



Risk & Insurance | Employee Benefits | Retirement & Private Wealth

RETIREMENT

What Plan Sponsors Should Know for 2026:

**DOL Updates, ERISA
Litigation & the OBBBA**



Bradford Campbell, Esq.

Partner

Faegre Drinker Biddle & Reath LLP



Tom Ditzer

Vice President of Retirement Plan Solutions,
Retirement & Private Wealth

HUB International

Agenda

- 1** How Did We Get Here?

- 2** New Administration, New Enforcement

- 3** Executive Orders and Regulatory Priorities

- 4** Trump Accounts and OBBBA

- 5** Key Takeaways

Trump's First Year: Laying the Foundation



Executive Orders

200+ Executive Orders result in an unprecedented pace of regulatory change, setting a lot of new rules in motion, including several directly affecting retirement plans and advisors.



Legislation

The One Big Beautiful Bill Act (OBBBA)'s real victory for retirement plans was not targeting them to fund other tax cuts. Trump Accounts raise some new issues for employers.



Agencies

Major changes at DOL and IRS, including large staff cuts, both agencies down about 30%. Goal was to break agencies down to facilitate reform of policies and leadership.



Fun Fact!

SEVEN people have been IRS Commissioner since January 2025.

Sources: <https://www.dol.gov/agencies/ebsa>; www.irs.gov

New Administration, *New Enforcement*

EBSA Assistant Secretary Aronowitz pledged reform in his Senate hearing:

“

“...EBSA needs a major turnaround, and I am an experienced turnaround manager with unique fiduciary expertise and experience...

First, I will improve EBSA's enforcement of fiduciary law. We will **end the practice of open-ended investigations that go on for years**. We will **end the bias against ESOPs** and other legitimate ways to expand retirement benefits and ownership to America's workers. And we will **end the regulatory abuse of common-interest agreements with plaintiff lawyers**. EBSA's enforcement will be fair, even-handed, and efficient.”

”

Source: Senate Health, Education, Labor and Pensions Committee hearing; June 18, 2025.

Spotlight on DOL: Enforcement Drama

EBSA enforcement is on the hot seat:

- Congressional scrutiny—oversight hearings and new legislation regarding backlogs and secret deals with trial lawyers
- Significant staff reduction—about 1/3
- Long-running trend of declining results:



		2010	2015	2020	2024	Difference
Department of Labor	Civil cases closed	3,112	2,441	1,122	729	-77%
	Criminal cases closed	281	275	230	177	-37%
	EBSA budget* (millions)	\$155	\$181	\$181	\$191	+23%

*Nominal dollars, not adjusted for inflation, taken from FY 2011, 2016, 2021, and 2025 Congressional Budget Justification documents
 Source: EBSA Annual Enforcement Results FY 2010, 2015, 2020, and 2024, available at <https://www.dol.gov/ebsa>

Updated National EBSA Enforcement Priorities

What's OUT in 2026

ESOPs → End of 15+ years of enforcement priority

Missing Participants → New Lost and Found database

What's IN in 2026

Cybersecurity → Focus on fiduciary process for data security

Fiduciary Advisor Reviews → Focus on conflicts and compensation related to 3(21) advisers & 3(38) managers

DB Plans → End of 15+ years of enforcement priority

404(c) → Prudent selection of plan menu & compliance

Health Plans → Mental health, surprise billing

Source: <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement>

These Ain't Your Grandpa's Executive Orders!

1 Alternative Assets

DOL told to look at DC plan access to six specific types of alternatives. Didn't dictate outcome, but directs review of PE, PC, real estate, commodities, "alternative lifetime income strategies," digital assets, etc. Fund based, not direct individual access.

So far....

- Rescinded Biden-era PE guidance
- Issued AO on lifetime income in QDIAs
- Sent proposed rule to WH for review, coming soon!

2 Lowering Drug Costs

"Within 180 days [DOL] shall propose regulations pursuant to section 408(b)(2)(B)...to improve employer health plan fiduciary transparency into the direct and indirect compensation received by pharmacy benefit managers."

Just published for comment!

