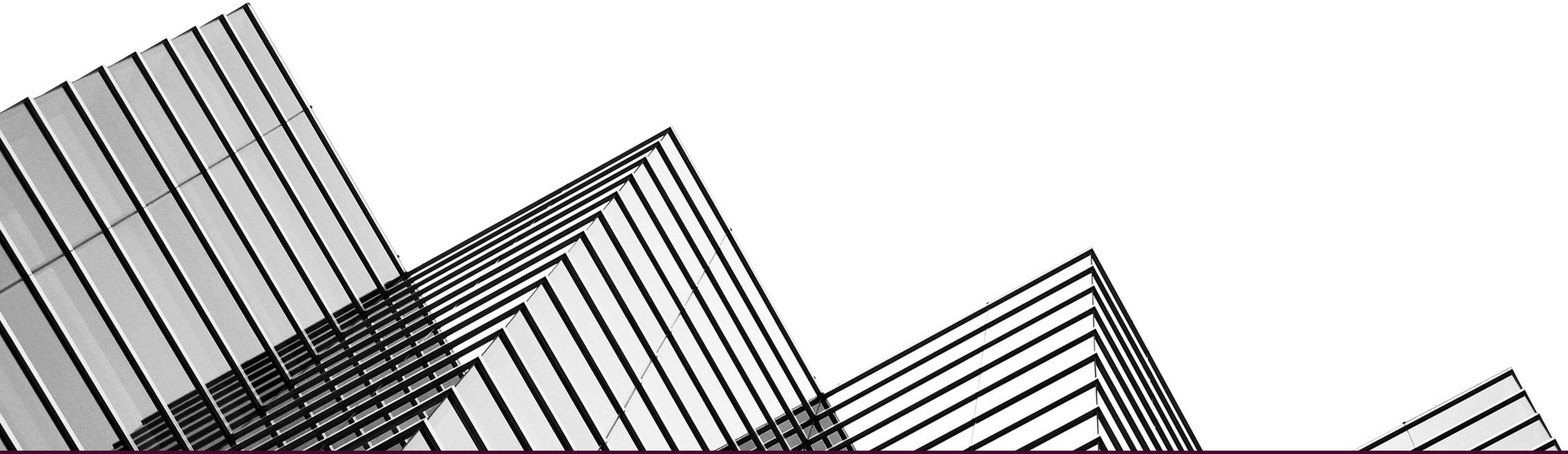
Trust Company Oklahoma

Navigating Retirement Plans

Fiduciary Responsibilities & Secure 2.0 Highlights



Understand Your Role as a Fiduciary

RETIREMENT PLANS ARE SCRUTINIZED MORE THAN EVER

ERISA standards of conduct

Department of Labor (DOL) and Internal Revenue Service (IRS) actively auditing and issuing guidance

Increased lawsuits

Their message is clear:

If you're sponsoring a retirement plan, you are expected to manage it with the same rigor as any other critical business function

Increased Litigation & Regulatory Scrutiny

LAWSUITS ARE BOOMING AND THEY’RE GETTING MORE SOPHISTICATED

Over the last two decades, there's been a sharp uptick in ERISA lawsuits, particularly around excessive fees, underperforming investment options, and forfeitures. Plaintiffs’ firms are well-resourced, and no plan size is immune, even smaller employers have been targeted.

ERISA Litigation Cases by Year (2020 - 2024)

YEAR	NUMBER OF CASES
2020	~210 (peak year)
2021	~150
2022	~120
2023	~110
2024	~130

Source: Groom Law Group, Gibson Dunn, Wilkie Farr & Gallagher LLP

Breakdown of Claims by Allegation Type in 2023

ALLEGATION TYPE	NUMBER OF COMPLAINTS
Excessive Recordkeeping Fees	28
Deficient Investment Performance	23
Excessive Investment Fees	17
Wrong Share Class	11
High Fee/Underperformance of Active TDFs	10
Excessive Float Income	9
Proprietary Funds	7
Forfeiture Claims	5
Stable Value Fund Claims	4
Excessive Managed Account Fees	1
Other (e.g., self-dealing)	1

