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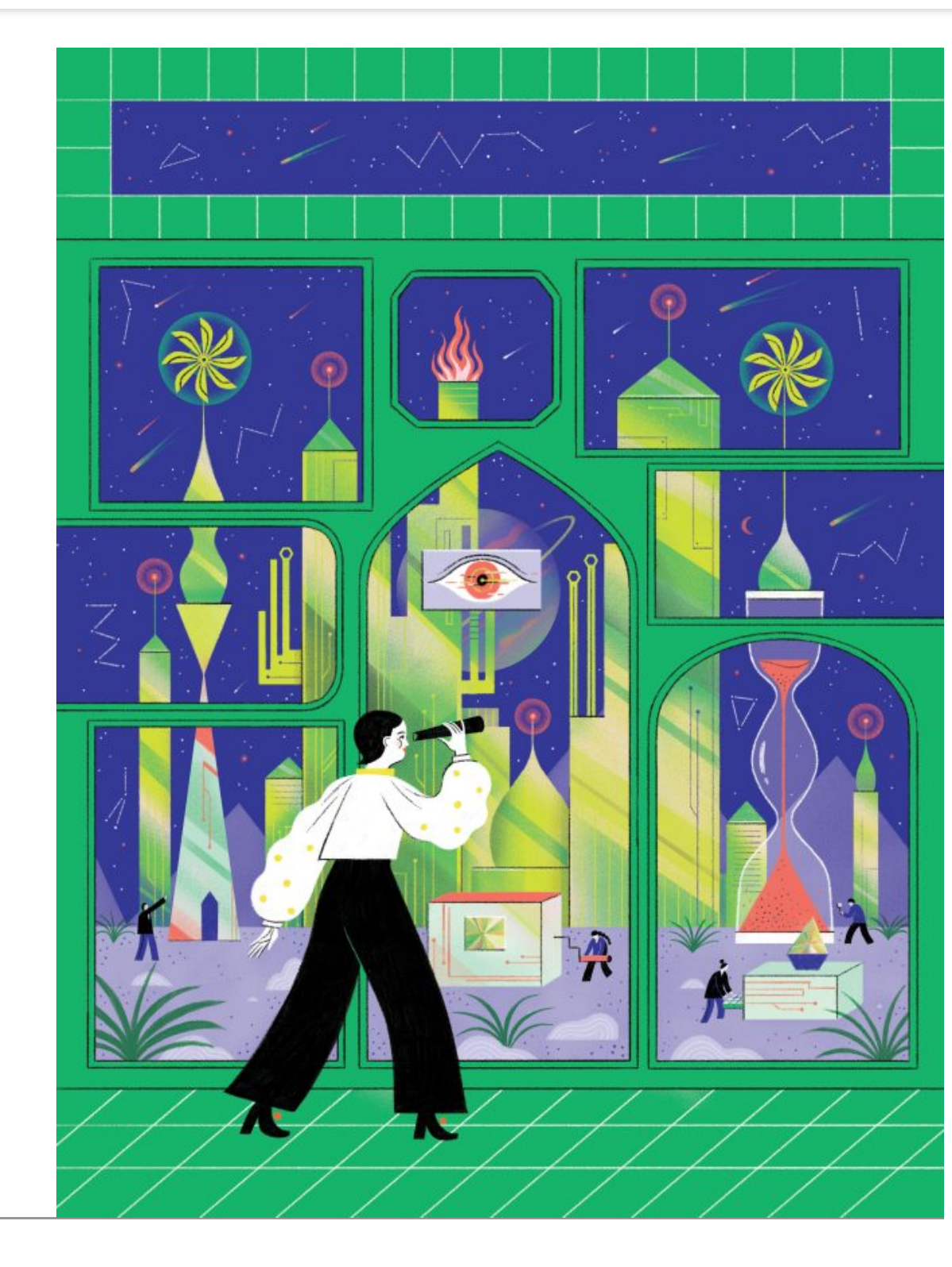
The Retirement Industry 2024

A view of the trends and advances that mattered most this year.



