Q3 2026
Legislative Update

Overview

Several provisions of the SECURE 2.0 Act of 2022 (SECURE 2.0) are moving from “future requirement” to “current obligation.” Regulators are stepping in with temporary relief where final rules haven’t caught up. And a significant plan amendment deadline is fast approaching. From a new payroll requirement for higher earners to the state of retirement legislation in Congress, here are developments that may affect plan sponsors and retirement services providers this quarter.

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Since last spring, Congress has kept up a steady, if unspectacular, pace of retirement-related bill introductions. A bipartisan proposal reintroduced in the House and Senate would establish parity for 403(b) plans by allowing them to use collective investment trusts (CITs), investment vehicles that are already available to 401(k) plans. Other reintroduced bills, including versions of the Retirement Savings for Americans Act and the Automatic IRA Act, aim to create new retirement savings structures for the roughly 56 million American workers without access to an employer-sponsored plan. That effort got a boost from the executive branch: on April 30, 2026, President Trump signed an executive order directing federal agencies to explore ways of connecting workers without workplace plans to low-cost IRA products. And administration officials have pointed to existing bills in Congress as potential vehicles for follow-up legislation.

Separately, a bill addressing political considerations in retirement plan investment decisions has also been introduced in the House. The Protecting Americans' Retirement Savings From Politics Act (H.R. 8286) has passed out of committee and is awaiting a full floor vote. This highly contested, partisan bill reflects continued interest in certain quarters about how plan fiduciaries weigh non-financial factors when selecting investments. The bill would revise certain processes overseen by the Securities and Exchange Commission (SEC) and address various aspects of proxy voting and corporate disclosure rules.

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As discussed last quarter, industry groups have started using the term "SECURE 3.0" to describe a possible future package building on the original SECURE Act and SECURE 2.0 Act. A SECURE 3.0 bill would likely gather various unrelated retirement plan bills into one bipartisan bill. But to be clear, no such bill has yet been introduced or enacted. So while there is no new legislation to prepare for right now, you won't be caught off guard if a broader package starts to move.

Although many retirement plan bills enjoy broad bipartisan support, the U.S. Congress faces more pressing concerns this year. For example, there are relatively few days that Congress will be in session before it must pass another funding bill by September 30, 2026. And upcoming elections may draw legislators away from Washington, D.C. this fall. So expect the rest of this year to be comparatively quiet for major retirement legislation. Industry association leaders have suggested, on the other hand, that once the dust settles after this November's midterm elections, 2027 may be a year with substantial retirement legislation.

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DOL Close to Releasing ESG Proposed Regulations

The Department of Labor's (DOL's) Employee Benefits Security Administration (EBSA) has submitted for approval the draft regulations entitled Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights. This proposed rule was sent to the White House's Office of Information and Regulatory Affairs on June 30, 2026, signaling that this guidance may become open for public comment soon. This new EBSA guidance seeks to overturn Biden-era regulations that allowed plan sponsors to consider environmental, social, and governance (ESG) factors when selecting plan investment options. Under the new rules, plan sponsors would be limited to weighing only financial considerations of any particular investment, rather than considering nonpecuniary factors.

DOL Provides Relief for Providing Annual Paper Statements to Participants

For years, plans have been able to rely on electronic delivery safe harbors to satisfy their obligation to provide participants with quarterly or annual benefit statements, cutting down on printing and mailing costs. SECURE 2.0 added a new wrinkle to that framework: defined contribution plans must now furnish at least one paper pension benefit statement per calendar year, and defined benefit plans must do so once every three years. This requirement took effect for plan years beginning after December 31, 2025, meaning that most calendar-year plans are already subject to it.

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Notably, the DOL hasn't finalized the rules explaining how this requirement interacts with existing electronic delivery safe harbors. The DOL published a proposed rule on February 25, 2026, and the comment period closed at the end of April. With final regulations still pending, and with quarterly statement deadlines arriving on schedule, the DOL issued Field Assistance Bulletin (FAB) 2026-02 on May 12, 2026, providing temporary enforcement relief. Under this FAB, the DOL won't take enforcement action against plan administrators who comply in good faith with a reasonable interpretation of either the statutory paper statement requirement or the proposed regulations.

Practically, there are several potential implications.

- Plans using the DOL's existing 2002 electronic delivery safe harbor can continue doing this while working toward compliance with the new paper statement requirement.
- Administrators may choose not to wait for a final rule to start complying, but should document the reasonable, good-faith steps they're taking now.
- If finalized as proposed, once the regulations are issued, plan sponsors may need to adjust their approach, including giving newly eligible participants a paper notice of their right to request paper delivery.