Source: Encore Fiduciary

Good plan governance is your best protection

WHO is a Fiduciary

Any person who exercises discretionary authority or control over plan assets or administration, or gives investment advice for a fee

Identified by actions and responsibilities, not titles

Fiduciary responsibilities can go beyond the committee

PLAN FIDUCIARIES

Employer
- Plan Sponsor
- Plan Administrator
- Fiduciary

Committee
- Appointed by Employer or Plan Sponsor
- Responsible for Plan Oversight
- Fiduciary

Service Provider
- Trustee
- ERISA 3(21) 3(38), 3(16)
- Fiduciary

ERISA Fiduciaries

Employee Retirement and Income Settlement Act

3(16)	3(21)	3(38)	Trustee
ADMINISTRATIVE FIDUCIARY	CO-FIDUCIARY	DISCRETIONARY FIDUCIARY	PLAN STEWARD

KNOW WHO'S ACTING AS A FIDUCIARY

Many plan sponsors assume their service providers are acting as fiduciaries

In reality, not all providers take on fiduciary responsibility

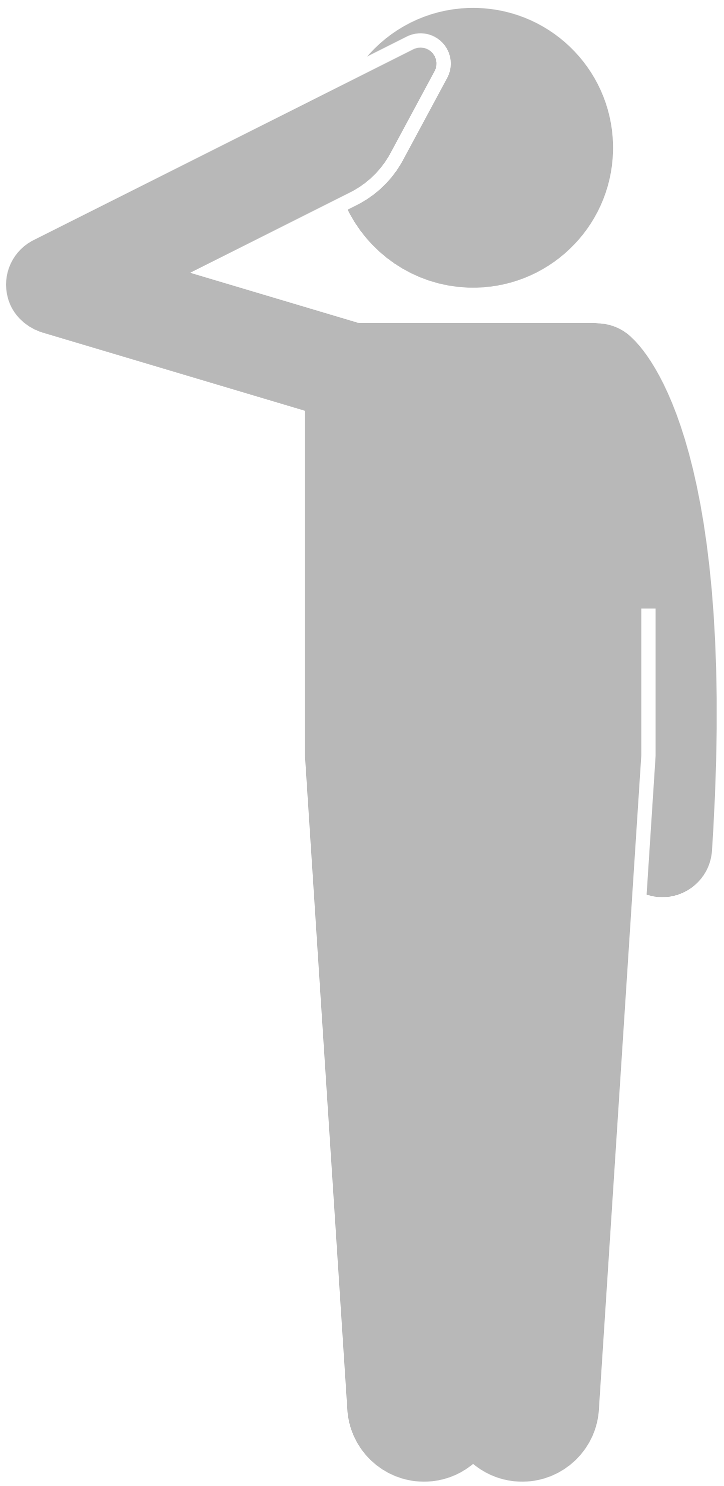
It’s critical to confirm the scope of their services in writing

