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Overview

During the longest federal government shutdown in U.S. history, no retirement legislation was enacted. The Senate, unlike the House, remained in session through much of the shutdown—and managed some progress on retirement-related bills. The pace of regulatory (and other) guidance has slowed down, but two significant retirement plan directives were released before most federal workers were furloughed.

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Legislative Update

Two ESOP Bills Pass in Senate

On October 9, the U.S. Senate passed the Retire Through Ownership Act by unanimous consent. This bipartisan bill, introduced by Senators Tim Kaine (D-Va.) and Roger Marshall (R-Kan.), is being fast-tracked with no debate because no senators objected to moving the bill forward. In recent years, several bills have been offered promoting employee stock ownership plans (ESOPs), which are qualified retirement plans under the Employee Retirement Income Security Act (ERISA) designed to invest primarily in employer stock. They allow a company to transfer ownership into the hands of employees through retirement plan contributions. This strategy not only provides a ready market for the closely held stock of a company, which promotes an orderly business succession, but it also gives plan participants ownership in the company, which offers employees long-term savings advantages while giving them a vital stake in the company's success.

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This short bill simply adds text to ERISA, amending the definition of ‘adequate consideration’ allowing ESOP fiduciaries to have a good faith reliance on guidance outlined in IRS Revenue Ruling 59-60 in determining the fair market value of employer stock. The result is that it allows ESOP fiduciaries to rely in good faith on an independent valuation expert or business appraiser who utilizes the valuation practices as described in IRS Revenue Ruling 59-60. This provision is aimed at reducing uncertainty and litigation, especially arising from claims that company stock is overvalued to the detriment of employees in the plan. A similar bill was passed out of the House Education and Workforce Committee in September.

Also on October 9, the Senate passed a bill further supporting ESOPs. The Employee Ownership Representation Act would expand the Department of Labor’s (DOL’s) ERISA Advisory Council to include representatives from employee ownership organizations. This provision is expected to further promote employee ownership through qualified retirement plans by giving ESOP proponents a stronger voice before the DOL.

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Retirement Savings Bill for Veterans Introduced in House

Representatives Jen Kiggans (R-Va.) and Wesley Bell (D-Mo.) have introduced the Financial Opportunities for Retirees and Warriors Advancing Retirement Development (FORWARD) Act. This bill would allow military retirees and 100% disabled veterans to continue contributing to their federal Thrift Savings Plan (TSP) accounts after their military careers are completed. The TSP program is similar to a 401(k) plan, but for federal employees. Former uniformed service members entitled to retired pay or disability compensation could continue to fund their TSP accounts despite no longer being federal employees. They would not, however, be eligible for matching contributions.

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Escheating Unclaimed Retirement Assets

If passed, the Unclaimed Retirement Rescue Plan would require the DOL to issue a rule to permit plan fiduciaries to transfer unclaimed retirement assets to state abandoned property programs. Introduced by Representatives Seth Magaziner (D-RI) and Ron Estes (R-Kan.), this bill would allow plan sponsors and certain other fiduciaries to pay a missing participant's or beneficiary's account (up to $5,000) to a state unclaimed property program without violating ERISA provisions. Among other requirements, the fiduciary must make reasonable efforts to locate the those entitled to payment and must provide specific information to the DOL, which will make it easier for payees to locate the assets. The DOL must also submit this information to its Retirement Savings Lost and Found Database.

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Raising First-time Home Purchase Limit for IRAs

Individuals are permitted to withdraw IRA assets without incurring a 10% additional tax on early distribution to purchase their first house. The $10,000 distribution limit was set in 1997. Since then, the median home price has nearly quadrupled. To keep pace with ballooning home prices, Senators Todd Young (D-Ind.) and Ruben Gallego (D-Ariz.) have introduced the Uplifting First-Time Homebuyers Act, which would increase the withdrawal limit to $50,000. This bill may not directly affect most employer-sponsored retirement plans. But with job changers and others having access to plan assets, more participants may be inclined to roll over their qualified retirement plan funds to IRAs if this bill is enacted.

Because of the broad concern about affordable housing, other bills to promote home ownership have been introduced. For example, the Bipartisan American Homeownership Opportunity Act would provide a refundable tax credit of up to $50,000 for first-time home buyers.

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Regulatory Update

Roth Catch-up Regulations Released

Among the many SECURE 2.0 Act provisions, one has caused particular concern: plan participants who earn more than the threshold amount in the previous year must make any current-year catch-up contributions as Roth contributions. This seemingly straightforward proposal—to increase federal revenue by making certain catch-up contributions taxable—has created implementation challenges for plan sponsors, participants, and service providers. Fortunately, in mid-September the IRS issued final regulations detailing how these catch-up provisions must be implemented.

