PGIM DC SOLUTIONS

THE BUZZ FROM WASHINGTON

May 2025

It would be an understatement to say there has been a tremendous amount of activity in Washington, D.C., with the start of the second Trump administration. This activity includes a flurry of executive orders, Department of Government Efficiency (DOGE) efforts to cut costs in the government, immigration action, energy policy, tariffs, forthcoming battles on the budget and tax cuts, Cabinet appointees, and geopolitical challenges.

The retirement space hasn't been the direct focus of much of the activity, but there are many secondary effects, as well as issues that have been worked on for many years. With new leaders taking on roles in relevant government agencies, various ERISA court cases moving through the system, and a GOP-led Congress passing legislation while working to extend tax cuts and reduce spending, there is reason to expect more activity on retirement policy.

As time passes, it will be interesting to see whether retirement policy maintains its traditional bipartisan cooperation or if political polarization and thornier topics create more divisions. Of course, there are ongoing initiatives that are necessary, such as the implementation of Secure 2.0. With that in mind, here is our current take on the five buzziest areas of retirement policy, recognizing that news of the day changes more frequently than in the past.

TOP FIVE BUZZIEST RETIREMENT UPDATES

1. **Leadership at Agencies and Congress:** There is a new Secretary of Labor with the confirmation of former Representative Lori Chavez-DeRemer (R-OR). Her nomination was considered unusual, as her pro-labor votes in the past have often differed from those of many in her caucus. Her confirmation hearings were not heavily focused on retirement topics, and her experience in this area is limited. Of perhaps greater interest is the nomination of Daniel Aronowitz to lead the Employee Benefits Security Agency (EBSA), the agency within the Department of Labor that regulates employee benefits. Aronowitz's background is in fiduciary liability, and he is a frequent blogger on fiduciary topics. He has expressed criticism of ESG investing and the rise of ERISA class action lawsuits. If confirmed, will his priorities focus on class action litigation reform? His nomination hearings have yet to be scheduled.
   Meanwhile, there are new faces in other agencies, including Treasury and the IRS, that could affect retirement plans. And with the Senate majority switching to Republicans this Congress, there are new chairs of important committees, including Bill Cassidy (R-LA) at the Senate HELP Committee and Mike Crapo (R-ID) at the Senate Finance Committee. With Republicans controlling both houses of Congress and the presidency, will they pass their retirement policy priorities independently, or will they seek bipartisan efforts to pass additional legislation?

1. **SECURE 2.0 to SECURE 3.0?** While there is nothing on the table right now to follow up the two comprehensive bipartisan retirement legislations that passed in the last six years, nor is there a commitment to label it 3.0, many ideas are being discussed around town that could be incorporated into such legislation. These ideas include more support for retirement income products to be embedded into default options. There are still several outstanding provisions from the first two SECURE acts that require further regulatory guidance and support. The implementation of the Saver's Match, which provides government matches directly into the retirement accounts of low-income savers, is projected to have a meaningful impact on retirement security for that population. However, it also requires significant effort from both the industry and policymakers to make it work.

2. **A Changing View (Again) on Alternative Investments:** With the new administration and Congress in place, as well as innovations in the market, many are speculating about greater policy support from policymakers for the inclusion of additional asset classes in defined contribution plans. This includes both illiquid asset classes and even cryptocurrency. Both asset classes have seen the proverbial ping-pong ball effect in terms of support, or lack thereof, depending on the administration.

   Senator Tommy Tuberville (R-AL) introduced the Financial Freedom Act (S. 1222) on April 1, and there is a companion bill in the House. There are similar proposals floating around Washington, including broader efforts around Capital Formation. Amongst other things, such policies would allow greater access to institutional type investments for more investors.

   While the growing interest in these topics continues, many feel meaningful movement in this area won't occur without litigation reform, which brings us to...

3. **Lawsuits, Lawsuits, Lawsuits:** That's right. Litigation in the ERISA space continues. Over the last several years, the topics of the suits have continued to morph beyond just fee- and performance-related claims. The most recent wave of lawsuits has focused on the proper use of forfeiture assets. Decisions in these cases are winding through courts, yielding some mixed results for the plaintiffs and defendants. Meanwhile, on April 17, in a highly anticipated decision, *Cunningham v. Cornell University*, the U.S. Supreme Court held in a unanimous decision that plaintiffs alleging a prohibited transaction under ERISA can proceed to discovery by merely stating that a plan hired a service provider, without first having to show that a statutory exemption does not apply. More time will be needed to analyze the decision fully, but even the justices admitted that their interpretation of the law will continue to support the proliferation of lawsuits, as getting past the all-important discovery phase of a trial will be easier. Will this decision, as well as the aforementioned appointment of Daniel Aronowitz at the Department of Labor, lead to regulatory and legislative efforts to limit these suits that many argue are discouraging plan sponsors from innovating in their defined contribution plans?

4. **China and Retirement Plans:** On March 11, Rep. John Moolenaar (R-MI-02) and Sen. Jim Banks (R-IN) reintroduced the "Protecting Americans' Retirement Savings Act" (PARSA) (H.R. 2607/S.928). This bill prohibits ERISA-covered retirement plans from making new investments in companies controlled by or based in countries considered to be 'foreign adversaries,' which include China, Iran, North Korea, and Russia. China is the only new addition to this list, as the other countries are already restricted. While this bill is not expected to see much activity in the near term, the increased rhetoric around China from both sides of the aisle means this is an area worth continued focus.

OTHER TOPICS CREATING A BUZZ

- **CITs for 403(b) Plans:** Efforts to pass legislation to allow those working in the not-for-profit sector to invest in CIT vehicles in their retirement plans continue.
- **Tax Reform:** While the current debate on the budget and tax reform has not resulted in direct proposals regarding Social Security or retirement plans, it's worth watching to see if the large tax expenditures supporting workplace retirement plans become an area of focus in the future.
- **The Coverage Gap:** There has been meaningful work within policy circles and the industry to bring greater coverage of workplace retirement plans to more workers, particularly those working for small businesses and in the gig economy. Additional states continue to add auto-IRAs for residents in their states. That being said, a national mandate to offer plans, including creating a federal thrift savings plan for all Americans, doesn't seem to be under consideration in the near term.
- **Fewer Federal Workers:** The efforts of DOGE have resulted in a considerable shrinking of the federal workforce. It remains to be seen how this will impact the work of agencies related to retirement plans, including at EBSA and the Social Security Administration.
- **The ESG Ping-Pong Match:** The Trump administration, as predicted, is looking to reverse many of the ESG-focused policies of the prior administration. This includes a request to the 5th Circuit of Appeals to pause proceedings on a legal challenge to the Biden-era rule. This seems to signal an eventual move to rescind the regulation entirely. This is another key item to watch.

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