Reported by BETH BRAVERMAN | Art by ANJA SUŠANJ

Over the past year, plan sponsors have continued implementing both mandated and optional plan features under the Setting Every Community Up for Retirement Enhancement Act and the SECURE 2.0 Act. At the same time, ongoing technological advancements have enabled sponsors—and the retirement industry, broadly—to explore new ways to improve plan efficiency and participant outcomes. Here is a look at the biggest trends and innovations of 2024.

Sponsors Embrace AI

The retirement industry leaned further into finding the best ways to harness the power of artificial intelligence this year; many recordkeepers and providers have already incorporated it into their systems and processes for a range of tasks.

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Uses vary widely: Providers such as Financial Finesse employ AI to power their financial coaching; tech firm vWise uses it to generate video services for participant education and enrollment; and TIAA delivers lifetime income solutions and services via an AI platform.

Plan sponsors and their advisers and vendors are seeking ways to integrate AI into existing plan design, vs. fully revamping processes. The industry's embracing of AI has become part of the ongoing effort to use automation whenever possible to lower costs and bring more solutions to participants at scale, experts agree.

"AI is evolutionary, not revolutionary," says David Levine a partner in Groom Law Group in Washington, noting that providers have used automation for years for things such as nondiscrimination testing or to build style-box charts to show fund returns. "AI allows further customization of all of that, making it more cost-efficient to do more with the people you have," he says.

Meanwhile, participants are growing more open to taking advice from AI-enabled apps, and that acceptance looks poised to continue. Deloitte Center for Financial Services estimates that, by 2027, such apps could become the leading source of retail investment advice, reaching a 78% share by 2028.

Portability Makes Progress

Several recordkeepers continued to prioritize plan portability this year, with the goal of automating the process of moving a retirement plan account from one plan sponsor to another for small-balance participants—i.e., those with less than $7,000 saved.

Retirement Clearinghouse estimates that, if widely adopted, portability could grow the net incremental wealth of participants by $1.6 trillion. This is because, unless portability to another retirement plan is available, more than half of participants in such accounts will cash them out immediately on leaving their employer; 37% will have their balance rolled into a safe harbor individual retirement account where, according to an RCH automated portability simulation, it will sit in a money market fund. Of these accounts, about 8% will either get cashed out or drop to a zero balance as annual fees get paid.

The highest-profile effort to preserve all such small accounts, RCH's Portability Services Network, was launched in late 2023, with founding recordkeeper members Alight, Empower, Fidelity Investments, Principal Financial Group, TIAA and Vanguard. As of this September, PSN reported that it had signed up more than 6,000 plans, representing over 2.2 million active participants. The network has processed 300-plus transactions, and 4,000-plus are in process. Further, PSN says it is in discussions with six additional recordkeepers that say they may join next year.

"We've taken the first baby steps toward increased portability, though we haven't seen a tremendous impact yet," says David O'Meara, head of defined contribution investment at WTW in New York City. "But, as employees keep changing employers, being able to seamlessly move assets into their new plan should hopefully put them in a better position to manage their retirement assets."

CITs Step Ahead

For years, collective investment trusts kept gaining ground on mutual funds as a target-date vehicle, and, in August, they finally surpassed them, says Morningstar. That change is the most evident in larger plans.

Two-thirds of the 30 largest CIT providers surveyed in Cerulli Associates' 2024 Collective Investment Trust Provider Survey said they believe that, when comparing CITs and mutual funds, plan sponsors pick the former mainly for lower costs and fees; 27% said sponsors appreciate the ability to negotiate fees on the trusts.

Over the past decade, CITs have become a more standardized, regulated and lower-cost product than have comparable mutual funds, says Phil Maffei, TIAA's senior managing director of corporate retirement income products in Charlotte, North Carolina.

"CITs now look, feel and behave as close to a mutual fund as you can get; snapping a CIT into a plan, in terms of effort and communication, is no different than putting in an equivalent mutual fund," he says. One-third of over 1,100 plan sponsors told Fidelity in August that they had added CITs to their investment menus in the past year, and a third said they planned to add more in the year ahead, according to the firm's annual "Plan Sponsor Attitudes Study."

This year also saw some movement in the push to allow CITs to be included in the fund lineup of 403(b) plans. Both houses of Congress are considering legislation, widely expected to pass, that would bring the lower-cost options to 403(b)s.

