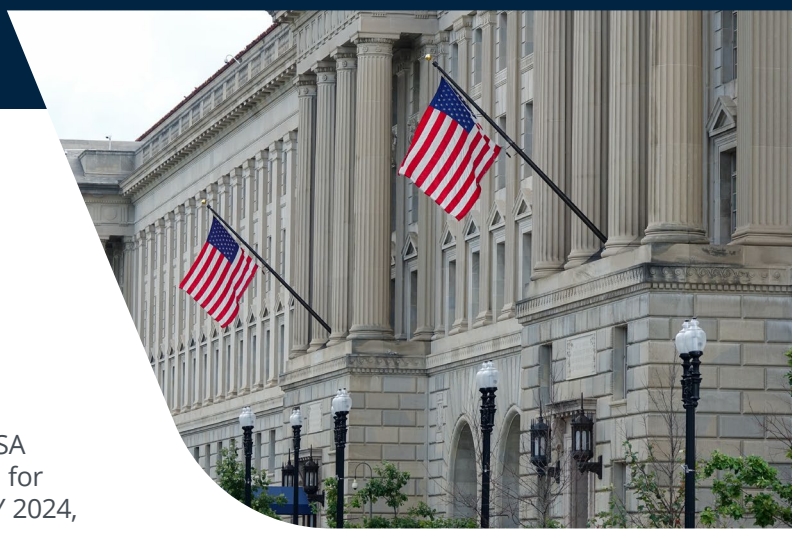
IMA Retirement

Q3 2025



EBSA 2024 Enforcement Efforts and Trends/Tips for 2025

The Employee Benefits Security Administration (EBSA), the Department of Labor (DOL) sub-agency which oversees ERISA regulation of retirement plans, recovered nearly $1.4 billion for employee benefit plans, participants, and beneficiaries in FY 2024, according to the EBSA's annual enforcement fact sheet. (The Department of Labor operates on a fiscal year beginning on October 1 and ending September 30; e.g., October 1, 2023, through September 30, 2024.) EBSA oversees 2.6 million health plans, 801,000 private pension plans, and 514,000 other welfare benefit plans, covering 156 million individuals.

Enforcement results for FY 2024 were consistent with FY 2023's results. Although we expect changes in EBSA enforcement priorities and activities beginning in FY 2025 given the change in administration, looking back at the most recent statistics can still be instructive for identifying trends and tips

Monetary Recoveries by Source

Program	$ in Millions
Investigations	$742
Informal Complaint Resolution	$544
Abandoned Plans Program	$ 54
Voluntary Fiduciary Correction Program (VFCP)	$ 44

Key Findings:

- EBSA received nearly 200,000 informal participant and beneficiary complaints through its website and phone calls.
- Seventy-one percent of the plans investigated were faulty, requiring plan sponsors to restore losses and/or take other corrective action. TIP: Most investigations start because of participant complaints and faulty Form 5500 filings.
- Delinquent Filer Voluntary Compliance Program (DFVCP) applications increased in FY 2024, reflecting growing engagement with voluntary corrections. TIP: EBSA has two voluntary compliance programs: The DFVCP, generally, for allowing plan administrators who have failed to file timely Form 5500s to voluntarily comply with ERISA reporting obligations and the Voluntary Fiduciary Correction Program (VFCP) for fixing 19 types of plan infractions. The VFCP has been recently revamped to now allow for self-corrections, without submitting a VFCP application to EBSA, to address two common infractions related to delinquent participant contributions and loan repayments.

Year-Over-Year Trends

Metric	FY 2023	FY 2024	Change/Observation
Total Recovered	$1.4B+	$1.384B	Unchanged
Civil Investigations Closed	731	729	Slight decrease
% with Monetary Results	69%	71%	Slight increase
Criminal Investigations Closed	196	177	Decrease
Indictments	60	68	Increase
Convictions/Guilty Pleas	Not specified	161	Data newly reported
Litigation Referrals	50	53	Slight increase
VFCP Applications	1,192	1,162	Slight decrease
DFVCP Reports	18,955	20,009	Increase
Plans/Participants Covered	153M	156M	Increase

What to Expect for 2025

Daniel Aronowitz, the nominee to lead EBSA, testified at his hearing that he plans a robust agenda to:

- Provide regulatory clarity,
- Improve EBSA's enforcement of fiduciary law, and
- Encourage plan sponsors to expand access to retirement and health care benefits.