3 Deregulation

- 10-1 deregulatory to regulatory actions mandate.
- Literal or aspirational?
- What counts as deregulatory?

Source: <https://www.whitehouse.gov/presidential-actions/executive-orders/>

Trump Second Year—Regulatory Agenda

Fiduciary Rule

Biden 2024 rule and exemptions are effectively dead but for court paperwork. Fall Agenda called for a new final rule in May 2026. Just repeal or more tweaks for rollover advice?

ESG Rule

Biden 2024 rule challenged in court, but in current effect. Agenda called for a new final rule in May 2026. Will “pecuniary factors only” test from short-lived Trump 2020 rule come back?

PBM Transparency

DOL just issued proposed regulation responding to Executive Order regarding 408(b)(2) disclosure for PBM’s serving self-insured health plans.

ESOP Adequate Consideration

DOL scheduled to propose new definition this month to clarify ESOP valuation issues.

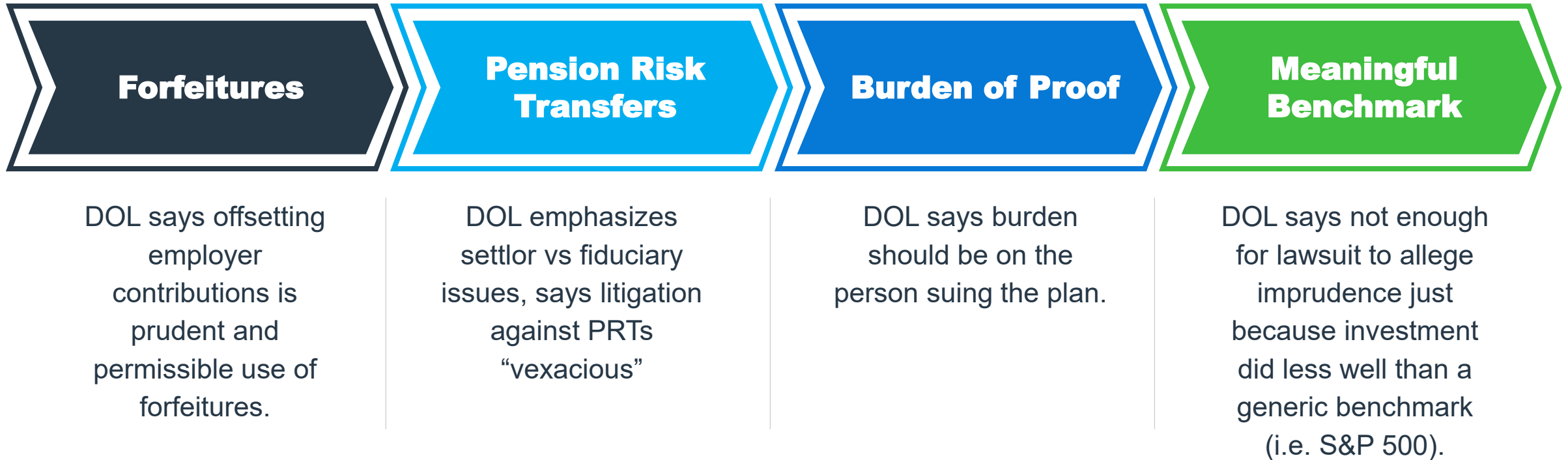
PEP Guidance & RFI

DOL encouraging PEPs, issues guidance for participating employers and asks for input. More guidance coming?

Source: <https://www.reginfo.gov>

Siding with Fiduciaries in Litigation!

Major amicus briefs filed in SCOTUS and Federal Circuit courts defending fiduciaries on:



Source: <https://www.dol.gov/agencies/sol>

OBBBA and Trump Accounts

Contributions In (before age 18)

Section 128 Employer Contributions:

- Up to \$2,500/year (indexed), not taxable to employee
- Includes pre-tax employee contributions through 125 Plan

Pilot Program Contribution:

- \$1,000 for U.S. citizen children (2025–2028) from U.S.

