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# Regulatory, Legislative & Industry Update

3Q 2025

# Regulatory, Legislative & Industry Trends Update | 3Q 2025

## REGULATIONS

IRS & DOL released much needed Proposed Regulations in early 2025 providing clarification on the following provisions SECURE 2.0 provisions. Plan sponsors can rely on the Proposals in good faith until they are finalized.

### Effective Jan 1, 2025

**Super-Saver Catch-Up Contribution** (optional) Participants whose ages range from 60-63 have an increased catch-up contribution limit of \$11,250 for 2025  
**New Plans** established after Dec. 29, 2022 have mandatory automatic enrollment and automatic escalation if default enrollment rate is less than 6%.

### Effective Mar 17, 2025

**Self-Correction** options now available for delinquent participant contributions and loan repayments. This provides relief from formal filing requirements. However, plan sponsors still need to develop and maintain robust processes and documentation, as robust as if they were making a formal filing.

### Effective Jan 1, 2026

**Catch-up Contributions** are required to be Roth for employees that earned at least \$145,000 in FICA wages in 2025. If your plan does not allow Roth contributions, these employees cannot make catch-up contributions.

DOL launched the **Retirement Savings Lost and Found Database** as required by SECURE 2.0 to help reconnect participants and their beneficiaries with their retirement accounts that have gone dormant as the participant contact information is outdated. To date, the Database relies on voluntary reporting by plan sponsors and/or their plan providers (recordkeepers and third-party administrators).

*It is estimated that at least \$1.7 trillion languishes in lost or forgotten 401(k) accounts, with an average unclaimed balance of \$56,616. Those 29 million idle accounts represent one quarter of all assets held in 401(k) retirement plans.<sup>3</sup>*

This Database may be able to simplify the process of reconnecting terminated participants with their balances, if any exist

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## LEGISLATION

The fear of litigation from class action suits is a concern for all plan sponsors and their fiduciaries. The concern is heightened for the “extra-large” plans with 100s of millions of dollars in plan assets. These lawsuits claim excessive fees, poor investment due diligence and recently lawsuits have a relatively new claim of improper use of plan assets held in the forfeiture account(s). In the last half of 2024, these lawsuits increased 35% and record settlements totaling \$203 million in 2024 with the average settlement of \$4.6 million.<sup>2</sup>

### New Trend - Forfeiture Cases

Starting in late 2023 plaintiff's law firms have added a new claim of breaching duty of loyalty by using forfeiture balances to reduce employer contributions. Basically, the lawsuits claim that if the plan document allows the plan sponsor discretion on how to use the forfeiture account balances, then the plan sponsor *must always* prioritize participant plan expense reduction over the offset of employer contributions and that any other decision is a breach of their fiduciary duty.

- Common Uses of Forfeiture Accounts:
- Payment of eligible plan expenses
- Offset employer contributions
- Restore accounts of rehired employees
- Reallocate to active participants

The DOL has never objected to the common uses of forfeiture accounts as long as the plan document permits the use. Many courts have granted the defendants' motions to dismiss the lawsuits. However, some allow the plaintiffs to amend their complaints and refile the lawsuit. This is a good opportunity to review your plan's document and confirm the proper use of the forfeitures. Some plan documents list the priority of such use. For example, 1<sup>st</sup>) use to offset the employer contributions, 2<sup>nd</sup>) use to pay eligible plan expenses, 3<sup>rd</sup>) reallocate to the active participants in the plan. Remember that IRS requires forfeitures to be used in a timely manner.

### Environmental, Social and Governance (“ESG”) Case

Spence v. American Airlines in Texas District Court. The Court ruled that American Airlines breached the fiduciary duty of loyalty to participants and their beneficiaries when they outsourced the plan's proxy voting authority to an investment manager which is heavily focused on ESG factors rather than exclusive financial interests of the plan participants. This case highlights the importance of having clear separation of corporate policies from fiduciary responsibilities.

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## INDUSTRY TRENDS

### Blend Target Date Solutions

With nearly \$4 trillion in assets<sup>1</sup>, target date funds are becoming a large portion of a plan's assets. Combined with the focus on fees shines light on blend target date solutions. Blend target date strategies embrace the power of combining passive (index) investing with active investing. Blend target date strategies are gaining momentum among investors that believe the passive vs. active debate is off target and that a combined approach is a better solution than 100% passive and 100% active investment approach.

T. Rowe Price is a leading target date fund provider, offering both active and blended strategies. Their Blend strategy outperformed their active series for the 2030, 2040 and 2050 vintage for the past three-, five- and ten-years ending June 30, 2025 and both strategies outperformed the index bogey for most of the same periods.

In turn, blend target date solutions are gaining advisors' and consultants' favor as reported by Cerili. Taking a fresh look at your plan's target-date series strategy and the competitive options now available may prove to be beneficial.

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## INDUSTRY TRENDS

### New Area for Emergency Savings

The retirement industry acknowledges that access to emergency funds could help preserve retirement savings. Providing an emergency fund, whether inside or outside the plan, can help employees cover unexpected expenses without assuming debt and compromising long-term financial goals.

**In-plan** emergency savings programs as allowed by SECURE 2.0 provides two main paths for in-plan emergency funds:

**Emergency Withdrawals** - participants can take one penalty-free emergency withdrawal of up to \$1,000 per year. No additional withdraw can be made for three years unless the repaid or equivalent contributions made.

**Pension-Linked Emergency Savings Accounts (PLESA)** – These accounts allow participants (excluding highly compensated employees) to contribute up to \$2,500 on a **Roth** basis, invested in a cash preservation fund like money market funds. Employer match can be made on these contributions, but not in the PLESA. One penalty-free withdrawal can be made per month.

**Out-of-Plan** emergency savings programs are gaining interest by plan sponsors for their simplicity, flexibility and ability to make larger contributions by all employees. However, out-of-plan solutions vary widely by providers.

Employers play a critical role in shaping the financial well-being of their employees. Recordkeepers, advisors and consultants can help plan sponsors evaluate whether an in-plan or out-of-plan solution would be the best fit for their employees. By leveraging the opportunities presented by SECURE 2.0 and adopting innovative emergency savings solutions, plan sponsors can help foster a more secure and resilient future for their employees earning their loyalty.

## DISCLOSURES

<sup>1</sup> source: Investment News as end of 2024

<sup>2</sup> source: PlanSponsor January 13, 2025 **401(k) Excessive Fee Litigation Spiked to 'Near Record Pace' in '24**

<sup>3</sup> source: Kiplinger, How to Find a Lost 401(k), 2025

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