

## Legal Developments Impacting Retirement Plans

### 2024 Year-End Update

1. As discussed in our prior [January 2024 bulletin](#), plaintiffs' class action firms have taken aim at common and longstanding practices of 401(k) plans regarding the **use of forfeitures** to reduce employer contributions, with over two dozen lawsuits filed against large corporate plans in the last year alone. These cases are in their early stages and court rulings to date have been mixed, with courts granting defendants' motions to dismiss in five cases and denying them in two.
2. The DOL has begun collecting data for its online **Retirement Savings Lost and Found Database**, which is intended to help missing participants and beneficiaries locate unpaid retirement plan benefits.<sup>1</sup> Currently, plans are encouraged but not required to submit information to the database. The DOL also addressed cybersecurity risks and the interplay of state privacy laws in an effort to assuage data-sharing concerns and encourage plans to submit information to the database.
3. A federal district court in Texas ruled that American Airlines 401(k) plan fiduciaries violated the ERISA fiduciary duty of loyalty—but not the duty of prudence—by maintaining index fund options with BlackRock, which engaged in **ESG (Environmental, Social, and Governance)** activism and proxy voting in its funds.<sup>2</sup> While this decision breaks new ground in permitting ESG claims involving passive fund investments, its potential long-term impact is uncertain—both because court proceedings on any damages or nonmonetary relief are continuing, and because the decision may be applicable only in cases involving unaddressed conflicts of interest between a company and its 401(k) plan's investment manager.
4. In *Loper Bright Enterprises v. Raimond*,<sup>3</sup> the Supreme Court **overturned the “Chevron Doctrine,”** which generally deferred to any regulation that could be read as consistent with the regulation's overarching statute, even if the agency interpretation differed from the court's preferred reading. While the Court confirmed it will not overturn regulations previously upheld under *Chevron*, courts will now have more freedom to invalidate a regulation if unpersuaded by the agency's interpretation. For example, the Fifth Circuit recently sent one challenge to ESG regulations back to the trial court for reconsideration in light of *Loper Bright*.<sup>4</sup>
5. In 2022, SECURE Act 2.0 modified Internal Revenue Code and ERISA rules regarding the handling of **benefit overpayments** by plans and fiduciaries, and in October the IRS issued guidance on how these changes impact the EPCRS correction program. That guidance confirmed plans are not required to seek recovery of benefit overpayments except in limited circumstances and that overpayments that are rolled over generally retain tax-

qualified status unless the distributing plan seeks recoupment. DOL guidance regarding the ERISA changes remains outstanding.

6. Other **SECURE Act 2.0 and SECURE Act guidance** issued in 2024 included:
  - IRS regulations updating the required minimum distribution rules;<sup>5</sup>
  - Proposed DOL regulations on automatic portability programs;<sup>6</sup>
  - IRS guidance on emergency personal expense distributions and domestic abuse victim distributions,<sup>7</sup> qualified disaster recovery distributions,<sup>8</sup> and student loan repayment matching contributions;<sup>9</sup> and
  - IRS and DOL guidance on pension-linked emergency savings accounts.<sup>10</sup>
7. Following **Hurricanes Helene and Milton**, the DOL and IRS extended claim and appeal deadlines for individuals affected by the storms, similar to extensions issued in response to COVID-19.<sup>11</sup>
8. Lawsuits were filed against several large corporate pension plans that engaged in **annuity-lift out transactions** (a form of pension risk transfer) alleging their selection of a particular insurer for the group annuity contract constituted a breach of fiduciary duties under ERISA based on failure to satisfy the “safest annuity available” standard under 1995 DOL guidance. Relatedly, the DOL issued a report to Congress on fiduciary considerations related to plans’ selection of annuity providers, generally finding that the factors articulated in its prior guidance remain relevant.

**From all of us here at MMPL, your employee benefits law firm.**

*Not intended as legal advice.*

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<sup>1</sup> 89 Fed. Reg. 91,787 (Nov. 20, 2024).

<sup>2</sup> *Spence v. American Airlines, Inc.*, 718 F. Supp. 3d 612 (N.D. Tex. 2024).

<sup>3</sup> *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

<sup>4</sup> *Utah v. Walsh*, 2:23-CV-016-Z, 2023 WL 6205926 (N.D. Tex. Sept. 21, 2023), *vacated and remanded sub nom. Utah v. Su*, 109 F.4th 313 (5th Cir. 2024).

<sup>5</sup> 89 Fed. Reg. 58,886 (July 19, 2024).

<sup>6</sup> 89 Fed. Reg. 5,624 (Jan. 29, 2024).

<sup>7</sup> IRS Notice 2024-55.

<sup>8</sup> IRS News Release FS-2024-19 (May 2024).

<sup>9</sup> IRS Notice 2024-63.

<sup>10</sup> IRS Notice 2024-22.

<sup>11</sup> 89 Fed. Reg. 88,642 (Nov. 8, 2024).