

What's New In Washington: Legislative and Regulatory Update

It's hard to believe, but 2026 is nearly behind us, and Washington has been busy. Between new Treasury and IRS guidance implementing the One Big Beautiful Bill ("OBBB"), fresh DOL enforcement signals, and several bills still working their way through Congress, plan sponsors have plenty to track heading into 2027. Here are the key developments to keep on your radar:

1) Trump Accounts – Employer Contribution Programs: Trump Accounts, created under the OBBB, launched on July 4, 2026. Under new Internal Revenue Code Section 128, an employer may contribute up to \$2,500 per employee per year (for 2026 and 2027, across all employers) to the Trump Account of an employee or the employee's dependent, and the contribution is excludable from the employee's income. Employer contributions count toward the overall \$5,000 annual Trump Account contribution limit. On August 11, 2026, Treasury and the IRS issued proposed regulations establishing the framework for Trump Account contribution programs, which must be maintained under a separate written plan, along with updated nondiscrimination rules for dependent care assistance programs under Section 129.

- The proposal would allow employees to make Section 128 contributions through a Section 125 cafeteria plan, with election changes permitted at least monthly.
- Employers must provide reasonable notice to eligible employees and report Section 128 contributions in Box 12 of Form W-2 using code "TA."
- A DOL Technical Release clarified that Trump Accounts and employer contribution programs generally will not be treated as ERISA pension plans.
- Comments were due September 25, 2026, and a public hearing is scheduled for October 15, 2026.

2) Executive Compensation – Section 162(m) Expansion: Section 162(m) limits a public company's deduction for compensation paid to a "covered employee" to \$1 million per year. Two expansions are now converging. For tax years beginning after December 31, 2025, the OBBB requires compensation paid by all members of the controlled group (including partnerships and LLCs) to be aggregated, with the \$1 million limit allocated among the paying members. For tax years beginning after December 31, 2026, the American Rescue Plan Act adds the next five highest-compensated employees, whether or not they are executive officers, to the covered employee group. Unlike the traditional group, this new group is determined annually and is not subject to the "once covered, always covered" rule. Public companies should coordinate across HR, legal, tax, and accounting now to identify the full controlled group, model 2027 deductibility, and evaluate any payment-timing changes carefully in light of Section 409A.

3) Saver's Match Begins in 2027: Beginning with contributions made in 2027, the federal Saver's Match will match up to 50% of eligible low- and moderate-income savers' retirement contributions, up to \$1,000 per person per year, deposited directly into a designated retirement account. Eligible plans include 401(k), 403(b), and governmental 457(b) plans, as well as IRAs. Savers will claim the match when they file 2027 tax returns in 2028. Sponsors should coordinate with recordkeepers on how matching deposits will be accepted and consider including the Saver's Match in 2027 enrollment and education materials.

4) DOL–Proxy Voting and Enforcement Priorities: On April 14, 2026, the DOL issued Technical Release 2026-01, clarifying that proxy advisory firms may be ERISA fiduciaries under the long-standing five-part investment advice test and reiterating that proxy rights must be managed to maximize risk-adjusted returns. The same month, the DOL issued Field Assistance Bulletin 2026-01 on EBSA enforcement priorities. Plan fiduciaries that use proxy advisors should review those arrangements and watch for follow-up rulemaking.

5) Congress–Pending Legislation: The ERISA Litigation Reform Act (H.R. 6084) would strengthen pleading standards for certain ERISA claims and postpone discovery until a case survives a motion to dismiss. The bill has now advanced in the House. Meanwhile, the Retirement Fairness for Charities and Educational Institutions Act, which would allow 403(b) plans to invest in collective investment trusts, passed the House as part of the INVEST Act in December 2025 and awaits Senate action.

6) 2027 Cost-of-Living Limits – Coming Soon: The IRS typically announces next-year plan limits in late October or early November. For reference, the 2026 limits are \$24,500 for elective deferrals, \$8,000 for age 50+ catch-ups, \$11,250 for the age 60–63 "super" catch-up, and \$72,000 for total annual additions. Early projections suggest the 2027 deferral limit may rise to \$25,000 or \$25,500, and the annual additions limit to \$75,000. Watch for the official figures and update payroll systems, plan communications, and participant materials accordingly.

While much of this guidance is still proposed or pending, these developments will shape plan design, payroll administration, and executive pay planning in 2027 and beyond. Be sure to work with advisors, TPA partners, and benefits counsel if you have questions about how these changes may impact your plans!