Other Contributions:

- Beneficiary, parents, others; after-tax
- \$5,000/year limit (includes the \$2,500 pre-tax contributions; indexed after 2027)

Qualified General Contributions:

- From states, governments, 501(c)(3)s

Qualified Rollover Contributions:

- From another Trump account

Growth Period (until age 18)

- Distributions generally not allowed
- Distributions allowed: qualified rollovers, ABLE rollovers, excess contributions, death
- Tax-free growth of investments
- Only U.S. index-tracking funds with < 10 bps fees

Contributions Out (after age 18)

- Distributions follow IRA rules
- Limited ability to rollover to qualified retirement plans (including Roth conversion)
- Penalties for early withdrawal unless exceptions: (i) Higher education; (ii) First home purchase; (iii) Age 59½, etc.

Take Note:

No contributions until July 4, 2026. Unlike an IRA, no compensation required to establish.

Treasury Secretary creates account—file a tax form (yet to be finalized).

Corporations have a tax deduction for § 128 Employer Contributions, but no individual tax deduction for after-tax contributions. Employers can allow employees to make pre-tax contributions through the employer's Code Section 125 cafeteria plan.

Source: IRS Notice 2025-68

Fiduciary Compliance Checklist for 2026

The classics never leave the list (i.e. periodic review of fees, investments, service providers at least annually). Additional current topics:



Forfeiture Accounts: IRS says OK to use forfeitures to offset employer contributions, 70+ lawsuits alleging breach. Three questions: (1) What does your plan document say? (2) What are you actually doing? (3) Do you want to make a change?



Missing Participants: DOL enforcement lessening, but plan administration issues remain. Talk to your RK!



Cybersecurity: DOL says is fiduciary duty: are you asking about this as part of your RFPs? Do you know where your data goes? What does your plan do to protect participants?



SECURE 2.0 Roth Provisions: Mandatory Roth-only catch up for \$150K+ HCE NOW IN EFFECT even though the new IRS regulation doesn't apply until 2027!

Upcoming Events

WEBINAR
Employee Benefits

2026 Compliance and Benefits Update

Wednesday, Feb 25
12:00 PM CT

REGISTER NOW



VIRTUAL EVENT
MOXIE Women's Network

Give to Gain: The Power of Generous Networks, Mentorship & Collective Success

Tuesday, March 10
1:00 PM CT

REGISTER NOW



For more information, visit www.hubinternational.com/events

Thank you

The views expressed in this presentation are the speaker's own and not necessarily those of Faegre Drinker Biddle & Reath, LLP, or anyone else. This material was created for educational and informational purposes only and is not intended as ERISA, tax, legal or investment advice. If you are seeking investment advice specific to your needs, such advice services must be obtained on your own separate from this educational material.

HUB Retirement and Private Wealth employees are affiliated with and offer Securities and Advisory services through various Broker Dealers and Registered Investment Advisers, some of whom may or may not be affiliated with HUB International. HUB International owns the following Registered Investment Advisers: HUB Investment Partners; HUB Investment Advisors; Global Retirement Partners, LLC; RPA Financial; and Taylor Advisors. Additional information for each individual HUB International Registered Investment Advisor may be found in the respective Form ADV available on the SEC's IAPD website at <https://adviserinfo.sec.gov>. Insurance services are offered through HUB International.



Key Takeaways

DOL Enforcement is Changing

- Investigations will be more efficient and less open-ended
- Focus shifting to cybersecurity and fiduciary advisor reviews
- DOL is now siding with plan sponsors in litigation

Regulatory Activity is High

- Alternative assets coming to 401(k) plans through diversified funds (not individual investments)
- Fiduciary rule effectively dead; ESG rule being revisited
- PEP guidance evolving—understand what you're signing up for

Compliance Essentials

- Address forfeiture account usage annually—does your plan document match your practice?
- Cybersecurity is a fiduciary duty—ask about it in RFPs
- SECURE 2.0 Roth catch-up for \$150K+ earners is IN EFFECT (even though final regs aren't until 2027)

Trump Accounts Create New Options

- Employer contributions up to \$2,500/year (tax deductible for corporations)
- Available starting July 4, 2026
- Consider whether this benefit fits your workforce