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Overview

The first part of 2026 has seen fewer retirement plan bills introduced in the U.S. Congress, and no such bills have been enacted lately. On the other hand, guidance from the executive branch can be issued relatively easily—and significant regulatory action has taken place. In addition to new regulations, we have received sub-regulatory guidance that may give some insight into the direction of this administration's course of action. The "Miscellaneous Updates" section at the end of this update includes several such items.

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Legislative Update

The OPTIONS Act (H.R. 8314)

On April 15, 2026, two members of the influential House Ways and Means Committee—one Democrat and one Republican—introduced the Optimizing Participant Tax Incentives through Optional Noncash Selections Act (OPTIONS Act) to allow employees to choose from a broader range of benefits through a "qualified benefits options plan," similar to a Section 125 (Cafeteria) plan. This new Internal Revenue Code section would allow employees to allocate certain employer contributions to a variety of benefits.

- Nonelective employer contributions to a retirement plan (as currently permitted)
- Contributions to a Health Savings Account (HSA) or a Health Reimbursement Account (HRA)
- Contributions to a qualified educational assistance program (student loan repayments)
- Other benefits that the Internal Revenue Code excludes from income (e.g., a dependent care assistance program)

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Employees of different ages and life stages may face quite different financial priorities. Younger ones may need help paying off student loans while older ones may have substantial healthcare costs. Allowing employees to allocate employer contributions to suit their situations was approved by the IRS in a 2024 Private Letter Ruling (PLR 202434006). But PLRs can be relied on only by the taxpayer seeking the ruling and are not intended as general guidance. So the OPTIONS Act would codify the terms of this PLR, making expanded choices with employer contributions a possibility for all employees with such a plan in place.

Form 5500 Simplification Act (H.R. 7362)

Introduced on February 4, 2026, this short bill would give more time for plan sponsors to file the annual Form 5500, allow flexibility for the DOL to extend the deadline (e.g., for qualifying natural disasters), and specifically permit electronic signing. Instead of the existing deadline, which is 210 days after the close of the plan year, the new deadline would be "15 days after the end of the 9th calendar month that begins after the close of [the plan] year."

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Home Savings Act (H.R. 7185)

This act seeks to make home ownership more accessible by allowing tax-free distributions from defined contribution plans (e.g., 401(k) plans) and IRAs for down payments and closing costs on a primary residence for five years (until the end of 2030). Under this bill, individuals could also withdraw funds and gift them to an eligible relative. This provision would be a radical departure from other bills, which typically make such distributions exempt only from early distribution penalties.

Other bills have been introduced to facilitate home ownership, including the First-Time Homebuyer Empowerment Act (H.R. 7468), which allows up to $35,000 from a 529 qualified tuition plan to be distributed, tax free, to buy a first house, provided that the 529 account has been open for at least 15 years. The Uplifting First-Time Homebuyers Act (S. 2867) would permit buyers to take a penalty-free withdrawal of up to $50,000 for a first-time house purchase.

Although Congress seems to acknowledge the difficulty that many taxpayers have in buying a house for the first time, bills allowing tax-free distributions may face a strong headwind. Several considerations may affect the likelihood of passage: first, any bill that makes it easier to withdraw retirement savings can also be seen as promoting plan "leakage," which may harm individuals' long-term retirement prospects. Second, tax-free distributions would be unprecedented and would reduce federal tax revenue. And third, promoting easier home ownership without addressing underlying barriers—housing shortages, construction costs, and mortgage rates, for example—might worsen the situation.

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The INSIGHT Act (S. 4360)

On April 23, 2026, Senators Bill Cassidy (R-LA) and Jim Banks (R-IN) introduced the Investigative Status and Governance for Honest Transparency Act. This bill seeks greater transparency from the DOL's Employee Benefits Security Administration (EBSA) related to investigations and enforcement actions. Concerned with lengthy, burdensome inquiries into employer-sponsored retirement plans, the bill's sponsors hope to require EBSA reporting on cases that remain open for more than 36 months or when the DOL provides assistance to plaintiffs' attorneys to the detriment of plan sponsors. This bill could dovetail nicely with the DOL's recently released enforcement priorities (covered below).

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The SECURE 3.0 Act

SECURE 3.0 has not been formally introduced and is more of a compilation of diverse retirement plan measures that could get grouped for passage sometime after the 2026 election cycle. But some industry observers, noting the ongoing bipartisan support for retirement plan access and improvement, believe that 2027 could be the year that a significant pension-reform bill could be enacted. Here are some of the existing and proposed bills that could be consolidated into a SECURE 3.0 Act.