Central to his testimony is Mr. Aronowitz's view that it is necessary to "provide regulatory clarity and eliminate the ERISA litigation abuse that is turning benefit plans into liability traps." Mr. Aronowitz emphasized a number of areas where DOL can help employers have regulatory clarity, including (1) modernizing defined contributions plans to include alternative investments, such as private equity and cryptocurrency, (2) the fiduciary rule as applied to IRA rollovers, (3) plan forfeitures, and (4) cybersecurity to protect participants assets.

While we expect that EBSA will continue to pursue bad actors who mismanage retirement assets, Mr. Aronowitz emphasized the need to encourage employers to expand retirement and health care benefits to America's workers through even-handed enforcement and regulatory guidance. Mr. Aronowitz noted that EBSA "will end the practice of open-ended investigations that go on for years" and will work with Congress "for legislative changes needed to end litigation abuse." As we've previously discussed, at least in the short-term, this desire to curb meritless ERISA fiduciary litigation may face headwinds from the Cornell University case discussed below.

Cornell Case Could Pave Way for More ERISA Litigation Claims

On April 17, 2025, the United States Supreme Court issued a decision in Cunningham v. Cornell University that may make it easier for plaintiffs to bring ERISA claims for violation of the "prohibited transaction" rules. ERISA's prohibited transaction rules are designed generally to protect plan participants from transactions that could give rise to conflicts of interest. For example, it is a prohibited transaction for a fiduciary to cause a plan to engage in a transaction with a service provider, but there is a corresponding prohibited transaction exemption that permits such transactions if the services were necessary for the operation of the plan and no more than reasonable compensation was paid.

In Cunnigham, the Court held that plaintiffs could state a claim and potentially survive a motion to dismiss merely by alleging the existence of a prohibited transaction (e.g., a transaction between the plan and a service provider) without having to also plead the unavailability of a corresponding prohibited transaction exemption (e.g., that the services were either not necessary or for unreasonable compensation). While there is risk that this decision may encourage more ERISA lawsuits and yield more settlements because of defendants' reasonable desire to avoid costly and time-consuming discovery, the Court believes that this risk can be mitigated because "district courts can use existing tools at their disposal to screen out meritless claims before discovery."

No matter how ERISA litigation trends may shake out, the upshot for responsible plan fiduciaries is unchanged. Regardless of litigation risk, responsible plan fiduciaries should continue to select and monitor investment options for the purpose of maximizing risk adjusted financial returns and otherwise maintain processes to satisfy their ERISA fiduciary obligations.

Recent Developments in ERISA Forfeiture Litigation

In Hutchins v. HP Inc., No. 5:23-cv-05875-BLF (N.D. Cal. Feb. 5, 2025), a federal court in California granted a motion to dismiss a lawsuit that plan fiduciaries violated their ERISA duties by using forfeited plan assets (e.g., the non-vested employer contributions in a terminated, former employee's account) to reduce employer contributions, rather than pay administrative costs the plan charges to plan participants.

This case is part of a broader trend of class action ERISA lawsuits challenging the use of forfeitures. In general, plaintiffs in these cases allege that employer plan fiduciaries breach their fiduciary duties and engage in self-dealing in violation of ERISA when it is decided to use forfeitures to reduce employer contributions rather than increase participant benefits by paying administrative costs otherwise charged to plan participants.

Central to the premise of these lawsuits is that, generally, fiduciary obligations arise because an employer plan fiduciary has discretion to choose between using forfeited funds to reduce employer contributions or pay administrative costs. Faced with that choice, a fiduciary would always be required choose to pay administrative costs, since doing so would be to the financial benefit of plan participants – an outcome that the court in HP viewed as overbroad and contrary to longstanding regulatory practice.

As noted above, the nominee to head EBSA has indicated that DOL may prioritize issuing guidance on use of forfeitures that could reduce uncertainty arising from this litigation trend. In the meantime, this decision speaks more broadly to the importance of reviewing, and possibly updating, plan terms concerning forfeitures. As the forfeiture lawsuits illustrate, whether a plan document permits or mandates use of forfeitures can have implications in the event of potential litigation.

Let's Connect

IMA Retirement

For assistance with your retirement needs, contact an IMA Retirement Advisor at 800.305.1864 or retirement@imacorp.com

SAFEGUARDS FOR YOUR RETIREMENT

Retirement Benefits Matter. We believe in the power of a well-planned retirement. It's not just about numbers, it's about investing in the people who make your organization shine. We partner with you to design a retirement plan that speaks to every individual, from the moment they join your team to the day they wave goodbye – helping them blossom both today and tomorrow.