Best Practices: Year-End Plan Amendments: What Plan Sponsors Need to Know Before December 31

The IRS recently clarified the deadline for adopting plan amendments implementing the SECURE and SECURE 2.0 Acts. Although the guidance generally gives plan sponsors additional time to adopt required amendments, the deadline remains December 31, 2026, for most private-sector retirement plans to adopt written amendments reflecting discretionary changes under the SECURE Act and SECURE 2.0, as well as any CARES Act provisions the plan adopted. Here is a quick guide to what is due at year-end, what can wait, and what you can do now. Separate amendment deadlines apply to IRAs, SEP arrangements, and SIMPLE IRA plans, generally December 31, 2027.

IRS Clarification on the Amendment Deadline: On September 16, 2026, the IRS issued guidance clarifying how amendment deadlines work under the SECURE and SECURE 2.0 Acts. The guidance separates required amendments from discretionary amendments:

- **Required amendments:** Required amendments to qualified plans and 403(b) plans generally follow the annual Required Amendments List (“RA List”). Once a provision appears on the list, plan sponsors generally have until the end of the second calendar year after publication to adopt the amendment. If the IRS expects to issue guidance needed to draft a provision, that provision will not appear on the list until the guidance is issued and becomes applicable.
- **Discretionary amendments:** Discretionary amendments, i.e., new features a plan chooses to adopt, but which are not legally required, generally remain due December 31, 2026 for most private-sector plans. Later deadlines apply to applicable collectively bargained plans (December 31, 2028) and governmental plans (generally December 31, 2029). Discretionary features themselves will not appear on an RA List, but later guidance governing adopted features may.

Keep in mind that although the guidance effectively extends the deadline to adopt required amendments, most of these provisions are already required to be operationally effective. Formalizing them in plan amendments is the most practical next step, if not already complete.

Key Amendment Categories: Discretionary and CARES Act Amendments (Due December 31, 2026):

- **Discretionary provisions you chose to adopt:** If your plan elected optional features, such as enhanced catch-up limits for ages 60–63, student loan matching, pension-linked emergency savings accounts, an increased involuntary cash-out threshold, or Roth treatment of employer contributions, the adopted provisions generally must be documented by December 31, 2026.

- **CARES Act provisions:** If your plan adopted coronavirus-related distributions, expanded loan limits, loan repayment suspensions, or the waiver of 2020 required minimum distributions, those time-limited provisions generally must be documented in a written amendment by December 31, 2026, even though they have expired.

Required Amendments (Later RA List Deadlines):

- **Required minimum distribution (“RMD”) changes:** Effective January 1, 2020, the SECURE Act increased the applicable age used in determining when RMDs must begin from 70½ to 72 for individuals who reached age 70½ after December 31, 2019. SECURE 2.0 increased the applicable age again, generally to 73 for individuals born in 1951 through 1958 and to 75 for individuals born in 1960 or later. Proposed regulations would also apply age 73 to individuals born in 1959. Other changes include beneficiary distribution rules and the elimination of lifetime RMDs from designated Roth accounts. For changes covered by the 2025 RA List, the amendment deadline generally is December 31, 2027; remaining RMD changes await a future list.
- **Mandatory Roth catch-up for higher earners:** Beginning in 2026, participants in 401(k), 403(b), and governmental 457(b) plans whose prior-year FICA wages from the plan sponsor exceeded \$150,000 (the 2026 threshold, indexed for future years) generally must make age-based catch-up contributions on a Roth basis. Plans that allow catch-ups must either offer a Roth option or eliminate catch-up contributions for affected participants, subject to applicable nondiscrimination rules. The IRS expects this change to appear on the 2027 RA List, making the amendment deadline for most 401(k) and 403(b) plans December 31, 2029.
- **Long-term, part-time employees:** Operationally effective for plan years beginning after December 31, 2024, the 401(k) eligibility threshold for elective deferrals by long-term, part-time employees was reduced from three consecutive years of 500 or more hours of service to two. The two-year rule also applies to ERISA-covered 403(b) plans and must be reflected in the plan document. The formal deadline will be set by a future RA List after final regulations are issued and become applicable.
- **Mandatory automatic enrollment for new plans:** New 401(k) and 403(b) plans established on or after December 29, 2022 generally must, for plan years beginning after 2024, include automatic enrollment at an initial default rate of at least 3% (but not more than 10%), escalating by 1% annually to at least 10%, with a 15% maximum. Exceptions include SIMPLE 401(k), governmental and church plans, and certain small or new employers. If your plan was required to include this feature, the plan document must reflect it; the formal deadline will be set by a future RA List.

Accordingly, December 31, 2026 is primarily a deadline for discretionary and CARES Act amendments. Required amendments on the 2024 RA List also generally remain due then. The IRS has indicated that the upcoming 2026 RA List will include additional clarification consistent with its recent guidance. Plans that are terminating generally must adopt applicable required amendments in connection with termination, even if a later amendment deadline would otherwise apply.