If your provider is not acting as a fiduciary, you are fully responsible for the following fiduciary tasks with no expert oversight:

- Selecting and monitoring investments
- Ensuring plan operations comply with laws, regulations, and plan documents

🔎 **Always review service agreements and roles carefully**

BASIC Fiduciary Duties



Act SOLELY in the interests of the participants and their beneficiaries **(duty of loyalty)**

Perform duties with the care, skill, and diligence of a prudent person **(duty of care)**

Pay only reasonable and necessary expenses for the plan

Follow the terms of the plan

Diversify plan investments

Your LIABILITY

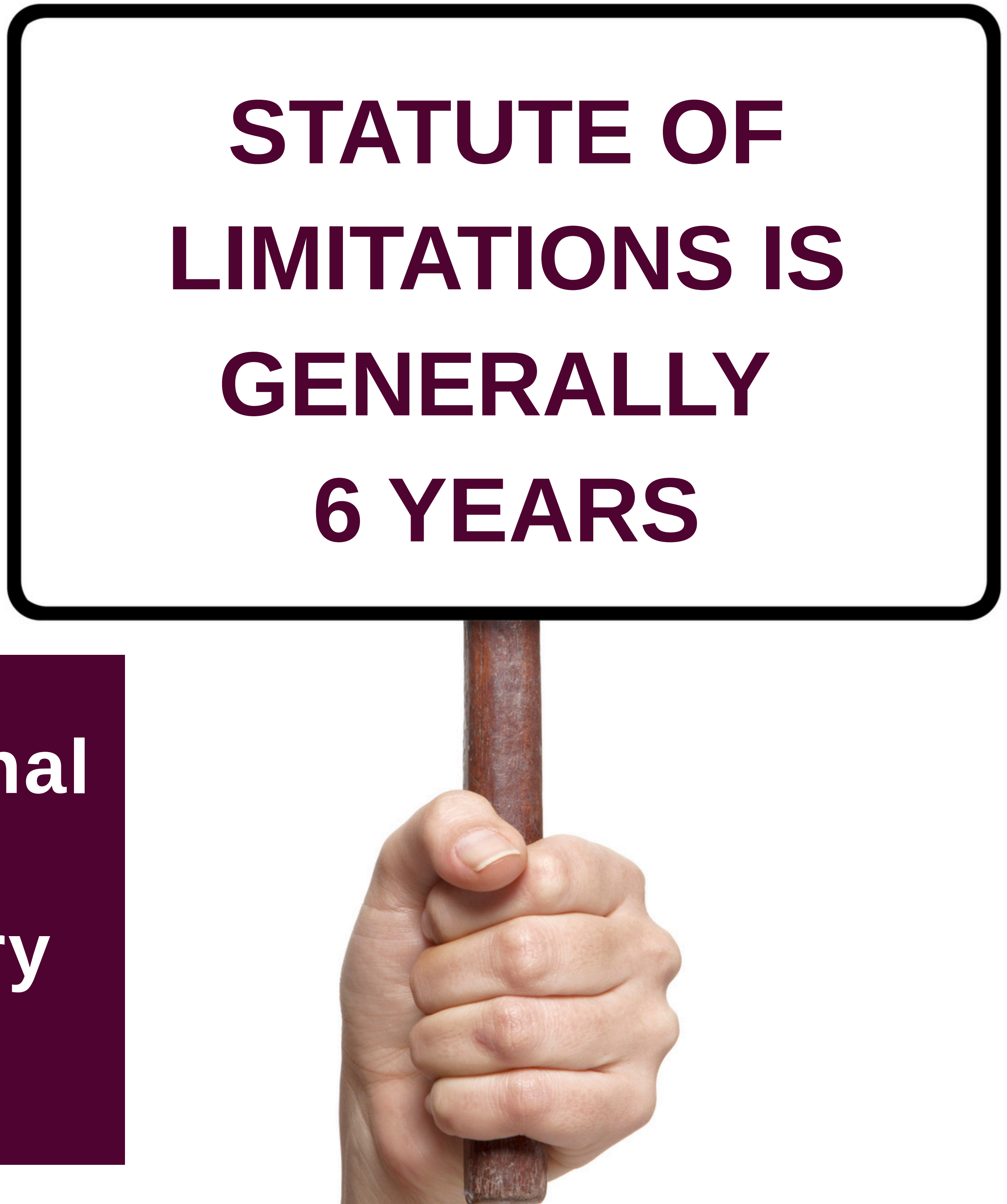
Fines

Personally liable to restore plan losses

Removal from fiduciary position

Ban on future service as a fiduciary

Imprisonment due to criminal intent



Although Plan Sponsors can hire an external fiduciary to help, they cannot absolve themselves completely from their fiduciary liability and duty

Co-Fiduciary LIABILITY

A fiduciary will be liable for another fiduciary's violation if:

- Participates in or acts to conceal a violation
- Permits the other fiduciary to commit a violation
- Has knowledge of another fiduciary's violation and fails to take reasonable steps to remedy

MITIGATE FIDUCIARY LIABILITY

- Fidelity bond, required by ERISA and helps to restore plan assets when an act of fraud or dishonesty is committed against the plan by someone covered by the bond

- Fiduciary liability insurance, optional coverage and helps protect plan sponsors and plan fiduciaries against claims of breach of fiduciary duty

- 404c protection, optional and shifts the responsibility for investment outcomes shifts from the employer/fiduciary to the participant when compliance is met

Plan Governance

- Oversight
- Documentation
- Administration
- Communication

OVERSIGHT

Investment Selection & Ongoing Due Diligence
Plan sponsor may handle directly or delegate to a 3(21) or 3(38) investment fiduciary

Service Provider Monitoring
Regularly review:

- Service agreements
- Investment performance reports
- Fee disclosures and benchmarking data
- SOC 1 / SOC 2 reports
- Cybersecurity policies

Cybersecurity Adherence
