



PITTA LLP  
Labor, Employment & Employee Benefits Law Firm

# EMPLOYEE BENEFITS

IN FOCUS

FOR CLIENTS & FRIENDS

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## **SUPREME COURT DECLINES REVIEW OF OKLAHOMA STATE LAW, ALLOWING TENTH CIRCUIT PBM RULING TO STAND**

The U.S. Supreme Court declined to review a U.S. Court of Appeals for the Tenth Circuit decision that struck down key provisions of an Oklahoma law aimed at curbing pharmacy benefit managers' ("PBMs") practices. While not a ruling on the merits, the denial leaves in place the Tenth Circuit's limitation on Oklahoma's ability to regulate PBMs. The Tenth Circuit decision is *Pharm. Care Mgmt. Ass'n v. Mulready*, 78 F.4th 1183 (10th Cir. 2023), *cert denied*, *Mulready v. Pharm. Care Mgmt. Ass'n*, No. 23-1213. (U.S. June 30, 2025).

At the center of this issue are the PBMs who manage prescription drug benefits. PBMs act as intermediaries among health plans, pharmacies, and drug manufacturers, negotiating costs, managing prescription drug benefits, and processing claims for millions of Americans. The PBM market is heavily concentrated, with just three companies—CVS Caremark, Express Scripts, and UnitedHealth Group's OptumRx—dominating around 85% of the market. This dominance gives them tremendous leverage over manufacturers, health plans, and pharmacies. Critics argue that this dominance allows these companies to engage in anti-competitive tactics in ways that drive up costs and shut out small and independent pharmacies.

As PBMs face little federal regulation, states have increasingly tried to fill that regulatory gap. In an effort to rein in PBM practices, the Oklahoma Legislature passed a law in 2019 prohibiting PBMs from restricting patients' choices of in-network providers and from using discounts to steer patients toward PBM-owned pharmacies or preferred mail-order pharmacies. It also included an "any-willing-provider" provision that required health plans to accept into their network any pharmacy that meets the network's standards.

The PBM industry challenged this law, claiming that it interferes with plan administration and benefit design and as such is preempted by the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"). ERISA's preemption clause limits states from legislating in areas governed by federal regulation. The lower court rejected the PBM industry's claim, holding that because the regulations focus only

on PBMs and not on health plans, they are not under ERISA's purview and not preempted by ERISA. But the Tenth Circuit disagreed, reasoning that the Oklahoma law regulating PBMs had an "impermissible connection" to ERISA plans because it dictated the types of benefit designs and network rules PBMs could implement.

The denial of certiorari by the Supreme Court leaves the Tenth Circuit's holding in place, effectively limiting the scope of states' regulations of PBMs. In contrast, the Supreme Court's 2020 decision in *Rutledge v. PCMA*, 592 U.S. 80 (2020) upheld an Arkansas law regulating PBM reimbursement rates, finding that it did not interfere with plan design. The current line appears to be that states have leeway to regulate what PBMs pay pharmacies, but cannot regulate how a health plan must be designed or administered, as it is preempted by ERISA.

While the decision reinforces ERISA's dominance in regulating health plan design, it leaves unresolved questions about the extent of state authority over PBMs. Until Congress enacts legislation or the Supreme Court provides further clarification, states are likely to continue pursuing PBM regulations, and litigation will persist. In the meantime, plan sponsors must navigate an evolving legal landscape shaped by a patchwork of differing state rules.

### **ERISA ADVISORY COUNCIL OFFERS RECOMMENDATIONS ON QUALIFIED DEFAULT INVESTMENT ALTERNATIVES**

The Advisory Council on Employee Welfare and Pension Benefit Plans, also referred to as the ERISA Advisory Council (the "Council") produced a report in December of 2024 providing guidance on Qualified Default Investment Alternatives ("QDIAs"). The Council was established pursuant to Section 512 of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA") to advise the Secretary of Labor on issues relating to employee benefit plans. While the report was completed in December 2024, its release was delayed due to a freeze on the Council's activities and concerns about potential budget cuts under the Trump administration. The 2024 report may be read in its entirety [here](#).

QDIAs are adopted by plan sponsors for participant-directed, individual retirement savings plans like 401(k) or 403(b) plans to provide a default investment option for participants who do not affirmatively select their investments. Often, QDIAs are paired with automatic enrollment. QDIAs help ensure that participants who are not actively managing their investments still have a diversified portfolio and adequate savings for retirement. The Council convened to study "the effectiveness of QDIAs in both the accumulation and decumulation phases of retirement," as well as to review

prior QDIA rules issued through the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act of 2019 (regarding lifetime income fiduciary relief) and the SECURE 2.0 Act of 2022 (regarding automatic enrollment mandate for new plans).

Following their review, the Council made three (3) recommendations that aim to increase the success of QDIAs in the accumulation and decumulation phases of retirement.

### **Recommendations**

First, the Council recommended that the Department of Labor (“DOL”) issue a comprehensive “Tips” document to provide guidance to plan fiduciaries with regard to selecting and monitoring guaranteed and non-guaranteed retirement income options, inside and outside of a QDIA. The “Tips” document should include information necessary for fiduciaries to make prudent selections and monitor lifecycle funds. It should be guided by relevant statutes, regulations, case law, and stakeholder input. The rationale for this recommendation is that a Tips document could lead to better fiduciary decision-making, resulting in better outcomes for participants and beneficiaries, as well as greater transparency regarding fees and reporting structures. Further, recognizing that fiduciaries may be apprehensive of litigation risks associated with adopting more complex products such as insurance-based lifetime income solutions, the value of which may be difficult to quantify, the Council further recommended that the Tips document be informed by relevant recent case law regarding the prudence of fiduciaries’ investment selections.