- **RISE/START Act:** Increases the minimum start-up tax credit; also allows a credit for retirement plan servicers who provide the plan to employers.
- **Retirement Rollover Flexibility Act:** Allows Roth IRA assets to be rolled over into a designated Roth account within a qualified retirement plan (e.g., 401(k) plan).
- **Helping Young Americans Save for Retirement Act:** Lowers the plan eligibility age from 21 to 18 and ensures that employers are not penalized for expanding eligibility.
- **Form 5500 Simplification Act:** Discussed above.
- **Unclaimed Retirement Rescue Plan Act:** Eases the burden of voluntarily transferring unclaimed accounts to state unclaimed (abandoned) property programs.
- **Charity Parity:** Allows direct qualified charitable distributions (QCDs) from 401(k) and 403(b) plans, as now exist with IRAs.
- **Small Nonprofit Retirement Security Act:** Expands start-up and automatic enrollment credits to tax-exempt organizations.
- **Auto Re-Enroll Act:** Allows plans to automatically reenroll workers back into the plan at least once every three years, even if they had previously opted out of the plan.
- **OPTIONS Act:** Discussed above.

If a SECURE 3.0 Act gains traction, expect other retirement plan provisions to find their way into the bill.

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Regulatory Update

DOL Releases Proposed Regulations on Alternative Investments

Last August, the President issued Executive Order (EO 14330), Democratizing Access to Alternative Assets for 401(k) Investors. This order directed the Department of Labor (DOL) to reexamine existing guidance on private market investments within participant-directed defined contribution retirement plans. On March 30, 2026, the DOL released proposed regulations, which address a plan fiduciary's duty of prudence when selecting all investment options for a participant-directed individual account plan—not just when choosing "alternative investments."

The proposed regulations seek to "alleviate certain regulatory burdens and litigation risk that interfere with the ability of American workers to achieve . . . the competitive returns and asset diversification necessary to secure a dignified and comfortable retirement." To support this goal, the DOL emphasizes three key principles that apply when enforcing certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

- The process of selecting prudent investments is more important than the results; whether selections were prudent should not rely on hindsight determinations.
- Plan fiduciaries (e.g., plan sponsors) should retain maximum discretion and flexibility when selecting investment options, including alternative investments.
- When plan fiduciaries follow a prudent decision-making process, they will benefit from a safe harbor "presumption of prudence" to insulate them from burdensome litigation.

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Last fall, the DOL rescinded a statement—issued during the previous administration—that had cautioned fiduciaries about selecting investments with a "private equity component." This statement was withdrawn because it deviated from the DOL's historically neutral approach to investment decisions. In the proposed regulations, the DOL now takes a more global approach in defining the investment-selection process that plan fiduciaries must follow to ensure compliance with their duties under ERISA.

The DOL is proposing a process-based "safe harbor" for plan fiduciaries to use when selecting investment options. Those who "objectively, thoroughly, and analytically consider and make a determination" with respect to the following six factors will be presumed to be using reasonable judgment, which should be entitled to significant deference.

- Performance
- Fees
- Liquidity
- Valuation
- Benchmarking
- Complexity

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Although this list of factors is not exhaustive, the DOL believes that they are "integral to the vast majority of designated investment alternatives provided within participant-directed individual account plans." The proposed regulations also contain examples that illustrate how each of these six factors could be evaluated to demonstrate that a fiduciary has exercised reasonable judgment. These examples—20 in all—provide practical, real-world suggestions that may prove useful as plan sponsors select any plan investment.

Especially in light of the executive order and the push for better access to private assets in plans, some circles welcome the DOL's safe harbor in the proposed. Others, however, caution that true fiduciary prudence extends beyond a proper process and involves achieving substantively reasonable results. The DOL encourages interested parties to submit comments, which are due by June 1, 2026. And it appears that there may be quite a vigorous debate about procedural prudence versus substantive prudence. The final regulations will surely have to address this tension.

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DOL Amends Investment Advice Fiduciary Rule

On March 20, 2026, the DOL published guidance in the Federal Register that reflects the current definition of "fiduciary" in the context of a person giving investment advice for a fee. This action restores the 50-year-old "5-Part Test," which serves as the basis for determining who is an investment fiduciary. All five elements of this test must be met to be considered "investment advice," which subjects a financial advisor to a fiduciary duty.