Plan sponsors that rely on electronic delivery for participant disclosures may wish to confirm that at least one paper statement is going out each year and that their process would hold up as a reasonable, good-faith effort.

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Miscellaneous Updates

Reminder: Higher Earners Must Make Catch-Up Contributions as Roth Deferrals

For plans that allow catch-up contributions, 2026 is the year the rules change for higher-paid participants. Starting on January 1, 2026, participants age 50 or older who earned more than $150,000 (indexed for inflation) in FICA wages from your organization in 2025 must make any catch-up contributions on a Roth basis, rather than as pre-tax deferrals. This requirement comes from Section 603 of SECURE 2.0, and it applies to 401(k), 403(b), and governmental 457(b) plans.

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A few details worth flagging for your team:

- **The threshold looks back one year.** Whether participants are subject to the Roth requirement in 2026 depends on their 2025 FICA wages from the current employer and not on their current year pay. A participant's wages from other unrelated employers in 2025 is disregarded under the new rules.
- **The IRS has extended good-faith relief.** The final regulations implementing this rule aren't formally effective until 2027, so the IRS requires reasonable, good-faith compliance throughout 2026. This allows for a transition, but it is not a pass on compliance. Plan sponsors should still be working toward full compliance now.
- **Payroll and plan administration have to talk to each other.** If a participant subject to the rule tries to make a pre-tax catch-up contribution, many plans handle this with a "deemed Roth" feature that automatically changes the type of contribution once the statutory deferral limit is reached. Plan sponsors may wish to confirm with their payroll provider and recordkeeper that pre-tax and Roth deferrals are being tracked separately and that the switch to the proper deferral type is actually working once catch-up contributions begin for the participant.
- **The age 60–63 catch-up provision still applies, but with the same Roth requirement**. Instead of the normal, age 50 catch-up limit of $8,000 for this year, participants who attain ages 60 to 63 can contribute up to $11,250 in catch-ups for 2026 under the enhanced catch-up limit. And if they're above the 2025 wage threshold, any catch-up contribution must also be made as a Roth deferral.

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As more participants exceed the wage threshold, either through performance incentives or cost-of-living increases, the number of employees affected by this rule will keep growing. By communicating to participants now, and by explaining what's changing and why, employers can potentially head off confusion (and corrections) when the first affected paychecks go out.

It's also worth thinking about what happens if something goes wrong. If a pre-tax catch-up contribution is mistakenly processed instead of a Roth deferral, corrective action may be required. The appropriate correction method can depend on the facts and circumstances, including how the plan has implemented the Roth catch-up rules and whether certain procedural requirements have been satisfied. Even so, identifying and addressing an error promptly is generally simpler than discovering it after multiple pay periods have passed. Building a periodic check into your payroll cycle can catch these errors before they compound.

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Note: Plan sponsors should be aware of certain considerations when implementing the new Roth catch-up contribution requirements.

- Although most plan sponsors routinely offer the catch-up deferral feature, it is optional.
- Plans with a catch-up contribution feature must now also offer a Roth deferral option; otherwise, no participants (regardless of income) are permitted to make catch-up contributions.
- Over 95% of 401(k) plans currently offer a Roth deferral option. And implementing the mandatory Roth catch-up provision requires significant coordination with service providers. Still, most plan sponsors will likely do what is needed to comply rather than eliminate catch-up contributions altogether.

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Pooled Employer Plans (PEPs) and Securities Law

Pooled employer plans got a welcome piece of regulatory clarity this spring. On May 4, 2026, the Securities and Exchange Commission's (SEC's) Division of Investment Management issued a staff statement confirming that PEPs may rely on the "single trust exclusion" under the Investment Company Act of 1940, meaning that they will not be regulated as investment companies. At the same time, the SEC clarified that collective investment trusts (CITs) may rely on Rule 180 of the Securities Act of 1933 when issuing interests to PEPs that include self-employed individuals, such as sole proprietors and partners. Separately, the SEC's Division of Corporation Finance confirmed that PEPs generally qualify for a securities registration exemption, unless an employer offers its own company stock as an investment option.

Why does this matter for employers? PEPs let multiple, unrelated employers join a single retirement plan overseen by a pooled plan provider (PPP), who takes on much of the fiduciary and administrative burden. For smaller employers, that's the appeal: access to institutional-quality investment options, including CITs, without having to build and run a standalone plan. For larger employers, a PEP may be a way to offload administrative work and reduce fiduciary exposure, although it may come with less customization than a standalone plan.

