Q2 2025 Fiduciary Legal Briefing

On February 11, 2025, President Trump nominated Daniel Aronowitz to be Assistant Secretary of Labor as the head of the Employee Benefits Security Administration (EBSA), the sub-agency which oversees ERISA regulation of retirement plans.

Aronowitz is a critic of “excessive fee and imprudent investment lawsuits against plan sponsors that followed best fiduciary practices.” In his view, these lawsuits “have become a lucrative way for a small group of plaintiffs’ firms to monetize ERISA’s fiduciary provisions. The key problem is that many fiduciary breach cases are allowed to proceed into expensive discovery even when the plans follow fiduciary best practices.”

It remains to be seen what reform proposals will emerge once Aronowitz is confirmed, although the desire to curb meritless ERISA fiduciary litigation may face headwinds outside of EBSA’s control.

Notably, on April 17, 2025, the United States Supreme Court issued a decision in Cunningham v. Cornell University that may make it easier for plaintiffs to bring ERISA claims for violation of the “prohibited transaction” rules. ERISA’s prohibited transaction rules are designed generally to protect plan participants from transactions that could give rise to conflicts of interest. For example, it is a prohibited transaction for a fiduciary to cause a plan to engage in a transaction with a service provider, but there is a corresponding prohibited transaction exemption that permits such transactions if the services were necessary for the operation of the plan and no more than reasonable compensation was paid.

In Cunnigham, the Court held that plaintiffs could state a claim and potentially survive a motion to dismiss merely by alleging the existence of a prohibited transaction (e.g., a transaction between the plan and a service provider) without having to also plead the unavailability of a corresponding prohibited transaction exemption (e.g., that the services were either not necessary or for unreasonable compensation). While there is risk that this decision may encourage more ERISA lawsuits and yield more settlements because of defendants’ reasonable desire to avoid costly and time-consuming discovery, the Court believes that this risk can be mitigated because “district courts can use existing tools at their disposal to screen out meritless claims before discovery.”

No matter how ERISA trends may shake out, the upshot for responsible plan fiduciaries is unchanged. Regardless of litigation risk, responsible plan fiduciaries should continue to select and monitor investment options for the purpose of maximizing risk adjusted financial returns and otherwise maintain processes to satisfy their ERISA fiduciary obligations.