1) Specific investment recommendations are made (such as buying, selling, or holding securities);
2) The advice is given on a regular basis;
3) It is provided under a mutual agreement, arrangement, or understanding with the plan, plan fiduciary, or IRA owner;
4) The advice serves as a primary basis for investment decisions with respect to plan or IRA assets; and
5) The advice is individualized to the plan's or IRA's particular needs.

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Times have changed – The retirement world has changed dramatically since 1974, when ERISA was enacted. Then, there were no 401(k) plans with participant-directed investments. So this old test may not address the current state of affairs. Specifically, two elements of the 5-Part Test allow advisors to claim they are not acting as a fiduciary . First, the 5-Part Test requires that the advice be given "on a regular basis." It carves out "one-time advice"—even if it was intended to address a plan's (or a participant's) particular needs. Second, because the fourth element of the 5-Part Test requires that the advice serve as a "primary basis" for an investment decision, advisors can insulate themselves with a disclaimer. For instance, the fine print in an agreement could simply state that the advice may be "a basis"—versus a primary basis—for a decision, thus avoiding liability under the rule.

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A procedural roller-coaster ride – For many years, the fiduciary rule on investment advice has been in flux, see-sawing as various administrations wielded their influence and court challenges stopped implementation. Several entities (SEC, FINRA, DOL) have made efforts to craft guidance that keeps pace with the modern world. Then in 2016, after considerable effort and after years of proposals, the DOL released a final fiduciary rule. This 2016 rule imposed much more stringent requirements on investment advisors and gave retirement investors additional remedies that ERISA provisions did not expressly authorize.

Without recounting all the details, a federal appeals court invalidated the 2016 final rule, essentially sending the DOL back to square one. In response, the DOL took several actions in 2020, including the creation of Prohibited Transaction Exemption (PTE) 2020-02. This PTE broadened the interpretation of certain aspects of the 5-Part Test. In 2024, the DOL issued final regulations (again) that replaced the 5-Part Test with more stringent requirements, particularly in the context of those advising plan participants about whether to roll over plan assets to an IRA. This, too, was challenged in court, with two federal courts delaying implementation. The DOL appealed these rulings. But late last year, the DOL formally requested a dismissal of its appeals, which the courts honored by vacating the 2024 rule and related guidance.

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The saga will continue – The DOL's recent action merely reflects a return to the "old rules" (i.e., the 5-Part Test and PTE 2020-02) regarding how to determine the fiduciary status of those who give investment advice for a fee. The DOL has also republished PTE 2020-02 and has removed the preamble, which had contained significant insight into how the DOL had previously interpreted fiduciary liability. Because the preamble was largely vacated by the courts, the DOL has deleted it to avoid providing guidance that is no longer reliable.

This back-and-forth is likely to continue unless some compromise is reached. Meanwhile, the current law tends to favor financial advisors—especially those giving advice only occasionally and not "on a regular basis"—while leaving investors with less recourse when receiving imprudent advice. Future administrations may try again to update the fiduciary rule. But until then, the old 5-Part Test remains in effect.

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Independent Contractor Rule Change Proposed

Another Biden-era rule is being undone by the DOL: the independent contractor rule. While this change may not affect all employers, many plan sponsors have workers that are classified as "contractors" versus "employees." A correct classification is essential to plan compliance. Treating common law employees as if they are independent contractors—and vice versa—could lead to complicated and expensive remedies. So, getting it right is critically important.

On February 26, 2026, the DOL issued a proposed regulation that replaces the 2024 final rule and restores an analysis that was established during the first Trump administration. The 2024 rule used a "totality of the circumstances" test, with six factors used to determine a worker's status.

1) Opportunity for profit/loss based on managerial skill
2) Investments by worker and employer
3) Degree of permanence of the relationship
4) Nature/degree of control over the work
5) Work's integration into the employer's business
6) Worker's skill and initiative

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The new proposed rule gives two factors greater weight: 1) the nature and degree of control that the employer exercises over the work and 2) the opportunity for profit or loss based on the worker's initiative and investment. The DOL believes that these core factors will provide enough guidance in most cases. Other secondary factors, such as the skill required and the permanence of the relationship, could be considered, if needed.

Critics of the previous rule argue that the multiple factors—with no clear guidance on weighing them—could lead to inconsistent outcomes and increased litigation. The new rule may reduce the uncertainty about applying the factors and gives multiple fact-specific examples, which may also provide additional clarity. The old rule tended to favor a finding that workers were employees (and potentially eligible for retirement benefits, for example); the new rule leans toward allowing more workers to be classified as independent contractors, which employers tend to favor.

