Q1 2026 Legislative Update

Overview

Since the federal government shutdown ended last November, legislators have introduced (or re-introduced) a number of retirement-related bills. Despite distractions that may slow progress, several of these bills enjoy broad bipartisan support and continue to wend their way through the sometimes circuitous legislative process. Bills are often amended to reconcile different provisions in House and Senate versions—or as part of the usual give-and-take required to muster enough votes for passage. Any of these proposals may change before enactment, and even bills with majority support do not necessarily become law.

Regarding regulatory (and other) guidance, the current administration continues to exercise its influence in shaping federal policy. Sometimes this shift is direct, such as when the Department of Labor (DOL) issues regulations—as we expect soon—on alternative investments in retirement plans. But at times the effect may be more subtle. As we address below, the Employee Benefits Security Administration (EBSA, an agency of the DOL) has indicated that it is reworking its compliance approach when determining which types of plan sponsor violations warrant aggressive enforcement measures. Such methods, while less obvious, may still have considerable effects on plan administration.

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Legislative Update

The INVEST Act

The Incentivizing New Ventures and Economic Strength Through Capital Formation (INVEST) Act of 2025 (H.R. 3383) combines over 20 individual bills into one package. The INVEST Act passed in the House in December with broad bipartisan support and is now under consideration in the Senate Committee on Banking, Housing, and Urban Affairs. Among the retirement plan provisions is an enhancement for 403(b) plans, allowing them to invest in collective investment trusts (CITs). CITs are similar to mutual funds but with fewer regulatory restrictions. Because CITs can be cheaper than mutual funds, many 401(k) plans already use them in their investment lineups. The INVEST Act also expands lifetime income options for 403(b) plans. As a result, 403(b) plans would gain many of the same investment and income features that have long been available in 401(k) plans.

Also, the definition of "accredited investor" would be expanded to allow greater potential access to alternative investments. The current rules primarily rely on investors income and net-worth thresholds rather than on credentials related to investment knowledge. The bill would create a "competency-based" pathway for individuals to qualify as accredited investors.

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- The Securities and Exchange Commission (SEC) would create a free certification examination to determine financial proficiency. This exam would test competency in different security types, disclosures, financial statements, and the risks associated with alternative assets.
- Individuals could also demonstrate competency through education or job experience. For example, financial knowledge could be demonstrated through a particular course of study, as long as this were verified by an appropriate self-regulatory agency (e.g., the Financial Industry Regulatory Authority (FINRA)).
- Professional certifications or licenses—such as the FINRA Series 7 credential—could also qualify an individual. The bill allows the SEC to evaluate which designations would be sufficient to show financial competence.

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Protecting Prudent Investment of Retirement Savings Act

Passed by the House on party lines in January, this bill (H.R. 2988) would require plan fiduciaries to elevate strict "pecuniary factors" over non-financial goals, including goals that are driven by environmental, social, and governance (ESG) factors. The act would reverse rules under the previous administration that allowed for ESG considerations in retirement accounts.

- ESG factors could be used only to resolve a "tiebreaker" situation—when the relative merits of two or more investment options are indistinguishable.
- Fiduciaries could not consider race, color, religion, sex, or national origin when selecting other plan fiduciaries or service providers.
- If a plan provides for "brokerage windows" (or self-directed brokerage accounts), participants must receive a notice explaining that permitted investments may lack oversight by plan fiduciaries.

A similar bill was introduced in the Senate last fall: the Restoring Integrity in Fiduciary Duty Act (S. 3086) contains language that would also require plan fiduciaries to consider only financial factors in making investment decisions. Joint House and Senate committees will likely try to reconcile these two similar bills into legislation that can pass both chambers of Congress.

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ERISA Litigation Reform Act

Introduced in November, this bill (H.R. 6084) aims to reduce "meritless" class-action lawsuits against retirement plan fiduciaries by raising legal hurdles for plaintiffs. The primary change would be to require plaintiffs to plausibly allege and (ultimately prove) that a transaction is not exempt under the Employee Retirement Income Security Act of 1974 (ERISA) before the case can proceed. This would be a significant shift from the 2025 Supreme Court ruling in Cunningham v. Cornell University, which set a much lower standard for plaintiffs' lawsuits to move forward. This legislation reflects the current administration's seemingly more friendly stance toward plan fiduciaries.