Lawsuits Get 'Weedier'

After relative success with a string of excessive fee lawsuits—and since plan fees have dropped significantly—the plaintiffs' bar expanded the legal theories on which its lawyers brought suit this year. That broader focus saw a rash of lawsuits faulting the use of forfeiture assets to reduce employer contributions, and several cases arguing that plan sponsors selected an inappropriately risky annuity provider for their pension risk transfer, Levine says.

"The lawsuits are continuing to evolve, and they're getting weedier and deeper," Levine says. "The original fee lawsuits basically had simple theories looking at expenses and fees. Now they're getting much more complex, with a lot of granularities."

July's Supreme Court ruling that struck down the *Chevron* deference standard could lead to further expansion of litigation theories, since the federal judiciary no longer must defer to federal agencies' interpretations of law. That, in turn, could further open plan sponsors up to litigation and create greater uncertainty for them and their providers, Levine says.

Consolidation Continues

The decades-long trend toward consolidation kept going this year, with the number of recordkeepers continuing to shrink amid fee pressures, increased demand from plan sponsors and a recognition that protecting margins likely requires both scale and diversity of offerings. To that end, the aim of consolidation has evolved to reflect the convergence of health, wealth and overall wellness solutions, says Jason Burlie, Frisco, Texas-based vice president of retirement sales at The Standard.

Large aggregators now look to add wealth management and other benefit solutions to their offerings, a strategy that could aid plan sponsors, Burlie says. "Plan sponsors can benefit from this trend, working with advisers that are more holistic in their strategies and their understanding of what plan sponsors need in terms of what they're doing on their health plans [and] long-term disability and retirement [plans]," Burlie says. "The marketplace is evolving to a place where select firms can offer a more comprehensive, strategic set of solutions in consultation with plan sponsors."

While much of the year's mergers and acquisitions activity came from larger firms gobbling up smaller ones, Levine says, the August purchase of OneAmerica's retirement plan business by Voya shows that consolidation among the largest recordkeepers continues as well. That acquisition will add $60 billion in assets under administration to Voya's wealth solutions division. If the deal closes as planned, in January 2025, the expanded Voya will be the country's third-largest provider of 403(b) Employee Retirement Income Security Act plans, overtaking Vanguard and Empower.

ESG Is Increasingly Politicized

Since a 2022 ruling from the Department of Labor allowed plan fiduciaries to consider environmental, social and governance factors in making investment decisions, a growing backlash against the movement has reintroduced uncertainty and potential liability as to the best approach.

O'Meara says he has seen a growing number of large, corporate plan sponsors hesitate to discuss ESG for fear of being targeted.

"Some of that is prudent, being careful about what gets discussed and how we discuss different investments," O'Meara says. "But in some cases it's also driven by fear, which is not helpful to the greater discussion."

An August ruling by a Missouri district court struck down two anti-ESG investing rules, while a Texas court is rehearing a case, in light of the *Chevron* ruling, by Republican state attorneys general challenging the DOL guidance. Interest in ESG investments among participants, however, appears to still be on the rise. More than three-quarters of 1,002 investors surveyed by Morgan Stanley said they were interested in sustainable investing, and 57% said their interest has grown in the past two years. More than half said they expected to increase their sustainable investments over the next year.

Small Employers Gain Options

On the whole never really having been able to offer retirement benefits to their workers, small employers have more options now than ever. In 17 states, employers also face a mandate to facilitate participation in a state-run plan if they fail to offer one on their own. Findings from the National Bureau of Economic Research show that such mandates have boosted interest in private retirement plans.

"It's interesting [since] many of the state plans don't have the same regulations and hoops to jump through [that private plans do], but, that being said, many entrepreneurs and small businesses would still [prefer a private sector plan]," says Forrest Wilson, chief retirement services officer at Alerus in Minnetonka, Minnesota.

Whether or not they live in states with an automatic-IRA mandate, small business owners over the past year have benefited from more cost-effective plan options, such as pooled employer plans—an arrangement whereby multiple small employers join a common plan, outsourcing some of the administrative duties and getting access to the savings provided by scale.