What Plan Sponsors Can Do Now:

- 1. Engage your service providers now - not in December:** Reach out to your TPA, document provider, and legal counsel to confirm which amendments your plan needs and when they will be delivered for adoption.
- 2. Treat year-end 2026 as your working deadline:** Because these provisions already govern plan operations, the most prudent approach is to target December 31, 2026 for all amendments, required and discretionary alike, where amendment language is available.
- 3. Inventory what you adopted:** Confirm every optional SECURE, SECURE 2.0, and CARES Act feature your plan put into operation, so each one is properly documented.



Hot Topic: The Benchmark Battle: Supreme Court and DOL Take Aim at Investment-Selection Litigation

Investment selection and monitoring continue to attract fiduciary litigation. Recently, the U.S. Supreme Court agreed to address the issue. As we head into the final quarter of 2026, a Supreme Court argument, a proposed Department of Labor (“DOL”) safe harbor, and a maturing wave of forfeiture suits are converging in ways that could reshape how plan committees document their decisions. Here’s a brief look at where things stand and what plan sponsors should be doing now.

The Supreme Court Takes Up the “Meaningful Benchmark” Question: On January 16, 2026, the Supreme Court granted certiorari in *Anderson v. Intel Corporation Investment Policy Committee*, and the case is set for oral argument on October 6, 2026. In *Anderson*, participants in Intel’s 401(k) and retirement contribution plans allege that plan fiduciaries breached their duties by investing billions of dollars of plan assets in high-risk, illiquid alternative investments. The Ninth Circuit affirmed dismissal, holding that when a plaintiff alleges imprudence based on a fiduciary’s choice of one investment over another, the plaintiff must provide a “meaningful benchmark” for comparison. The Sixth Circuit took the opposite view in *Johnson v. Parker-Hannifin*, holding that a meaningful benchmark may be part of an imprudence pleading, but is not required. For now, the Court appears to be holding *Parker-Hannifin* and may send it back to the Sixth Circuit once *Anderson* is decided. Notably, the U.S. Solicitor General has sided with plan sponsors, urging a meaningful-benchmark requirement and taking the position that the burden of proving loss causation remains on ERISA plaintiffs. A decision is expected by the end of the Court’s term in mid-2027.

The DOL’s Proposed Investment-Selection Safe Harbor: In August 2025, an Executive Order was issued relating to alternative assets in 401(k) plans and instructing the DOL to review its guidance in this area. The DOL followed through on March 30, 2026, proposing a rule, “Fiduciary Duties in Selecting Designated Investment Alternatives,” published in the Federal Register on March 31. Although prompted by the alternative-asset directive, the proposal is asset-neutral and applies to the selection of any designated investment alternative. Under the proposed safe harbor, a fiduciary that objectively, thoroughly, and analytically considers six factors would be presumed to have acted prudently and entitled to significant deference:

1. Performance
2. Fees
3. Liquidity
4. Valuation

5. Performance benchmark
6. Complexity

A few details are worth noting. The proposal treats reasonable reliance on a prudently selected investment advice fiduciary (a 3(21) advisor) or investment manager (a 3(38) manager) as indicative of a prudent process. For liquidity and valuation, fiduciaries could rely on written representations from the manager of the investment option, subject to the proposal’s conditions. However, the safe harbor covers the selection of an individual option only; it does not cover the ongoing duty to monitor, the curation of the overall lineup, or brokerage windows, although the DOL has said separate monitoring guidance may follow. The comment period closed June 1, 2026, and a final rule could arrive by the end of 2026. It remains to be seen how courts will apply any final safe harbor in private litigation.

Forfeiture Suits Reach the Courts of Appeals: More than 65 class actions have challenged the practice of using 401(k) forfeitures to offset employer contributions rather than to pay plan expenses. A majority of district courts have dismissed these claims, particularly where the sponsor followed plan terms that expressly permitted the practice. Appeals are now pending in several circuits, including the Ninth Circuit, where the DOL filed an amicus brief in *Hutchins v. HP Inc.* supporting the employer. Still, a handful of courts have allowed claims to proceed where the allegations were more fact-specific, so the law in this area is not yet settled.

Key Takeaways for Plan Sponsors: Taken together, these developments point in one direction: process and documentation matter more than ever. Plan committees should compare their current investment-selection procedures against the six proposed safe-harbor factors and document the relevant analysis and determinations, including why the benchmark used for each option is appropriate. Sponsors that rely on a 3(21) or 3(38) advisor should confirm that the advisor’s scope, reporting, and recommendations are well documented. Sponsors should also review plan language governing forfeitures, confirm that forfeitures are being used in a manner consistent with the plan document and applicable timing rules, and consider clarifying amendments where the language is ambiguous. Finally, keep an eye on *Anderson* this fall and on any final DOL rule; either could change the litigation landscape quickly. As always, work with your TPA partners, investment consultants, and ERISA counsel to make sure your governance practices are ready.



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