Second, the Council recommended that the DOL “provide and update guidance to plan sponsors and other fiduciaries to improve participant education notices, transparency, and disclosures regarding the actual investments held within the QDIA in all phases of participation (accumulation, transition, decumulation) as well as non-guaranteed and guaranteed retirement income solutions offered within or outside the QDIA.” This recommendation seeks to address a number of issues regarding participants’ understanding of QDIAs. First, QDIAs may include non-traditional asset classes, such as insurance-based products and private markets, with which participants may not be familiar. Second, data suggests “explosive growth in the use of QDIAs.” Further, studies suggested that participants either do not read or do not understand notices and disclosures, with data reflecting a lack of understanding among participants regarding their QDIA investments, including longevity risks. The Council reasons that updating the available educational materials and offering new ones, such as a longevity risk calculator or illustrations of welfare improvements from annuitization, will benefit participants by helping them make more informed retirement decisions that will lead to better financial security in retirement.

Finally, the Council recommended that the Department amend ERISA's current "safe harbor" provision to allow the use of QDIAs as investment safe harbors for involuntary automatic rollovers to individual retirement plans. The Council reasoned that involuntary rollovers to individual retirement accounts tend to languish and accumulate low returns when the rollover is not in a balanced fund, target-date fund, or other diversified option. Rather, allowing QDIAs as an investment option for rolled-over funds would increase potential for capital growth of the retirement account. To illustrate, the Council gave the following example: a 25-year-old with a \$7,000 involuntary rollover to an IRA invested solely in low-risk capital preservation investments might earn 3% over 42 years, resulting in \$24,225 at age 67. Rolling over that same \$7,000 to a more balanced fund (for instance, 60% equity and 40% bonds) could earn 8% per year, resulting in \$177,376 at age 67.

## **DEPARTMENT OF LABOR RESCINDS OUTDATED BULLETINS AND REGULATIONS**

The Department of Labor's ("DOL") Employee Benefits Security Administration ("EBSA") recently issued three (3) new rules in Vol. 90, No. 124 of the Federal Register, rescinding longstanding regulations and guidance related to the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA") that it says are now obsolete. These rules will go into effect on September 2, 2025.

The first of these rules rescinds a number of Interpretive Bulletins ("IBs") the DOL published in 1975 shortly after the passage of ERISA. These publications were intended to provide guidance to the public on how to interpret and implement the new legislation. The IBs being rescinded are IB 75-2, IB 75-6, and IB 75-10. The DOL says that IB 75-2, which clarified when parties in interest have engaged in prohibited transactions, has been made obsolete by more comprehensive regulations on the same subject published more recently. IB 75-6, which relates to a plan's ability to make advance payments to fiduciaries to cover expenses under ERISA § 408(c)(2), was duplicated in the form of a final regulation in 1977. IB 75-10 discussed the effects of some ERISA provisions overlapping with Internal Revenue Service ("IRS") regulations. The DOL explains that this IB was made obsolete by the 1978 passage of Reorganization Plan No. 4 of 1978, which addressed and corrected these same overlaps in jurisdiction. This rule may be read in its entirety [here](#).

The next rule concerns a 2008 regulation from the Code of Federal Regulations providing a fiduciary safe harbor for the selection of annuity providers used for some benefit distributions. This protection was made redundant by a 2019 amendment to

ERISA that added a similar statutory safe harbor. This rule may be accessed in its entirety [here](#).

The final new rule removes a definition of “plan assets” that applied only to certain contracts issued by insurers to or on behalf of employee benefit plans before December 31, 1998. The DOL believes that keeping this definition in effect, when all contracts to which it applied have likely lapsed, is unnecessary. This rule may be read in its entirety [here](#).

These three new rules and the DOL’s justifications for each can be found

### **A FEW REMINDERS** **(Based on calendar-year plans)**

These reminders are for informational purposes only and are not intended to replace your regular compliance calendar as they do not include all deadlines that may be applicable to your plan.

## **AUGUST**

### **DEFINED CONTRIBUTION PLANS**

- **Second Quarter Pension Benefit Statements**
  - August 14, 2025 was the deadline by which benefit statements for the quarter ending June 30, 2025 must be sent to participants and beneficiaries.

## **SEPTEMBER**

### **HEALTH AND WELFARE PLANS**

- **Summary Annual Report (“SAR”)**
  - September 30, 2025 is the deadline by which health and welfare plans must distribute the SAR to all plan participants.

### **DEFINED BENEFIT PLANS**

- **Minimum Funding Contributions**
  - September 15, 2025 is the deadline by which minimum funding contributions are due.
- **Actuarial Certification**
  - September 30, 2025 is the last day by which the actuary must certify the 2025 AFTAP to avoid October 1, 2025 presumption that the 2025 AFTAP is less than 60%.

- **SAR**

- September 30, 2025 is the deadline by which the SAR must be distributed to all plan participants unless the defined benefit plan is covered by the Pension Benefit Guaranty Corporation's ("PBGC") termination insurance program; PBGC-covered DB plans are required to furnish their participants with an annual funding notice instead.

## **DEFINED CONTRIBUTION PLANS**

- **SAR**

- September 30, 2025 is the deadline by which the SAR must be distributed to all plan participants.

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