An additional incentive motivating small businesses with fewer than 100 employees is a three-year tax credit of up to $5,000 per year to help cover plan startup costs.

Income Solutions Keep Evolving

The industry remained focused on the decumulation problem, with more than 90% of plan sponsors surveyed by the Plan Sponsor Council of America saying they were interested in some retirement income solution. While uptake has lagged interest, vendors this year continued offering both in-plan and out-of-plan products to help sponsors wanting a decumulation solution for their participants. The past year saw the introduction of hybrid target-date annuity products from heavyweight BlackRock. Meanwhile, TIAA's and Nuveen's lifetime income default target-date offerings are approaching $35 billion in assets under management.

"We've seen some prominent solutions come to market this year and some live implementations starting to hit, which we've been waiting for for [several] years," O'Meara says. "That's been pretty meaningful, and it's changed the discussions from being theoretical into 'We can actually implement something now.'"

As more employers consider incorporating such benefits into their retirement offerings, plan participants are recognizing how such products work—and how they could benefit from them. A recent study by Nationwide found that 37% of employees age 45 or older are aware of guaranteed income. At 20 percentage points higher than in 2023, that figure represents significant progress, though it shows that the majority of workers still require education.

Managed Accounts Enable Personalization

Plan sponsors and their advisers are increasingly re-evaluating whether target-date funds based on a single data point—projected retirement age—provide the most optimal outcomes. Discussions are evolving as to the recognition that, as participants age closer to retirement, they may desire the more tailored strategy delivered via managed accounts, Wilson says.

"With the data that the recordkeeper has, it can now put in another five to 10 variables, such as the [person's] balance, geography, industry," he says. "And participants can add even more variables, such as where they want to retire or outside assets."

Driving further interest from plan sponsors, the cost of managed accounts has come down substantially, from 45 through 60 basis points to options for under 20 basis points, he adds.

Still, uptake by participants has failed to ignite. More than three-quarters of participants were offered access to managed account advice last year, vs. 60% in 2019, says Vanguard's "How America Saves 2024" report. Yet, only 7% of participants were using such a program.

One approach that more plan sponsors are exploring is a dynamic qualified default investment alternative approach, which starts participants in a TDF and then, at a certain age or asset threshold, shifts them automatically into a managed account, Burlie says. "One size doesn't fit all, so that dynamic QDIA gains a whole lot more interest" than a standalone managed account, he adds.

Alternative Investments Gain Ground

Whether available via brokerage windows or embedded within TDF or managed account investments, alternative investments are slowly making their way into workplace retirement accounts. Of the DC-plan investment managers surveyed by Cerulli Associates, about one in five said they already include private real estate in DC multi-asset-class products, and 8% said they include private equity. Another 4% said they were planning to add private equity in the next year, and nearly a quarter said they would consider doing so if approached by consultants or advisers. Proponents of incorporating additional asset classes into retirement portfolios cite concerns about the concentration risk for portfolios heavily invested in stock market indexes, which are skewed heavily toward a handful of high-valuation companies.

"In the past 20 years, the number of publicly traded companies has gone down precipitously," Levine says. "So, we're seeing more and more interest in products—whether private real estate, private equity or private credit—coming onto the market. You're starting to see that growth there."

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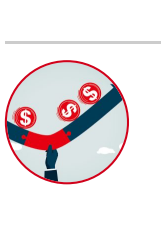

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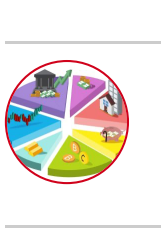

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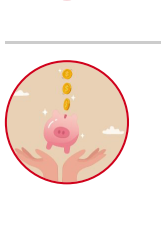

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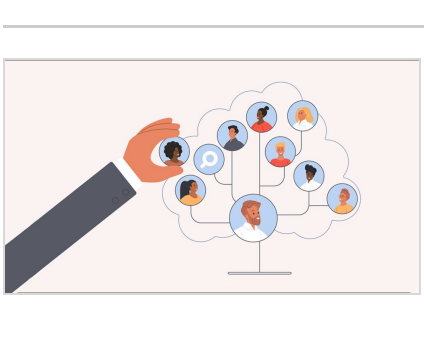