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This relief removes a technical barrier that had made some CIT sponsors cautious about accepting PEP assets when self-employed individuals participated. It's worth noting that this guidance is limited to PEPs; other types of pooled plans, such as multiple employer plans (MEPs), weren't addressed and still face open questions.

PEP adoption continues to grow among small and mid-sized employers, driven partly by rising administrative costs for standalone plans and partly by growing awareness of the fiduciary protections a PEP arrangement can offer. With this securities law question resolved, more CIT providers may seek to offer their investment products to PEP business. This may, in turn, broaden the menu of low-cost investment options available to PEP participants.

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Long-Term Care Premiums Paid from Retirement Plans Meet the 10% Penalty Exception

A less prominent SECURE 2.0 provision is starting to get more attention: as of December 29, 2025, certain defined contribution plans, including 401(k), 403(b), and governmental 457(b) plans, may allow participants to take distributions to pay premiums on certified long-term care insurance without triggering the 10% early-withdrawal penalty. The IRS has released detailed guidance on this provision, known as a qualified long-term care distribution, in Notice 2026-33.

Plan sponsors considering this provision should understand these details.

- This is optional. For this distribution feature to apply, plan sponsors must specifically adopt this provision; it isn't automatic. If a plan document doesn't include it, the penalty exception generally doesn't apply, even if a participant's distribution pays for long-term care premiums.
- There are annual limits. A participant can withdraw the lesser of the premium amount, 10% of their vested account balance, or $2,600 for 2026 (indexed for inflation).
- The distribution is still taxable. The exception removes only the 10% penalty; ordinary income tax normally still applies.
- Documentation matters. A qualifying distribution requires a long-term care premium statement, filed by the insurance issuer, confirming the coverage and the amount paid.
- There's a longer amendment runway. Recognizing that this is a newer feature, the IRS has extended the amendment deadline for adding it specifically to December 31, 2027, which is later than the general SECURE 2.0 amendment deadline discussed below.

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Long-term care costs are a growing concern for employees approaching retirement, and this provision gives them one more planning tool. Industry surveys have pointed to rising interest in long-term care coverage generally, as employees watch family members face the cost of extended care and look for ways to fund protection without straining their current budget. A penalty-free source of premium dollars, even a limited one, can make that coverage more attainable for participants who might otherwise put it off. Plan sponsors weighing whether to add this feature may wish to understand administrative requirements, including how the required premium statements will be collected and verified, and whether their recordkeeping system can track the annual dollar and percentage limits automatically.

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Plan Amendment Deadline Drawing Near

Preapproved defined contribution (DC) plans are entering an important compliance period. For most nongovernmental qualified plans, December 31, 2026, is the date by which most plans must be amended to adopt required and discretionary amendments under legislation, including provisions from the SECURE Act, the CARES Act, and the SECURE 2.0 Act. Earlier in August, however, the IRS announced that employers using Cycle 4 pre-approved DC plan documents generally have until September 30, 2028, to adopt the newly approved restatement. As this deadline approaches, a few points are worth remembering.

- The Cycle 4 deadline applies to document restatement, not just to individual amendments. If your plan uses a preapproved document, your provider should already be working with you on a full restatement. This restatement approach provides a complete retirement plan document, which is generally much easier to work with than a patchwork of amendments.
- Some plans get more time. Governmental plans, collectively bargained plans, and certain 403(b) plans maintained by public school systems have later deadlines.
- Newer provisions may have their own timeline. As noted above, the long-term care distribution feature has its own extended amendment deadline of December 31, 2027, so don't assume that every SECURE 2.0 feature has to be squeezed into the December 2026 restatement.
- Waiting has real consequences. Missing the deadline can jeopardize your plan's tax-qualified status and may require correction under the IRS's voluntary compliance programs.

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Because this amendment and restatement process normally involves a full review of plan design, this may also be a natural time for plan sponsors to revisit choices made years ago and not have reconsidered since. Eligibility requirements, vesting schedules, distribution options, and loan provisions can all be evaluated as part of a restatement rather than treating the restatement as a purely administrative exercise. Certain “protected benefits” cannot be reduced, so involving your plan advisor and legal counsel early in the process is highly recommended. Done properly, employers can turn a compliance deadline into an opportunity to customize their plan design to meet their current needs.