Service providers and **Plan Sponsors** must adhere to Department of Labor (DOL) best practices for retirement plan cybersecurity

CYBERSECURITY IS A FIDUCIARY DUTY

In 2021, the DOL issued guidance that treats data security and breach response as core fiduciary responsibilities

If participant data is lost or misused, plan sponsors can be held liable

Ensure your service providers follow cybersecurity best practices

Educate employees on safe practices

DOL BEST PRACTICES

https://www.dol.gov/agencies/ebsa/key-topics/retirement-benefits/cybersecurity/best-practices

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FEES & EXPENSES

Fiduciary must ensure plan service costs and investment expenses paid by the plan are reasonable in light of the services provided; both costs and quality are important factors

BEST PRACTICE: Review the plan sponsor 408(b)(2) fee disclosure annually and ask each provider to clearly outline all compensation received for their services

BEST PRACTICE: Conduct an annual benchmarking of all plan service costs, ensuring each service is clearly identified with its specific cost, including the plan's net weighted average expense ratio

FEES & EXPENSES

(CONTINUED)

BEST PRACTICE: Ensure the plan offers the lowest-cost share classes available and eliminate unnecessary revenue sharing and hidden fees within the investment menu

BEST PRACTICE: Conduct periodic request for proposal (RFP) or request for information (RFI) to assess the competitiveness of plan service providers; even if no change is made, formally benchmarking providers demonstrates active, prudent oversight of the plan

DOCUMENTATION

Maintain a Centralized Fiduciary File

Include key governance and oversight materials such as:

- Committee charter
- Investment Policy Statement (IPS)
- Fiduciary training records
- Meeting minutes
- Signed fiduciary appointment letters
- Plan and investment review reports
- Fee benchmarking information
- All other plan-related documents and correspondence

📁 **Well maintained documentation is critical for demonstrating prudent fiduciary process**

MEETING MINUTES

- If it’s not documented, it didn’t happen
- Determine who will take minutes
- Document process used to carry out fiduciary responsibilities
- Focus on decisions reached, factors considered, and reasons why