This bill has galvanized both supporters and opponents. In light of the numerous lawsuits in recent years—often alleging substandard investment options, excessive fees, or misuse of plan forfeiture accounts—supporters claim that action is needed to protect retirement plans from depletion through "nuisance suits" by attorneys hoping for settlements from large plans. Opponents maintain that participants must be able to hold plan fiduciaries accountable for mismanagement, which depends on plaintiffs' ability to file class action lawsuits without unduly restrictive pleading standards.

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The Retirement Simplification and Clarity Act

As its name suggests, this bipartisan bill (H.R. 6324) contains retirement plan provisions that could help participants' retirement planning.

- It would allow those age 50 and older to take penalty-free in-service 401(k) distributions and roll them over into individual retirement annuities while still working. This would permit participants to lock in a steady, guaranteed payout earlier in their careers.
- It would also require the IRS to simplify documentation when participants have access to their retirement assets, which is intended to promote a clearer understanding of distribution options and of the tax implications of various elections. (The IRS has recently released its newest version of this distribution notice (the "402(f) notice"), which would have to be revised again.)

Introduced in November, this bill has been referred to the House Ways and Means Committee. It is also undergoing committee review as part of a broader 2026 retirement policy agenda—with multiple provisions—sometimes referred to as "SECURE 3.0."

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Retirement Rollover Flexibility Act

This is another bipartisan bill (H.R. 6450/S. 3352), introduced in both chambers of Congress in December, that would allow individuals to roll over Roth IRA assets into designated Roth accounts in employer-sponsored retirement plans (e.g., 401(k), 403(b), governmental 457(b) plans). Currently, Roth IRA and other after-tax assets cannot be rolled over into such plans, reflecting a decades-old regulatory "gap" that has been left unaddressed. On the other hand, designated Roth account assets and other after-tax assets from a 401(k) (or other similar plan) have long been allowed to be rolled over to a Roth IRA. Creating "parity" between IRAs and non-IRA employer-sponsored plans should help prevent retirement plan leakage and would promote asset consolidation, thereby reducing fees and creating efficiency for savers.

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Automatic IRA Act of 2025

Another December bill (H.R. 6722), this proposal would require employers with more than 10 employees to automatically enroll them in an IRA if the employer does not already offer a retirement plan. This bill is similar to the many state-facilitated IRA programs that have addressed the lack of retirement plan options for many workers. The bill also directs the Treasury Department to issue guidance enabling automatic IRA arrangements for gig workers and contractors.

- Covered workers would be defaulted into a 6% contribution, with annual 1% increases to 10% by the fifth year.
- No employer contributions would be required, but a modest employer tax credit would still apply for businesses with 100 or fewer employees.
- Contributions default into a Roth IRA, and they would be placed into a target-date/life-cycle fund unless the IRA owner elects a different qualified investment (e.g., principal preservation or balanced option).

Existing state-facilitated IRA programs could continue, but this act would preempt similar state laws passed after December 31, 2027. The bill has been referred to the House Ways and Means Committee and would be effective for plan years beginning on or after January 1, 2028.

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Emergency Savings Enhancement Act of 2025

Bipartisan companion bills (S. 3333/H.R. 6417) were introduced in the House and Senate in December. This bill would revise existing pension-linked emergency savings accounts (PLESAs), which were created by the SECURE Act of 2022.

- PLESA maximum balances would be increased from $2,500 to $5,000.
- Eligibility would be expanded to include highly compensated employees (HCEs).
- Administrative complexity would be reduced by lessening monitoring by plan sponsors.
- If enacted, the effective date would be for taxable years beginning on January 1, 2027, or later.

This modest proposal might help participants save more in their retirement plans, knowing that they have penalty-free access to enough funds to meet most “routine” financial emergencies.