The comment period for this proposed rule has recently ended (with 27 comments received). After reviewing the comments, the DOL will possibly issue a final classification rule by the end of the year.

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Miscellaneous Updates

DOL Releases Guiding Principles for EBSA Enforcement Priorities

On April 14, 2026, the Department of Labor's Employee Benefits Security Administration (EBSA) issued Field Assistance Bulletin (FAB) 2026-01, detailing its approach to enforcing the retirement plan rules under ERISA and related regulations. The FAB addresses four priorities.

1) Focusing enforcement on the most egregious conduct and significant harm. According to the FAB, "EBSA investigators should seek out and target cases where the Department can make the most significant difference in addressing harm to plan participants and beneficiaries—particularly when there is direct evidence of disloyalty or impermissible conflicts of interest." In addition, fiduciaries' reasonable discretionary judgment should not be subject to "second-guessing" when enforcing ERISA provisions.
2) Ensuring, whenever possible and consistent with our mission, that EBSA does not regulate by enforcement and instead promotes fairness, prior notice, and clarity to the regulated community. The DOL states that "whenever possible and consistent with our mission, EBSA must not regulate through enforcement activities, or use enforcement to drive policy. Instead, we should use notice-and-comment rulemaking and sub-regulatory guidance." Generally, any enforcement action should rely on
   - The plain language of ERISA's text,
   - Clearly established guidance in final DOL regulations or prominently published sub-regulatory guidance, or
   - Clearly established case law.

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3) Requiring proper review by senior agency officials of all critical enforcement initiatives. The FAB states that certain high-ranking EBSA officials must inform senior DOL leadership of significant enforcement activity, including proposed settlements and voluntary corrective actions.
4) Committing to timely and responsive enforcement. According to the FAB, "investigated parties and Congress have expressed concerns that some EBSA investigations are open-ended and unduly continue for extended periods of time. EBSA takes these concerns seriously and, absent exceptional circumstances, commits to completing investigations within a reasonable time frame and to conduct its enforcement activities properly and respectfully." Specific time frames in the FAB include generally completing routine investigations within 18 months and more complex investigations within 30 months.

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DOL Files Friend-of-the-Court Brief in Forfeiture Case

Earlier this year, the DOL filed an amicus (friend-of-the-court) brief in the U.S. Court of Appeals for the Third Circuit. The DOL is urging the court to affirm a lower court's decision dismissing claims in Barragan v. Honeywell Int'l Inc. that the employer breached its fiduciary duties by not allocating forfeited plan funds to pay plan expenses. Instead, the plan sponsor used forfeitures to reduce employer contributions promised under the plan. This option was clearly permitted by the plan language at the employer's discretion.

In the brief, the DOL explains that ERISA's purpose is to foster established standards of conduct for fiduciaries and that a fiduciary's use of forfeited plan funds would not necessarily violate ERISA. In addition, the DOL's solicitor stated in the DOL's news release that this filing "is part of an ongoing effort by the DOL to stop regulation by opportunistic litigation."

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Budget Reductions at DOL and IRS May Affect Operations

The White House has requested a discretionary budget for the upcoming 2027 fiscal year of $9.9 billion, down from the 2026 enacted budget of $13.4 billion (a nearly 26% decrease). The EBSA would receive $181.1 million in funding, down by $10 million from 2026. (Also, EBSA lost over 20% of its staff in early 2025 through DOGE-related cuts.)

The IRS has requested $9.8 billion in funding, a 12+% drop from fiscal year 2026 enacted funding. The White House notes that the IRS staffing was reduced by 27% in the past year or so, and that of the $80 billion appropriated to the IRS under the Inflation Reduction Act, $54 billion has been rescinded.

How these budget and staff reductions will affect DOL and IRS operations is uncertain. It stands to reason, however, that the cuts—to both monetary and human resources—will have an impact on service levels.

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President Trump Signs Executive Order Expanding Retirement Coverage

On April 30, 2026, President Trump signed an executive order instructing the Department of Treasury to publicize and support individual retirement arrangements for workers who are not currently offered a workplace retirement plan. The order directed Treasury to launch a website—TrumpIRA.gov—by January 1, 2027, which will provide those workers access to IRAs. The order directs that investments in the IRAs available through the site offer "diversified index-based investment options, automatic portfolio choices, and portability." The order garnered support from members of the retirement industry, with Chris Spence, head of federal government relations and public policy at TIAA, stating, "We're encouraged by the Administration's continued focus on improving America's retirement system, especially by expanding access for the nearly 59 million Americans who currently lack a workplace retirement plan—representing roughly half of all working Americans."