INDUSTRY INSIGHTS

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IMA Retirement



Prudence, Not Perfection: Lessons from the Third circuit's Quest Diagnostics Decision

In re Quest Diagnostics ERISA Litigation (3d Cir. June 22, 2026)

The Third Circuit sided with the fiduciaries of Quest Diagnostics' 401(k) plan (Plan), which had been challenged in a lawsuit alleging that it had kept underperforming funds on its investment lineup. Consistent with long-standing precedent, the Court affirmed that the prudence of selecting investments in a plan lineup is evaluated not with the benefit of hindsight but based on the process used to make and monitor the investment selection. As the Court explained, this is because, ERISA is "mostly concerned with process, not outcomes" – and "[s]ometimes, even a good process produces disappointing results." A takeaway for responsible plan fiduciaries is that a robust, well-documented review process that is actually followed helps insulate plan fiduciaries against investment selection challenges.

Background

Plaintiffs challenged the Plan's decision to maintain certain investments on the plan lineup, pointing to allegedly investment underperformance. The trial court granted summary judgment to Quest, finding its fiduciary process adequate, and the Third Circuit affirmed.

What Quest Did Right

The Court focused on three primary issues. Quest's fiduciaries:

+ Reviewed their advisor's data and sought more where needed.
+ Understood the advice and the methodology behind it.
+ Followed generally accepted plan-management practices.

In practice, this meant that the investment committee:

+ Met quarterly and received annual fiduciary training.
+ Hired an outside consultant to analyze the challenged funds.
+ Did not simply defer to the consultant, but commissioned comparison studies and met with the fund managers.
+ Placed a challenged fund on a watch list and kept it for a documented reason: downside protection in bear markets.

The Plan's investment policy statements also used permissive language (for example, "may," and "no single factor" is dispositive). This gave the committee discretion over the challenged funds rather than requiring strict removal conditions.

Practical Takeaways: Process is Paramount

While not reducible to a mechanical checklist, engaging in a fulsome process to select and monitor each investment option in a plan lineup is the essence of fulfilling responsible plan fiduciaries' duty of prudence. This case includes examples of fiduciary committee actions that illustrate a sound process:

+ Document the reasoning behind retain-or-replace decisions.
+ Read and question advisor and manager materials.
+ Document responses to consultant recommendations.

EBSA Rulemakings and Guidance: Retirement Fiduciaries Should Prepare Themselves for a Regulatory Deluge

Over the last few months, the Department of Labor's Employee Benefit Security Administration (EBSA) has been busy, sending a number of regulations to the Office of Management and Budget (OMB) (which is the final stop prior to formal publication in the Federal Register) and issuing sub-regulatory guidance of interest to investment fiduciaries. It's a lot to keep track of, so we've prepared a cheat sheet noting where some of the higher priority developments stand.

ESG Proposal at OMB. On June 30, 2026, the Department of Labor (DOL) submitted to OMB a draft rule, titled, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" that would replace the Biden-era 2022 rule which covered environmental, social and governance (ESG) factors when selecting investments and exercising shareholder rights such as proxy voting. That Biden-era rule, in turn, had replaced corresponding rules issued during the first Trump Administration.

Despite a widespread perception of ping-ponging on when ESG factors may be considered in ERISA investment decisions, the past administrations' rules were consistent on this key question. Abiding by the ERISA statute, as interpreted by the Supreme Court, both rules permit consideration of ESG factors for the sole purpose of maximizing risk adjusted financial returns – and generally prohibit ESG factors for nonfinancial purposes. We expect that the latest rule will be consistent with these key principles.

DOL Alt Investments Final Rule expected. As we described in our Q2 Update, earlier this year, EBSA proposed a long-awaited proposed rule on Fiduciary Duties in Selecting Designated Investment Alternatives (Proposed Rule) to address a fiduciary's duty of prudence under Employee Retirement Income Security Act of 1974 (ERISA). The Proposed Rule would clarify fiduciary obligations when selecting investment options in defined contribution plans, including funds that contain private market investments, and provided a safe harbor intended to reduce second-guessing fiduciary decisions in court.

The comment period for the proposed rule closed on June 1, 2026. EBSA received nearly 50,000 comment letters in connection with the proposal. As with the ESG proposal, the expectation is that this final rule will be published imminently.

QPAM re-eligibility proposal at OMB. On July 20, 2026, EBSA sent OMB a proposed class exemption on the Qualified Professional Asset Manager (QPAM) exemption. The QPAM exemption is widely used by large managers that hold both plan and IRA assets. It permits transactions that ERISA's prohibited transaction rules would otherwise bar.

In 2024, EBSA broadened the list of misconduct that would result in a manager being disqualified from serving as a QPAM. Entitled, "Re-eligibility Options After Disqualification (QROAD)" class exemption, the expectation is that the new proposal would provide an avenue for asset managers and other users of the exemption to become eligible again after being disqualified. For advisers, this matters when a client's plan uses a manager that relies on QPAM status, because the manager's eligibility, and any path back to it, is part of ongoing due diligence.

Trump accounts are generally outside ERISA. In a technical release on June 18, 2026, EBSA provided guidance regarding the treatment of "Trump accounts," (i.e., tax-advantaged investment accounts for children provided for under section 530A of the Internal Revenue Code), stating that these accounts generally will not be considered employee pension benefit plans subject to the requirements of Title I of ERISA. Accordingly, EBSA takes the position that employer contributions to a child's Trump account generally are not subject to ERISA's reporting, disclosure, vesting and fiduciary standards.



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