IMA Retirement

Industry Insights

Q4 2024

IRS Private Letter Ruling Allows Employer to Increase Plan Design Flexibility

The IRS recently approved a private letter ruling (PLR) for an anonymous employer, allowing employees to choose where their employer's nonelective contributions are allocated. This ruling, while specific to the requesting employer, could inspire others to seek similar flexibility.

The employer, advised by Willis Towers Watson (WTW), requested the PLR to let employees make an annual irrevocable election to direct employer contributions to their 401(k) plan, a retiree health reimbursement arrangement, an educational assistance program, or a health savings account (HSA). If no election is made, contributions default to the 401(k) plan. Contributions must be made by March 15 of the following year.

Additionally, the employer amended its educational assistance program to allow student loan payments through December 31, 2025. The IRS clarified that contributions cannot be paid in cash or deferred compensation plans.

Benefits of Flexibility

Chris West, WTW's defined contribution strategy leader, highlighted the flexibility this PLR provides. Employees can split contributions between options, such as 50% to a 401(k) and 50% to student loans. If student loans are paid off, contributions default to the 401(k).

West noted that many employers are interested in flexible plan designs but face legal and administrative challenges. This PLR demonstrates that flexibility and choice are possible, though each employer must design their own plan.

Katie Bjornstad Amin of Groom Law Group reported increased interest from other employers since the PLR's release, recognizing diverse employee preferences.

Administrative and Compliance Considerations

Employers must consider feasibility and costs. Non-uniform contributions require careful tracking to avoid tax issues. Cooperation across multiple vendors is necessary to manage contributions within HSA and educational assistance limits.

Source:
IRS Private Letter Ruling Allows Employer to Increase Plan Design Flexibility, PLANSPONSOR, September 13, 2024

The employer included safeguards to prevent excess contributions. For example, employees electing HSA contributions cannot make pre-tax payroll contributions until after March 15. Similar rules apply to student loan repayments.

Plan design changes require amendments to plan documents and distribution of summary material modifications to participants.

Final and Proposed RMD Rules Answer Some Questions, Raise Others

On July 18, 2024, the IRS released the final required minimum distribution (RMD) rules. These rules affect 401(a) plans (including 401(k) plans), 403(a) annuity plans, 403(b) plans, governmental 457(b) plans, and IRAs, applying to distribution calendar years starting January 1, 2025. For earlier years, individuals must use the 2002 and 2004 regulations with a good-faith interpretation of the SECURE Act amendments.

Key Points:

1. **Beneficiary 10-Year Rule After RBD:**
   + If an account owner dies on or after the required beginning date (RBD) with a non-eligible designated beneficiary (NED), the NED must take annual RMDs for nine years and deplete the account by the 10th year. This also applies after an NED's death or a minor reaching maturity. Penalty relief is provided for missed RMDs from 2021-2024, but they must be taken starting in 2025.
2. **Confirmed RMD Ages:**
   + Birth before July 1, 1949: Age 70 ½
   + Birth between July 1, 1949, and December 31, 1950: Age 72
   + Birth between January 1, 1951, and December 31, 1959: Age 73
   + Birth on or after January 1, 1960: Age 75
3. **Designated Roth Account Assets:**
   + Excluded from RMD calculations and eligible for rollover when distributed.
4. **Solo Spouse Beneficiary:**
   + If the account owner dies before the RBD and the sole beneficiary is the spouse, the spouse is treated as the account owner, using the uniform lifetime table for RMDs. If the account owner dies on or after the RBD, the spouse may elect to be treated as the account owner.
5. **"Hypothetical" RMDs:**
   + If a surviving spouse elects the 10-Year Rule and later treats the IRA as their own, they must catch up on any missed RMDs.

Impact: Recordkeepers and TPAs will need to update distribution processing systems. Plan participants, IRA owners, and beneficiaries must understand the new rules to ensure proper RMDs are taken.

Proposed legislation would enhance investment options for 403(b) retirement plans

U.S. Senators Katie Britt (R-Ala.), Raphael Warnock (D-Ga.), Dr. Bill Cassidy (R-La.), and Gary Peters (D-Mich.) have introduced (S. 4917), the Retirement Fairness for Charities and Educational Institutions Act, to enhance investment options for 403(b) retirement plans. The Senate referred the bill to the Committee on Banking, Housing, and Urban Affairs. A similar provision was included in H.R. 2799, which passed the House in March and has since been referred to the Senate.

The proposal would expand retirement savings opportunities for non-profit employees by allowing 403(b) plan participants to invest in collective investment trusts (CITs). While SECURE Act 2.0 amended the Internal Revenue Code to allow CITs for 403(b) arrangements, it did not address related securities laws, thereby preventing parity with 401(k) plans. A CIT is a tax-exempt investment vehicle that provides a diversified, pooled investment option—similar to a mutual fund. Under current law, unlike 401(k) holders, 403(b) plan sponsors are not able to include CITs as an investment option. This legislation would create parity between 403(b) and 401(k) retirement savings plans.

