatively minimal factual allegation for the lawsuit to proceed. For example, a plaintiff may merely have had to allege that the defendant plan sponsor contracted with a service provider who was paid by the plan. Under federal rules, this alone may have resulted in a prohibited transaction. But this minimal pleading requirement ignores the additional federal rules that carve out numerous exceptions to the prohibited transactions rules. Specifically, fiduciaries (such as plan sponsors) may retain service providers and pay them with plan assets provided that, among other things, the compensation is reasonable.

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Some appeals courts would allow “excess fee” cases to proceed without much more than an allegation that the plan sponsor paid the service provider too much and that participants were harmed as a result. Other courts required much more in order to proceed toward trial. For example, they might require the plaintiff to acknowledge the prohibited transactions exemptions and include in their court filings specific details that support the allegations of excessive fees. This extra requirement, the arguments goes, might discourage plaintiffs’ attorneys from going on a “fishing expedition,” trying to force plan sponsors to either undertake an expensive defense or to settle the case.

In *Cunningham v. Cornell University*, the Supreme Court unanimously held that plaintiffs do not have to plead the absence of an available exemption to the prohibited transactions rules. The Court’s opinion pointed out that there are five existing mechanisms that lower courts can use to screen out meritless claims. Time will tell whether this ruling will result in plaintiffs filing more lawsuits. But for now, at least, plan sponsors and other fiduciaries may have legitimate concerns that the bar is set too low for claims against them.

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Looking Ahead

The current administration continues to make substantial changes to federal departments through executive orders and through internal departmental initiatives. Numerous lawsuits may determine the permissible scope of these orders. The emerging budget bill will also likely have a significant impact on funding for the DOL and the Treasury Department. This may affect enforcement capacity and the flow of future guidance.

Other topics that are attracting more attention include the end of student loan forbearance and forgiveness. This may lead to more plan sponsors adopting plan provisions that allow loan repayments to count as plan deferrals for matching contribution purposes. Alternative investments, such as private equity, private real estate, and hedge funds, in 401(k) plans and IRAs are also being discussed more frequently. And changes to the previous administration's Environmental, Social, and Governance (ESG) Rule, cryptocurrency guidance, and the Fiduciary Rule will likely affect plan sponsors. As these and other matters continue to head toward resolution, Pentegra will continue to keep you apprised.