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Background and the Basics

The relatively short provision in Section 603 of the SECURE 2.0 Act simply requires retirement plan participants who earn more than $145,000 (indexed for cost-of-living increases) in the prior year to make any catch-up deferrals as designated Roth contributions. At first, plan sponsors didn't seem too concerned about the details. Some were puzzled about why Congress chose the threshold amount, which is somewhat lower than highly compensated employee (HCE) limit, or whether plans would have to include a Roth catch-up provision if one was not yet in place. But once plan sponsors and service providers examined the details, many more questions arose.

This Roth catch-up provision was slated to become effective for the 2024 tax year. After considerable pressure, however, the IRS created a two-year "transition period" that gave plan sponsors until the 2026 tax year to fully implement this new rule. Proposed regulations were issued in January 2025, resolving some of the administrative questions. Still, several industry groups encouraged the IRS to further delay this provision, but it appears that the January 1, 2026, date for mandatory Roth catch-ups is firm.

As a reminder, catch-up contributions—or additional salary deferrals—can be made by those who attain age 50 or older in any tax year, if the plan permits them. For example, for 2025, a 54-year-old 401(k) participant could defer an additional $7,500 above the normal deferral limit of $23,500. The SECURE 2.0 Act also allows those reaching ages 60–63 to defer the greater of $10,000 or 150% of the regular catch-up limit ($11,250 for 2025) as a catch-up contribution. For instance, a 62-year-old 403(b) participant could defer $11,250 in 2025 ($7,500 + $3,750 = $11,250). (Special catch-up limits apply to SIMPLE plan participants, but the designated Roth catch-up requirements do not apply to SEP or SIMPLE plans.)

Requirements Under the New Final Regulations

The final regulations comprise nearly 100 pages of double-spaced text and cover a broad range of topics that may not arise for most plan sponsors. Here are some of the more common items that have triggered questions.

Income considered for the wage threshold—The IRS has kept it simple here: Social Security wages—in Box 3 of IRS Form W-2—determine whether catch-up contributions must be made as designated Roth contributions. Wages earned with the current employer for the previous year are used. So for 2026, only those who earned over $150,000 in 2025 are required to make any catch-ups as Roth contributions. This threshold will be indexed for cost of living in $5,000 increments and is not prorated for partial years of work. For example, someone starting work on July 1, 2025, and making $200,000 per year will make under $150,000 for the year; the threshold is not reduced to reflect a half-year of employment. So, this participant, who will make $100,000 with the new employer in 2025, is not required to make catch-up deferrals as Roth contributions in 2026. Wages from a former employer in the previous year are not considered.

Universal availability—Most plan sponsors currently offer designated Roth contributions in their plans. But they don't have to. Some will add this feature to their plan in light of the new rules. If a plan does not allow designated Roth contributions, again the rule is straightforward: those participants who exceeded the wage threshold in the previous year simply cannot make catch-up contributions. Because any catch-up deferrals must be made as Roth contributions, and because a plan does not permit designated Roth contributions, affected participants are barred from making catch-up contributions.

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Determining whether deferrals are Roth contributions—To make plan administration easier, the IRS allows plan sponsors to treat a participant's pre-tax deferral as a Roth catch-up contribution. This "deemed election" supersedes a participant's previous election when catch-up contributions must be made as Roth contributions and helps keep the plan and participants in compliance with the rules. Such a deemed election must be clearly articulated in the plan document, and affected participants must be given an opportunity to make a different election.

Although the designated Roth contribution requirement may often be triggered by a deferral that exceeds the statutory deferral limit, it could also arise if the participant exceeds a lower plan-imposed limit or if the plan is correcting an ADP test failure. Keep in mind that some participants over the wage threshold may still choose to make designated Roth contributions that are not required by the new rule. For example, they could make all their salary deferrals as Roth contributions—not just their catch-up contributions.

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Correcting Plan Failures Under the New Rule

Some plan sponsors and service providers are likely to experience challenges adapting to the new requirements. Fortunately, the final regulations contain two effective ways to correct Roth catch-up failures, but only for plan sponsors who have integrated the deemed Roth catch-up election into their plan. To use either method, plan sponsors also "must have in place practices and procedures designed to result in compliance with [the rules] at the time the elective deferral is made."

- *Correcting the participant's Form W-2*. If the participant's W-2 has not yet been filed or sent to the participant, the plan sponsor may move the catch-up contribution (including earnings) from the participant's pre-tax account to the participant's designated Roth account and must report the corrected contribution amount (not including earnings) on the W-2 as taxable income.
- *Creating an in-plan Roth rollover.* Alternatively, the plan sponsor may roll over the assets (including earnings) that should have been Roth deferrals from the participant's pre-tax account into the participant's designated Roth account. This transaction must be reported as a distribution for the year of the rollover on IRS Form 1099-R.

What began as a benign attempt to bolster federal coffers has become more complicated than expected. While the concept is clear, the details on Roth catch-up contributions make compliance more difficult. But as service providers iron out their processes, compliance should become easier.