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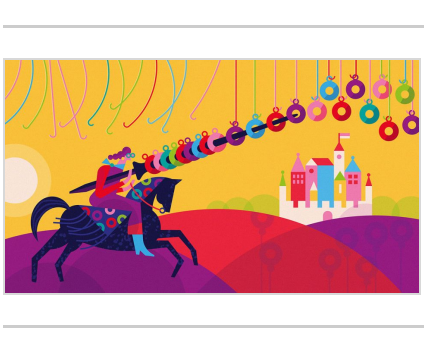

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2 Plan Sponsors Win Against Forfeiture Allegations

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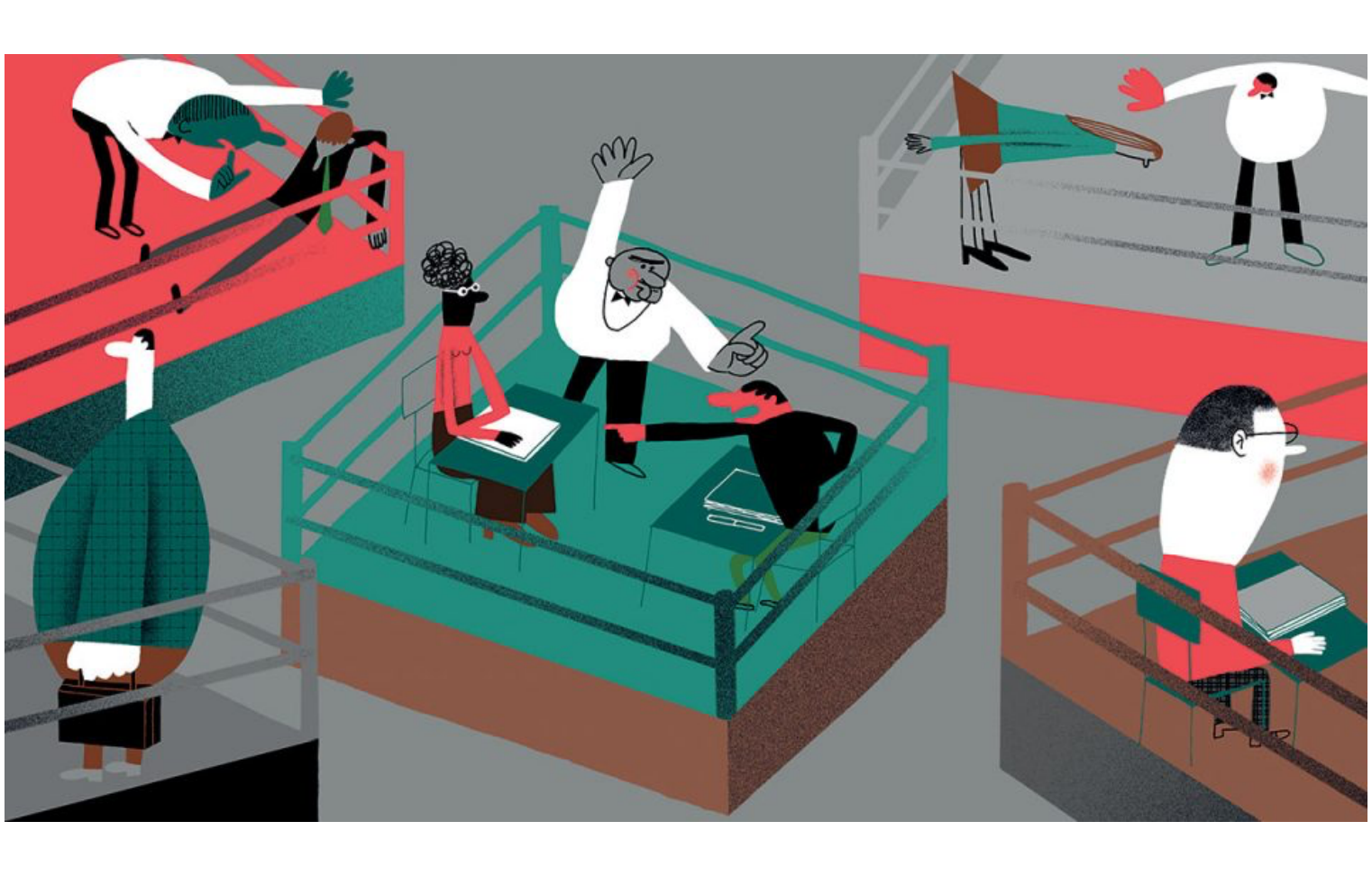