Advisory Council Sees More Work Ahead for Retirement Income Products As QDIA

The Department of Labor's Advisory Council on Employee Welfare and Pension Benefit Plans, also known as the ERISA Advisory Council, held final discussions centered on retirement income products and their place within qualified default investment alternatives.

Members debated the complexities of integrating lifetime income options into retirement plans and the broader implications for plan sponsors and participants amid the changing retirement landscape.

During the discussion, Alice Palmer, the vice president and retirement plan service chief counsel for the Lincoln Financial Group, highlighted key testimony from industry experts, drawing attention to the comparability of retirement income products. "Whether your money is in a Vanguard fund, or whether your money is in guaranteed income solution, what that translates to in retirement, depending on the product, can be equivalent," she said.

Palmer raised questions about how liquidation of these products affects retirees' purchasing power and whether the value preserved in these solutions can match that of a traditional target-date fund. Palmer emphasized the need for further research on how annuity products influence retirees' ability to maintain their living standards.

Beth Halberstadt, a senior partner in and the U.S. defined contribution investment leader at Aon, echoed Palmer's concerns, agreeing that there is a significant opportunity for more guidance on retirement and lifetime income options within qualified plans. She stressed that the current regulatory framework, particularly Section 404(c) of ERISA, does not provide detailed guidance on how fiduciaries should assess or select these products.

"When we think about the rules that we have today, 404(c) is pretty high level," Halberstadt said. "It doesn't go into telling fiduciaries how to assess, how to pick, how to select."

However, Halberstadt cautioned the group against letting perfection hinder progress, encouraging incremental steps toward improving available guidance. She also called for a balanced approach that fosters creativity while mitigating litigation risks.

“We know we don’t want to stifle innovation,” she says. “We’re already struggling in the DC space with innovation and litigation and trying to strike that right balance.”

Another key voice, Holly Verdeyen, a partner in and the U.S. defined contribution leader at Mercer, raised questions about the council’s focus. She noted that much of the testimony and discussion centered on the lifetime income component, despite the council’s original mandate to examine QDIAs as a whole.

Verdeyen emphasized the importance of determining how much of the final report should address the current state of QDIAs, suggesting that the conversation may have drifted too far into lifetime income products. Halberstadt agreed, but noted that foundational reports, such as those from Morningstar and Vanguard, could help address the gaps in testimony and provide a more complete picture.

In its future work, the council intends to further evaluate how lifetime income products can be integrated into QDIAs and how these decisions will impact plan sponsors’ fiduciary responsibilities. It will continue to focus on balancing innovation with the need for clear guidance, ensuring that retirees’ financial security is maintained across various product offerings.

Source:
Advisory Council Sees More Work Ahead for Retirement Income Products As QDIA, PLANSPONSOR, September 13, 2024

Litigation Highlights

SCOTUS Overturns Chevron Deference Doctrine

On June 28, 2024, the Supreme Court overturned the Chevron Doctrine in the case of Loper Bright v. Raimondo. This doctrine, since 1984, required courts to defer to federal agency interpretations of ambiguous statutes. Now, courts must interpret these statutes independently. This change will significantly impact fiduciary responsibility and retirement plan administration, making it harder for agencies to change policies through reinterpretation. Lawsuits challenging the DOL's new investment advice rules and ESG investing regulations are expected to increase.

Source:
Loper Bright's Potential Effects on "Chevron-Like" Deference Doctrines, Wiley, October 21, 2024

Plan Forfeitures

Two California district courts issued conflicting rulings on plan forfeiture cases. On May 24, 2024, the Southern District of California denied a motion to dismiss in Perez-Cruet v. Qualcomm, finding a potential ERISA violation in using forfeitures to reduce employer contributions instead of participant-paid costs. Conversely, on June 17, 2024, the Northern District of California dismissed a similar case, Hutchins v. HP Inc.

Plan sponsors should review their plan document language regarding the use of forfeitures. The rules clearly allow forfeitures to:

+ Pay plan administrative expenses
+ Reduce employer contributions under the plan
+ Increase benefits in other participants' accounts in accordance with plan terms. Including all three options in the plan document gives sponsors the greatest level of flexibility, and establishing a hierarchy of their use in the plan language would take any element of employer discretion out of play.

ESG Investing Cases

The DOL's ESG regulations, effective January 1, 2023, allow ESG factors in investment decisions if relevant to risk and return analysis. In State of Utah et al. v. Martin J. Walsh, a 26-state challenge, the court upheld the DOL's rule. Plaintiffs have appealed. In Spence v. American Airlines, the Northern District of Texas ruled for the plaintiff, finding issues with the plan's proxy voting policy and committee involvement in ESG efforts, leading to a bench trial.

TDF Fiduciary Hygiene

On May 20, 2024, the Northern District of California dismissed a complaint in Bracalente v. Cisco Systems, Inc., ruling that Cisco did not violate ERISA's prudence requirement in selecting BlackRock target date funds as the plan's QDIA. Key factors included an appropriate investment policy statement, custom benchmarks, and thorough committee minutes.

Let's Connect

IMA Retirement

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.

For assistance with your retirement needs, contact an IMA Retirement advisor at *retirement@imacorp.com* or call **800.813.0203**

CT-WP-IMAR-103024