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Alternative Assets in Plans Creating a Buzz

On August 7, 2025, President Trump issued an executive order to encourage broader access to certain investments for participant-directed defined contribution plans. Although this order does not have any immediate effect on access to "alternative investments" in plans, it directs the Department of Labor (DOL) and the Securities and Exchange Commission (SEC) to reexamine existing guidance and to emphasize creating new guidance that may reduce possible litigation that could interfere with offering such investment opportunities. This guidance could provide a safe harbor from liability for plan sponsors that decide to allow such investments to participants.

The rationale—The executive order cites several reasons for increasing access to alternative assets, which the order defines to include private market investments (financial instruments not traded on public exchanges), real estate, digital assets, and infrastructure development. First, it states that many wealthy Americans and public pension plans already invest in alternative assets, while most participants in employer-sponsored defined contribution plans cannot. Proponents share a belief in the superior risk-return profile of these assets compared to traditional investments. Second, it suggests that "regulatory overreach" and "burdensome lawsuits" have stifled investment innovation. And third, it points to plan fiduciaries' existing duty to protect participants by "carefully vet[ting] and consider[ing] all aspects of private offerings, including investment managers' capabilities, experiences, and effectiveness managing alternative asset investments." By removing certain barriers, the current administration hopes to boost investment in private markets while affording savers additional options for retirement security.

The concerns—Critics of the administration's policy may object to each of these reasons in turn. First, defined benefit pension plans, largely due to their size, can invest in alternatives more readily because the plan sponsor bears the risk of investment loss; if the plan loses money, the employer is still responsible for guaranteeing payments to participants. Second, the current legal and regulatory process is needed to protect participants and beneficiaries from imprudent fiduciaries and unscrupulous investment promoters. And third, existing fiduciary duties have largely resulted in defined contribution plans rejecting alternative assets as a retirement plan investment option. Relaxing the rules, the argument goes, will invite investment speculation by often unsophisticated savers, whose retirement security should be protected—not put at risk. Besides, "accredited investors"—those with high net worth or certain professional certifications—still have sufficient access to alternative investments.

The result?—The executive order requires the DOL, within 180 days, to "reexamine [its] past and present guidance regarding a fiduciary's duties under the Employee Retirement Income Security Act . . . (ERISA) . . . in connection with making available to participants an asset allocation fund that includes investments in alternative assets." Within that time frame, the DOL must also "clarify [its] position on alternative assets and the appropriate fiduciary process associated with offering asset allocation funds containing investments in alternative assets under ERISA." Importantly, the order also states that the DOL "shall prioritize actions that may curb ERISA litigation that constrains fiduciaries' ability to apply their best judgment in offering investment opportunities to relevant plan participants."

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It is unclear whether the government shutdown or reduced staffing at the DOL will affect the early January deadline. What seems clear, however, is that the current administration will seek to relax the current guidance on alternative investments, presumably within the constraints of ERISA's statutory requirements.

Some plan participants—and even some plan sponsors—seem ready to embrace the prospect of investing in alternative assets in their retirement plans. But ERISA's fiduciary rule requiring the utmost care in selecting plan investments may present a significant hurdle for plan sponsors to overcome. Despite new guidance from the DOL, breaching that statutory duty of care could result in even more litigation. Look for additional analysis in this update once the DOL releases further guidance.

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Annual Retirement Plan Contribution Limits for 2026

Plan Limits	2026	2025
401(k) Elective Deferral Limit	$24,500	$23,500
403(b)/457 Elective Deferral Limit	$24,500	$23,500
401(k)/403(b) Catch-Up Contribution Limit	*$8,000	*$7,500
Annual Defined Contribution Limit	$72,000	$70,000
Annual Compensation Limit	$360,000	$350,000
Annual Defined Benefit Limit	$290,000	$280,000
Highly Compensated Employee Dollar Limit	$160,000	$160,000
Key Employee Dollar Limit	$235,000	$230,000
Related Limits		
SIMPLE Employee Deferral Limit	$17,000	$16,500
SIMPLE Catch-Up Deferral Limit	$4,000	$3,500
SEP Minimum Compensation Limit	$800	$750
SEP Annual Compensation Limit	$72,000	$70,000
Social Security Taxable Wage Base	$184,500	$176,100
Self-only HSA Contribution Limit	$4,400	$4,300
Family HSA Contribution Limit	$8,750	$8,550
HSA Catch-Up Contribution Limit	$1,000	$1,000
IRA Contribution Limit	$7,500	$7,000
IRA Catch-Up Contribution Limit	$1,100	$1,000

*Under a change made in SECURE 2.0, a higher catch-up contribution limit of $11,250 applies to employees aged 60-63 for 2026.

Details on these and other retirement-related cost-of-living adjustments for 2025 are in Notice 2024-80,available on IRS.gov.