GOVERNANCE DOCUMENTS

- Plan Sponsors must comply with all governance documents formally adopted by the organization
- These documents should be practical and easy to follow
- Better to create a consistently followed policy than one that is complex and ignored
- Failure to adhere to a documented process creates unnecessary fiduciary risk

ADMINISTRATION

Key Tasks Include:

- Maintain current plan documents and amendments
- File required IRS forms and schedules (e.g., Form 5500)
- Complete annual compliance testing
- Manage missing participants
- Ensure timely deposit of employee contributions
- Avoid prohibited transactions and other fiduciary breaches (conflicts of interest, self-dealing, etc.)

🛠️ **Some administrative tasks are handled by your TPA or recordkeeper, but the plan sponsor retains oversight responsibility**

Don't Forget:

Monitor regulatory deadlines to stay in compliance

MISSING PARTICIPANTS

DOL SEARCH GUIDELINES:

1. Use certified mail
2. Check related plan & employer records
3. Check with designated plan beneficiary
4. Use electronic search tools
5. Consider other search methods

COMMUNICATION

Responsibilities:
Enrollment notification
Provide all required plan notices (e.g., fee disclosures, safe harbor, QDIA, etc.)
Offer ongoing participant education to support informed retirement decisions

Leverage Provider Resources:
Understand and utilize the communication, education, and support tools offered by your recordkeeper or service providers

💬 **Clear, consistent communication helps drive engagement and plan success**

GETTING IT RIGHT MEANS

Understanding your fiduciary duties	Mitigate primary risks	Implement good plan governance

You don't need to be perfect, just proactive

A clear process and documented decisions are your best protection

Secure 2.0 Provisions

& What You Need to Know

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SECURE 2.0 impacts over 90 sections of the Internal Revenue Code, with provisions phasing in over multiple years

Effective	Secure 2.0 Provision
Distributions after 12/31/2022	RMD age increased from 72 to 73 In 2033, RMD age will increase again to 75
Distributions after 12/31/2023	Involuntary cash-out limit increased from \$5,000 to \$7,000
Effective plan years after 12/31/2024	Long Term Part Time employees: service drops from 3 years to 2 years Mandatory auto enrollment for new plans established after 12/29/2022
Effective taxable years after 12/31/2024	"Super" catch-up contributions: higher limits for ages 60–63
Effective taxable years after 12/31/2025	Roth catch-up contributions required for employees earning over \$145,000

Super Catch-Up Contributions (ages 60–63)
Effective taxable years after 12/31/2024

Individuals aged 60–63 as of 12/31 can contribute the greater of:

$10,000 or

150% of the standard catch-up contribution limit

2025 Limit:

Deferral limit	$23,500
150% of $7,500	$11,250
Total deferral limit	**$34,750**

Optional, plan sponsors are not required to allow higher catch-up contributions

Roth catch-up contributions required for HPIs
Effective taxable years after 12/31/2025

Catch-up contributions made by Higher-Paid Individuals (HPIs) must be made on a Roth basis

Who qualifies as an HPI?
Employees with FICA wages > $145,000 in the prior calendar year

- Defined as Social Security wages reported in Box 3 of IRS Form W-2
- Indexed for inflation
- Example: If a participant earns more than $145,000 in FICA wages in 2025, 2026 catch-up contributions must be Roth

Important Clarifications:
If a participant has no FICA wages (e.g., a partner with only self-employment income), they are not considered an HPI

The $145,000 threshold applies only to FICA wages from the current plan sponsor and is generally not aggregated across other employers or plans

Do plan sponsors have to allow Roth contributions?

If Roth is not allowed:

Only non-HPIs may make catch-up contributions

Plan sponsors must:

Monitor who qualifies as an HPI

Prevent HPIs from exceeding the §402(g) deferral limit (e.g., $23,500 in 2025)

⚠ *Without Roth, catch-up contributions for HPIs are not permitted*

Must HPIs elect Roth for their catch-up contributions?