Using 401(k) plan forfeitures to offset employer matching contributions has been a long-standing practice permitted by U.S. regulators. But a slew of recent lawsuits is demanding that the courts scrutinize this practice.

Michael Schloss, counsel at The Wagner Law Group, counts 19 such recent suits. So far, court decisions have been split; judges rejected petitions for dismissal by Qualcomm Inc. and Intuit Inc. and dismissed suits against HP, Thermo Fisher Scientific Inc. and BAE Systems.

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The Thermo Fisher and BAE Systems cases, for instance, were dismissed for different reasons, but judges in both noted the importance of the language used in the plan documents, emphasizing that plan sponsors must ensure that their actions are authorized by the language in the plan.

On September 19, U.S. District Judge Todd Robinson of the U.S. District Court for the Southern District of California, granted without prejudice Thermo Fisher's motion to dismiss. Robinson concluded that, because fiduciary provisions of the Employee Retirement Income Security Act "neither created a benefit nor abrogated Treasury regulations," nor "settled rules regarding the use of forfeitures in defined contribution plans," the suit's allegation that Thermo Fisher breached its fiduciary duty was "too broad to be plausible."

The Thermo Fisher Scientific Inc. 401(k) Retirement Plan, represented by Covington & Burling LLP, has more than $7 billion in assets and 56,872 participants, according to its most recent Form 5500.

Plaintiff Konstantina Dimou, a participant in the plan, and represented by Hayes Pawlenko LLP, alleged in Dimou v. Thermo Fisher Scientific Inc. et al. that the employer breached its fiduciary duties by choosing to use forfeited funds to its own benefit and "solely to reduce future company contributions to the plan."

The original complaint was filed as a class action in September 2023, but, last December, Dimou removed her class action allegations and filed an amended complaint, seeking only planwide relief in a representative capacity. In January, Thermo Fisher filed its motion to dismiss.

Robinson's decision stated that the Treasury Department and Congress have "long understood" that forfeitures in DC plans could be either: reallocated to the remaining participants under a nondiscriminatory formula, used to reduce future employer contributions or used to offset administrative expenses.

Generally, Robinson wrote, decisions as to the design, establishment or modification of an employee benefit plan are settlor functions, because they do not "implicate program management," whereas transactions that deal with a pool of assets—e.g., selecting investments—are fiduciary.

Dimou had stated that, when a company transfers funds to the plan, those become plan assets and Thermo Fisher was acting as a fiduciary when deciding how to allocate them.

Robinson summarized the opinion of U.S. District Judge Beth Labson Freeman of the Northern District of California in Hutchins v. HP Inc. that, "although the decision to include a plan term setting forth various permissible uses for forfeitures is a settlor function, implementing that decision is a fiduciary function."

But he also relied on the Hutchins dismissal in his own grounds for dismissal, contending that because ERISA does not require a fiduciary to maximize pecuniary benefits and the plan document created no entitlement to such benefits, the court would be risking "improperly extend[ing] ERISA beyond its bounds" if it established such an entitlement.

Dimou's filings also argued that, when Thermo Fisher used forfeitures to offset its matching contributions, it was contributing less than 100% of the first 6% that employees deferred to the plan—the company's agreed-upon matching formula between 2017 and 2022. As a result, Dimou alleged, the employer violated the anti-inurement provision of ERISA because it used the plan's assets to forgive the employer's debt to the plan.

Thermo Fisher argued, however, that the matching contribution is not mandatory under the plan, so it is not a plan debt. Robinson agreed with a prior case ruling that allegations of "indirect" benefits to an employer are insufficient to bring an anti-inurement claim.

Dimou was granted 30 days to file an amended complaint. Lawyers representing her did not immediately respond to a request for comment.

