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# Sidestepping Fiduciary Landmines: Essential Guidance in 2025

Presented by Fred Reish and Alex Assaley



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He has been recognized as one of the “legends” of the retirement industry by both *PlanSponsor* and *PlanAdviser* magazines. He has also been given lifetime achievement awards by *Institutional Investor* and *PlanSponsor* publications and received recognition from the Internal Revenue Service for his contributions to the retirement community.



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Alex Assaley is Managing Director at AFS 401(k) Retirement Services, a HUB International company. He specializes in helping organizations design and manage effective retirement plans while improving financial outcomes for employees.

A recognized leader in the retirement industry, Alex has served as President of the NAPA Leadership Council and was the recipient of the inaugural 2024 NAPA Top Social Media Influencers award.

# Agenda

**1** Key Issues for Committees to Consider

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**2** Key Committee Responsibilities by Quarter

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**3** Key Issues under SECURE 2.0

# Plan Committees & Fiduciaries

The officers and managers who oversee the operation of qualified retirement plans, such as 401(k) plans, are fiduciaries for those activities. They **often work as a plan committee.**

The officers and managers who serve on plan committees have **fiduciary duties of prudence and loyalty.**

A judge in a fiduciary breach lawsuit against NYU (the university) **discussed committee members who did and didn't do their jobs.**



## Court's Concerns About Some Committee Members

*“[Her] testimony was concerning. She made it clear that she viewed her role as primarily concerned with scheduling, paper movement, and logistics; she displayed...a lack of true appreciation for the significance of her role as a fiduciary.*

*[She] appeared to believe that it was sufficient for her to have relied rather blindly on [the plan investment consultant's] expertise. **As a matter of law, blind reliance is inappropriate.**”*

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Sacerdote v. New York University



# Not Understanding the Fiduciary Role

*The Court also found that the testimony of another Committee member was disturbing because she “was similarly unfamiliar with the basic concepts relating to the Plans, such as who fulfilled the role of administrator for the Faculty Plan . . . . When asked about her inability to remember Plan details, [she] responded that she has a ‘big job’ (referring to her human resources role, not her Committee membership) and that her role on the Committee is one of many responsibilities she has. . . .”*

*This suggested that [she] does not view herself as having adequate time to serve effectively on the Committee.”*



## A Favorable Outcome But with Issues

*“After careful review of the record, the Court finds by a preponderance of the evidence that while there were deficiencies in the Committee’s processes—including that several members displayed a concerning lack of knowledge relevant to the Committee’s mandate—plaintiffs have not proven that the Committee acted imprudently. . . .”*



# The Right Stuff

*“As the CIO, [she] saw her role as providing ‘specialized knowledge relating to investing’ to the Committee. . . . She testified that she ‘questioned [the investment consultant] and discussed . . . the basis for their views’ on the Plan’s investment options. . . .*

*Outside Committee meetings, [she] read plan materials . . . and also met with [investment consultant] team members to discuss general market trends and investment options as well as specifics around NYU’s IPS.”*

## The Court Concludes

*“While the Court finds the level of involvement and seriousness with which several Committee members treated their fiduciary duty troubling, it does not find that this rose to a level of failure to fulfill fiduciary obligations. **Between [the investment consultant’s] advice and the guidance of the more well-equipped Committee members . . .**, the Court is persuaded that the Committee performed its role adequately.”*



# Key Responsibilities Each Quarter

- The legal standard of care for fiduciaries is that they make decisions at the appropriate times and will review (or “monitor”) their decisions on a regular basis.
- While there are a number of decisions that need to be made and monitored, such as quality and costs of investments and service providers, there is not a formula for doing that.
- One approach to ensuring that the fiduciaries cover all of their duties over the course of a year is to have agendas for each quarterly meeting. [Here are some examples.](#)

# Key Responsibilities Each Quarter

**Q1** Review of investments, expenses and share classes.

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**Q2** Review of expenses and performance of service providers.

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**Q3** Fiduciary education, including legal duties, current litigations issues, DOL investigation priorities, and retirement plan industry developments.

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**Q4** Plan metrics and ideas for improvement.

**Note:** These are just examples. There are many more topics that fiduciaries should consider.

# Fiduciary Lawsuits & DOL Investigations



- Plan fiduciaries should be aware of the lawsuits that are being filed against other plan sponsors and committees. The fiduciaries could then consult with their advisors and attorneys to determine if they should make any changes in their plan operations.
- Similarly, plan committees should know about the issues that the DOL is investigating and decide if they should make any changes in their plan operations in response to those investigations.

# Fiduciary Lawsuits & DOL Investigations



- Plaintiffs' attorneys have been suing plan fiduciaries for at least the past 10 years for selecting overly expensive investments and for excessive compensation for their plan recordkeepers (typically due to revenue sharing from the investments).
- The newer claims are for:
  - Improper use of forfeitures.
  - Imprudent selection of target date funds (TDFs).

# Fiduciary Lawsuits & DOL Investigations



In the last few years, DOL investigations of plans have focused on, among other things.



## Missing Participants

DOL: [Missing Participants – Best Practices for Pension Plans](#) (PDF)



## Cybersecurity

DOL: [Cybersecurity Guidance Update](#)  
(Compliance Assistance Release No. 2024-01)

- Cybersecurity Program Best Practices
- Tips for Hiring a Service Provider
- Online Security Tips

# SECURE Act 2.0 Changes



- Some plan sponsor activities are not fiduciary . . . for example, the terms of the plan documents are “settlor” or non-fiduciary decisions that an employer can make in its own best interest.
- However, SECURE 2.0 doesn’t require that plan terms be amended until 2026, while plans must be operated by fiduciaries in compliance with new legal requirements that are effective in 2025 and 2026

Let’s take a look at some important examples.

# SECURE Act 2.0



## Long-Term Part-Time Employees

- The SECURE Act 1.0 required 401(k) plans to include long-term, part-time (LTPT) workers (at least 500 hours and three consecutive years) in the plans for purposes of deferrals (but did not require employer contributions or matches).
- The SECURE Act 2.0 reduced the three-year requirement to two years effective for plan years beginning in 2025.
- SECURE Act 2.0 also extends the long-term, part-time coverage rules to ERISA 403(b) plans.

# SECURE Act 2.0



## Increase in Limits for Catch Up Contributions

- The Act increases the limits on catch-up deferrals for participants ages 60, 61, 62, and 63 for years after December 31, 2024.
- The limit for catch-up deferrals to qualified retirement plans is \$7,500. The limit in 2025 will be 150% of that amount, or \$11,250.
- The regular catch-up amount is increased periodically for cost-of-living and the increased catch up will be 150% of that amount.
- Specifically, the higher limit is available to a “participant who would attain age 60, but would not attain age 64 before the close of the taxable year.”

# SECURE Act 2.0



## Roth Treatment for Catch-Up Contributions

- Beginning in 2026, catch-up contributions (for, e.g., 401(k) and 403(b) plans) must be treated as Roth contributions for participating employees with compensation of more than \$145,000 (indexed).
- The compensation is for the preceding year and is based on the OASDI (Social Security) definition of “wages.”
- Plans must permit lower paid participants to make Roth catch-up contributions if they allow the \$145,000+ participants to make catch-up contributions.
- **Considerations:** Does the plan offer Roth accounts? If not, will it?

# Thank you

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