Q1 2026 Regulatory Update

Regulatory Update

Fiduciary Rule to be Updated

According to its annually published regulatory agenda, the Department of Labor (DOL) is expected to release a revised fiduciary rule by May 2026. Signaling a clear change in its official stance, the DOL previously withdrew its appeal in a case that had successfully challenged the Biden-era fiduciary rule. That 2024 rule created more potential liability for financial advisors who made certain one-time recommendations, such as rollover transactions, even if they did not have an ongoing professional relationship with the client. Whenever it is issued, the new rule is expected to make it harder for individuals to hold advisors responsible for improper advice regarding rollovers and other transactions.

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Alternative Investment Regulations Pending

The DOL is also soon planning to publish regulations on alternative investments in retirement plans. On January 14, 2026, the DOL submitted regulations to the Office of Management and Budget, which is typically the last stop before regulations are published in the Federal Register. This administration seems more inclined to encourage alternative assets in plans—provided that fiduciaries conduct proper oversight. Demonstrating this position, last May the DOL officially withdrew Biden-era guidance (Compliance Assistance Release 2022-01) that had warned 401(k) fiduciaries to exercise "extreme care" regarding cryptocurrency investments.

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EBSA Updates National Enforcement Projects

In mid-January, EBSA announced its national enforcement project overhaul for 2026. This will be the most significant change in years, stated Deputy Secretary of Labor Keith Sonderling in the DOL's news release. "By recalibrating the areas our investigators focus on, EBSA investigations will be more efficient, responsive, and prioritize serious misconduct rather than minor foot faults." Under the updated enforcement projects, investigators will emphasize the following types of cases.

- Cybersecurity
- Barriers to mental health and substance use disorder benefits
- Protecting benefit distributions
- Retirement asset management
- Surprise billing
- Criminal abuse (e.g., embezzlement and fraud) in contributory benefit plans

This last item has gotten even more attention lately. EBSA (and the DOL generally) has faced some criticism for focusing on "low hanging fruit" rather than on investigating benefit plan abuses that may have been less obvious. For example, the Bernie Madoff fraud, uncovered following the 2008–2009 financial crisis, might have been exposed more quickly had federal enforcement agencies communicated more effectively and had they pursued important (but less obvious) leads. For instance, both the DOL and the Securities and Exchange Commission failed to perform simple verifications of Madoff's alleged trading activity. Had they coordinated routine trade checks, they would have discovered his fraudulent lack of actual trading much sooner. By focusing on serious misconduct rather than on less egregious missteps, future enforcement action may better protect retirement savers from potentially huge losses.

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In one more notable shift, EBSA has removed employee stock ownership plans (ESOPs) from the national enforcement project list. For many years, ESOPs have been targeted for federal enforcement activity, which seemed to have a chilling effect on employers adopting such plans. This end to the "war on ESOPs" may improve prospects for more employers considering them. ESOPs can give plan participants an ownership stake in the company they work for—as well as providing a business succession avenue that benefits both the employer and employees. So EBSA's delisting is welcomed relief for ESOP advocates.

The recently enacted Consolidated Appropriations Act, 2026, which ended a partial government shutdown on February 3, 2026, contains funding for the Employee Ownership Initiative at the DOL. This grant will be used to develop educational materials to promote best practices. Federal funding to support ESOP establishment is further evidence of the gradual reversal of attitudes that formerly created some impediments to employee business ownership.

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United States Postal Service Changes Postmark Rules

At the end of December, the USPS added a section to its Domestic Mail Manual formally defining what a postmark is—and what the new rule means. This may have implications for those who use physical mail to deliver notices and other time-sensitive documents. Because the USPS has changed its mail processing system, there could be a delay between when an item is placed in a mail depository and when that item is first processed and formally postmarked. For example, mail deposited in a retail post office may be moved offsite to a processing facility and not postmarked until the following day. So individuals who need to ensure that mail receives a current-day postmark must request a manual postmark at a USPS retail counter when depositing that piece of mail.

Although over 90% of annual tax returns are filed electronically, there are still those who file paper returns. And some folks still wait till the last moment to file. For many purposes, including proof that a return was timely filed, the postmark is evidence that the deadline was met. So whether a plan sponsor is mailing IRS Form 1099-Rs or individuals are mailing IRA contributions, those using "snail mail" should 1) build more lead time into mailing schedules, 2) obtain manual postmarks to confirm timely mailings, or 3) turn to electronic delivery options whenever possible.