In the September 5 decision for BAE Systems, U.S. District Judge Anthony Trenga of the U.S. District Court for the Eastern District of Virginia ruled against an employee and plan participant who was seeking class action status. The initial complaint in Naylor v. BAE Systems was filed April 4, by representative firm Wenzel Fenton Cabassa.

Trenga also denied the plaintiff's motion to disqualify the defendant's counsel, Groom Law Group. The plaintiff had alleged that Groom was an unsuitable representative because BAE had used plan forfeitures to pay it for other projects. The BAE Systems Employees' Retirement Plan had assets of $4.15 billion and 29,887 participants as of December 31, 2022, per its most recent Form 5500 filing.

In the initial complaint, the plaintiff had alleged seven violations of ERISA, including using forfeitures to offset future employer contributions vs. to "cover administrative expenses" or otherwise bolster plan assets. Specifically, the plaintiff alleged that the plan managers had "wrongfully taken" about $9.7 million in forfeitures from 2016 to 2022, plus more in 2023, accounted for as the case progressed.

Here, Trenga pointed to the plan document's language on plan forfeitures, which clearly laid out the use of the funds for employer matching contributions. "It is unclear how, under these Plan provisions, any forfeiture amount during the relevant years could have been directed towards any other purpose than offsetting contributions when the employer contribution amount each year exceeded the available forfeiture amounts," he wrote. While the plan committee may also have chosen to use the funds for administrative expenses, Trenga ruled, it was not obligated to do so.

> **… Trenga pointed to the plan document's language on plan forfeitures, which clearly laid out the use of the funds for employer matching contributions.**

Schloss says Trenga's ruling is a little different from others because it focuses on the plan language detailing how the forfeitures would be used, not on the fiduciaries' actions. "It's a very interesting decision because it basically holds that the plan language effectively deprived the fiduciaries of discretion," he says. "It says the plan requires, without any discretion, that forfeitures go to employer contributions, and … [it] presumes the plan [may] do that."

The initial complaint also alleged that plan fiduciaries had allowed for excessive fees in the plan. For example, it alleged that BAE made millions each year by offering participants a managed account program, the Professional Management Program, that was not worth the additional fee they had to pay.

Additionally, the complaint alleged that BAE paid excessive fees to its counsel, Groom Law Group, for "ERISA compliance related services." The plaintiff described the roughly $700,000 per year being paid to Groom—as noted on BAE's Form 5500—as "excessive and unreasonable."

To both allegations, the judge ruled that the excessive fee claims lacked sufficient evidence; to the second he wrote, "there are no facts alleged with respect to the services Groom Law Group provided to the Plan as compared to services provided to the other clients."

He also rejected the plaintiff's attempt to have Groom representatives disqualified due to their having advised on the plan. He noted that case law does not back up this disqualification of a firm that had advised on fiduciary obligations. Schloss says the decision should make an impact. "It raises issues that other courts will certainly want to consider," he says. "It is a thoughtful decision; it holds together well, I think."

He also notes that, while the IRS has issued guidance approving the use of plan forfeitures to fund employer contributions, the Department of Labor has yet to comment. With more cases anticipated, he says, each agency may want to issue guidance on how plan forfeitures should be viewed under ERISA.

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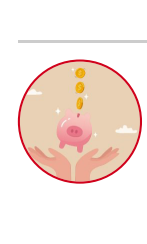

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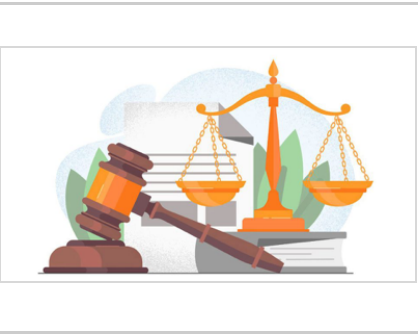

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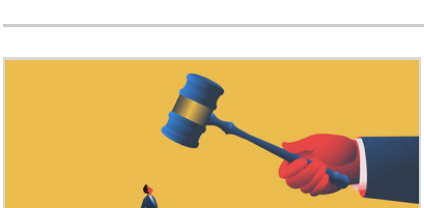

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