401(k) Plans, 2025, and You, The 401(k) Plan Sponsor

By Ary Rosenbaum, Esq.

I remember as a kid in the 1980s, being fascinated that 2000 was upon us. Now, we are almost 25 years in, and 2025 is just around the corner. The beauty of the 401(k) plan business is that it's constantly changing, it's way different than what it was when I started in 1998. As plan sponsors, you need to keep a step ahead of changes that may or may not happen with a 401(k) plan. So this is what this article is all about.

New year and new Administration

What is old is new again, as Donald J. Trump will be President again on January 20th. It's historic since you'd have to go back to Grover Cleveland to deal with a President, who was President before. Regardless of your politics, the change between Joe Biden and Donald Trump will be substantive in style, and policy. There will be many policy changes that will certainly impact 401(k) plans. Some are predictable, and some are guesses. Yet, it's important to prepare for what may happen.

The never-ending saga of a new fiduciary rule

I like a good soap opera. My favorite show of all time is Dallas. I've been watching The Bold and The Beautiful, on and off since 1989. The never-ending saga of implementing a new fiduciary rule is not a good soap opera. The Employee Retirement Income Security Act of 1974, (ERISA) as stated, was signed in 1974. It went into effect in 1976 and the regulations date back to around that time. So what was going on with retirement plans in 1974, predates 401(k) plans, that were only a thing in the 1980s. Regulations have to be updated, but the Department of Labor (DOL) has had the unfortunate task of the last 20 years, of trying to develop regulations to better define what a fiduciary is, especially in dealing with daily valued 401(k) plans. The problem is that elections and court cases have thrown a monkey wrench or two into having a rule for modern times. The latest rule was supposed to be implemented in September, but court challenges have delayed the implementation. Now the election results will likely further delay it, and quite possibly a withdrawal of the latest, new rule. The problem is that these rule rollouts take time and thanks to term limits, Trump will be almost a lame duck in January since he's precluded from running again. If the DOL takes the time and doesn't roll out a new rule before 2026, an election in 2028 could wreak havoc again.

The ESG rule is doomed

We can take bets on whether the Trump administration will pull the latest fiduciary rule, but no one will place odds on the withdrawal of the ESG rule. The ESG rule, or Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, is a rule from the DOL, implemented under the Biden administration that allows plan sponsors to consider environmental, social, and governance (ESG) factors when making investment decisions. ESG is a framework used to assess an organization's business practices and performance on various sustainability and ethical issues. It also provides a way to measure business risks and opportunities in those areas. So ESG funds aren't likely to invest in oil, tobacco, and casino stocks. What's the deal? It allowed plan sponsors to consider other factors in selecting investment returns, than best return. The problem with the rule is that it allowed, something other than investment return, as consideration. It injected politics into what I think, should be an apolitical decision. If participants want to invest in ESG investments, they should be given the chance to do so in a self-directed brokerage account. ESG funds aren't "woke" investments (I think you should read what woke means before claiming you're anti-woke), the problem is I don't see two mutual funds out there, with the same idea as what is ESG. There are many things that Trump may or may not do, but that ESG rule will be eliminated within January 20th. I drive a 2012 Toyota Prius, eat mainly vegetarian, and recycle my cans, but I don't think the ESG rule was a good idea from a plan participant's point of view. We have a retirement crisis in this country and maximum return should be the main focus.

Bitcoin in 401(k) plans will happen

As it stands right now, Bitcoin is around $100,000 a coin. I first bought it when it was about $11,000. Bought it for $69,000 and down to $16,000, and back up to where it is now. While Bitcoin is the greatest financial investment I ever made, I was against it being added to 401(k) plans. Why? Well, the DOL had an issue with it. Plan providers that wanted to offer Bitcoin in 401(k) plan were probably developing their plans when Bitcoin was climbing toward $69,000 and released those plans when it was $23,000 a coin. Timing is everything. The volatility of Bitcoin made a really bad investment and there were certain issues regarding security since virtual coins can only be held in a virtual wallet, which can be hacked. While I understand the trepidation of offering Bitcoin within a 401(k) plan as a brokerage account option, window, or actual investment, a lot has happened since the DOL advised that they may go after plan sponsors that offer Bitcoin within their 401(k) plan. Trump, in his bid to reclaim the White House, pursued a pro-crypto position, which was handsomely rewarded by contributions from investors and the crypto industry. More importantly, the Securities and Exchange Commission approved several Bitcoin and Ethereum spot Exchange Traded Funds (ETFs). ETFs can easily be held in custodial accounts such as a 401(k) trust, so the need to house digital coins in a digital wallet may not be an issue if Bitcoin ETFs are allowed. Lastly, Bitcoin is less volatile with so much institutional money behind it. Returns won't be as volatile as they have been. I expect the DOL under a second Trump administration will allow Bitcoin within 401(k) plans, whether that's the actual Bitcoin or a spot ETF.

Litigation will still be a thing.

Whoever is President, ERISA litigators still have to eat. They will still ponder novel ideas on how to sue plan fiduciaries. This past year, there was a concentration on suing large 401(k) plans and the use of forfeitures to either pay plan expenses or using it to reduce employer contributions. I don't litigate, so I don't need to sit at my table, devising new schemes to sue plan sponsors. Perhaps 401(k) plans continuing to offer ESG funds after the withdrawal of the ESG rule might be an avenue. Regardless, you need to remain vigilant in how you handle your 401(k) plan.

Tax legislation will affect 401(k) plans

With Trump in the White House and Republicans controlling both houses of Congress until 2026, expect some new tax legislation that will likely include changes to retirement plans, including 401(k) plans.

Some changes we know in 2025

Certain 401(k) changes were going into effect in 2025, whoever was President, thanks to SECURE 2.0. The standard deferral limit for 401(k) plans to $23,500 in 2025. That's up from $23,000 in 2024. For most folks 50 and up, the catch-up contribution limit stays at $7,500 in 2025. That's the same as 2023 and 2024. Participants aged 60, 61, 62, and 63 get a super catch-up contribution, thanks to SECURE 2.0. Essentially, these employees can stash up to an extra $11,250 instead of the usual $7,500 in their 401(k). For 401(k) plans that were not in effect before the signing of SECURE 2.0, many 401(k) Plan Sponsors will be required to automatically enroll new employees in 401(k) plans. Lastly, in 2024, Plan sponsors were required to extend plan access to long-term, part-time employees who worked at least 500 hours annually for three consecutive years. That threshold drops to two consecutive years in 2025.

The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557

http://www.therosenbaumlawfirm.com