4 Benefits And Exec Comp Policy Moves From 2026's 1st Half

By **Kellie Mejdrich** · Listen to article

Law360 (July 6, 2026, 7:49 PM EDT) -- The U.S. Department of Labor's proposal for a 401(k) fund safe harbor and the U.S. Securities and Exchange Commission's proposal to change the reporting framework for public companies are among the top policy developments from the first half of 2026 that drew benefits and executive compensation attorneys' attention.

Here are four recent developments attorneys may want to know.

DOL Proposes 401(k) Fund Safe Harbor

Benefits attorneys said the most important policy development was a **March 30 proposal** from the DOL's Employee Benefits Security Administration that would establish a safe harbor process for fiduciaries to follow when selecting investment funds.

Attorneys said EBSA's proposed rule provides new guidance on how to meet fiduciary duties under the Employee Retirement Income Security Act when choosing a given fund in a retirement plan's investment roster. If finalized, the rule would give legal cover for plan fiduciaries against allegations that they breached ERISA's fiduciary duty of prudence with respect to a given investment, by setting out a process for managers to follow. That process also directs fiduciaries to focus on six factors when considering a given investment: performance, fees, liquidity, valuation, performance benchmark and complexity.

Anne Greene, an employee benefits partner at Saul Ewing LLP who represents employers, said the proposal was "responsive to this constant ask by plan sponsors just to give us clear guidance" on how to select investment funds.

"This is a framework which is incredibly process-oriented," she said of the proposal.

Ali Khawar, who headed EBSA during former President Joe Biden's administration, was among the more outspoken critics of the proposal, and signed on to comment letters from a coalition of consumer groups and from a group of former DOL officials detailing problems with what the agency had put forward. The proposal ultimately drew **more than 47,000 comments**.

"There's an issue with the structure of the safe harbor, that it gives this — what they call a presumption of prudence. And I think they're not very clear on how limited the department's authority is there, and I think that risks really making this something that people could perceive as providing more relief than it does," Khawar said.

Khawar said he was also critical of the safe harbor's reliance on a set of factors to demonstrate compliance with ERISA's prudence duties.

"Expecting that you can have, whether it's six or eight, or whatever the number is, factors, that are sufficient to cover all investment decisions ... I'm just not sure that they can get there," Khawar said.

EBSA Enforcement Shift Includes More Guidance

Another shift in policy in the past six months has to do with how attorneys see EBSA enforcing ERISA, with practitioners noting that they've seen a change from regulators after the administration outlined a reordering of priorities.

The policy shift has come in the form of some additional guidance, including a **field assistance bulletin from April** and recent **public remarks** from EBSA chief Daniel Aronowitz, as well as just from attorneys reporting fewer overall interactions with DOL's enforcement staff.

Jennifer Neilsson, a partner at King & Spalding LLP who advises asset managers on employee benefits compliance issues, took note of the shift at the DOL as a major recent policy development.

"A considerable part of my practice has been assisting financial institutions in really thorny Department of Labor enforcement actions [and] examinations, and there has been a history of focusing on issues that may not bear on participant returns. And so it's really encouraging to see them focusing on issues that really affect participants," Neilsson said.

Neilsson said she's seen enforcement activity dropping off: "I've seen less enforcement actions altogether than I have seen at any other time in my career," she said.

SEC Proposes Less Executive Comp Disclosure for More Cos.

Executive compensation attorneys also highlighted the SEC's recent proposed changes to streamline disclosure rules so that reporting requirements are more proportionate to a company's size, which could result in many companies having to provide fewer details to regulators on executive compensation.

J. Michael Snypes Jr., a partner in Debevoise & Plimpton LLP's executive compensation and benefits group, called the May 19 proposed rule from the SEC a major development in the first half of the year. He said if finalized, the new disclosure framework "would significantly expand the number of companies that are eligible for scaled or reduced executive compensation disclosure."

Snypes added he's watching to see how investors respond to the rules.

"I think what companies are really going to be interested in is, does the reduced disclosure obligation mean reduced investor scrutiny of executive compensation practices?" he said.

Comments on the proposal are due July 20.

Regulators See Trump Accounts Outside ERISA

Another important development for practitioners was a June 17 **technical release from EBSA** stating that Trump accounts are generally not subject to ERISA.

The statement made clear that employer contributions to a child's Trump account generally wouldn't be subject to Title I of ERISA, which outlines reporting, disclosure, participation, vesting, fiduciary standards, and criminal and civil enforcement under the law.

Jennifer Kraft, an employer-side partner in Seyfarth Shaw LLP's employee benefits practice group, said the move seemed to align with past guidance on health savings accounts.

"It seems like it's more along the lines of health savings accounts, which the Department of Labor has said do not need to be considered ERISA plans either, as long as you tell people, these are not ERISA plans," Kraft said.

Former EBSA chief Khawar was critical of the statement and its potential impacts on other types of employer contributions, though he noted how Trump accounts in particular had different protections such as certain investment restrictions spelled out in the statute.

Even still, Khawar said his preliminary view was that "the fact that an employer can make contributions to an account, even if it's for a dependent, and not have that arrangement treated as an ERISA plan is a pretty significant departure from a line that the department had very consistently maintained in prior administrations."
###