Plans may deem (default) Roth catch-up elections for HPIs

- The opt-out option must be available to participants
- Applies even if participant only elected pre-tax catch-up
- Works even if plan normally requires separate elections

If no deemed (defaulted) election:

- Catch-up deferrals may be automatically stopped once §402(g) limit is reached
- Must have affirmative Roth election to continue

✔ *Decide, document, and communicate your plan's approach*

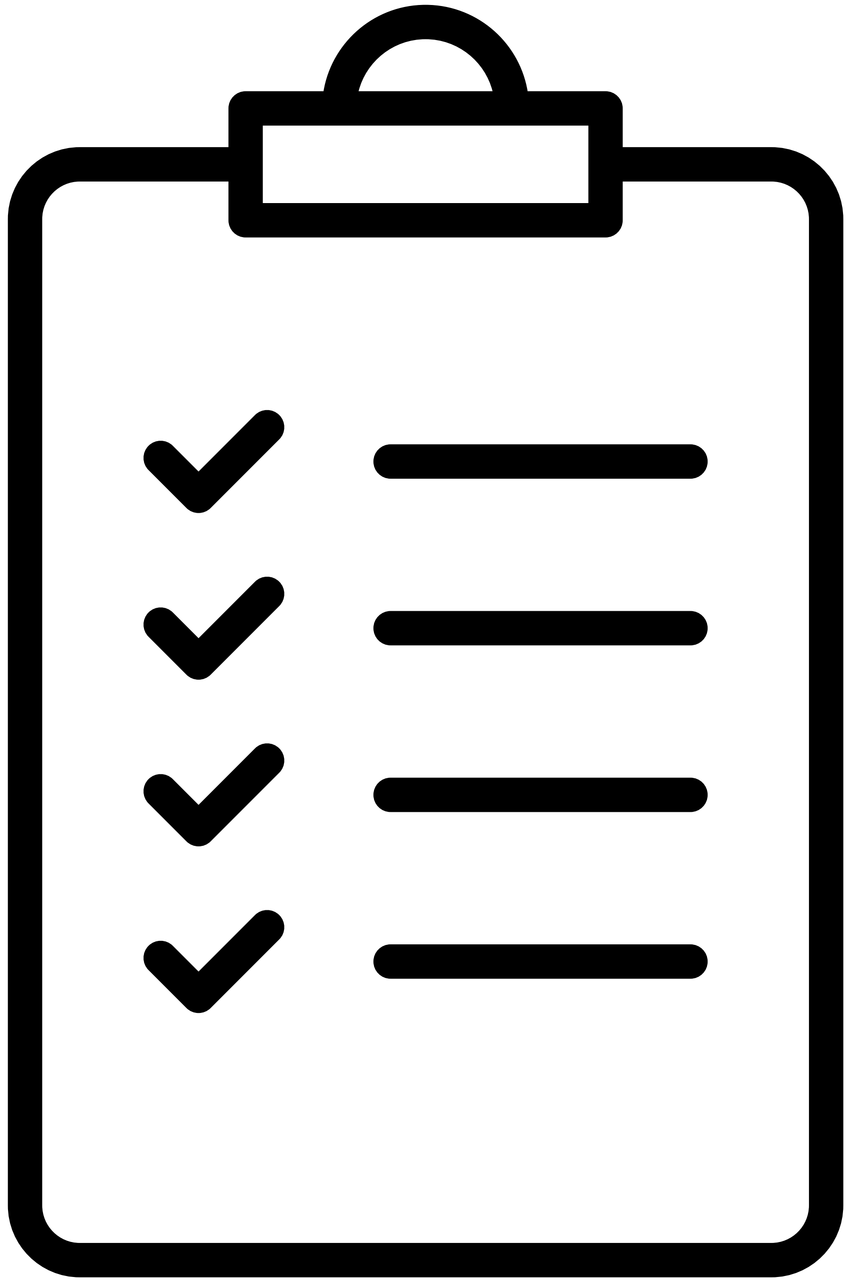
Action Steps for Plan Sponsors

Coordinate with payroll providers
Ensure systems and processes allow eligible participants to make elections

Engage your service providers
Confirm how limits will be tracked and monitored

Establish internal procedures
Develop and document processes for eligibility, tracking, and compliance

Communication
Communicate with eligible participants



Looking Ahead: SECURE 3.0

What to Expect

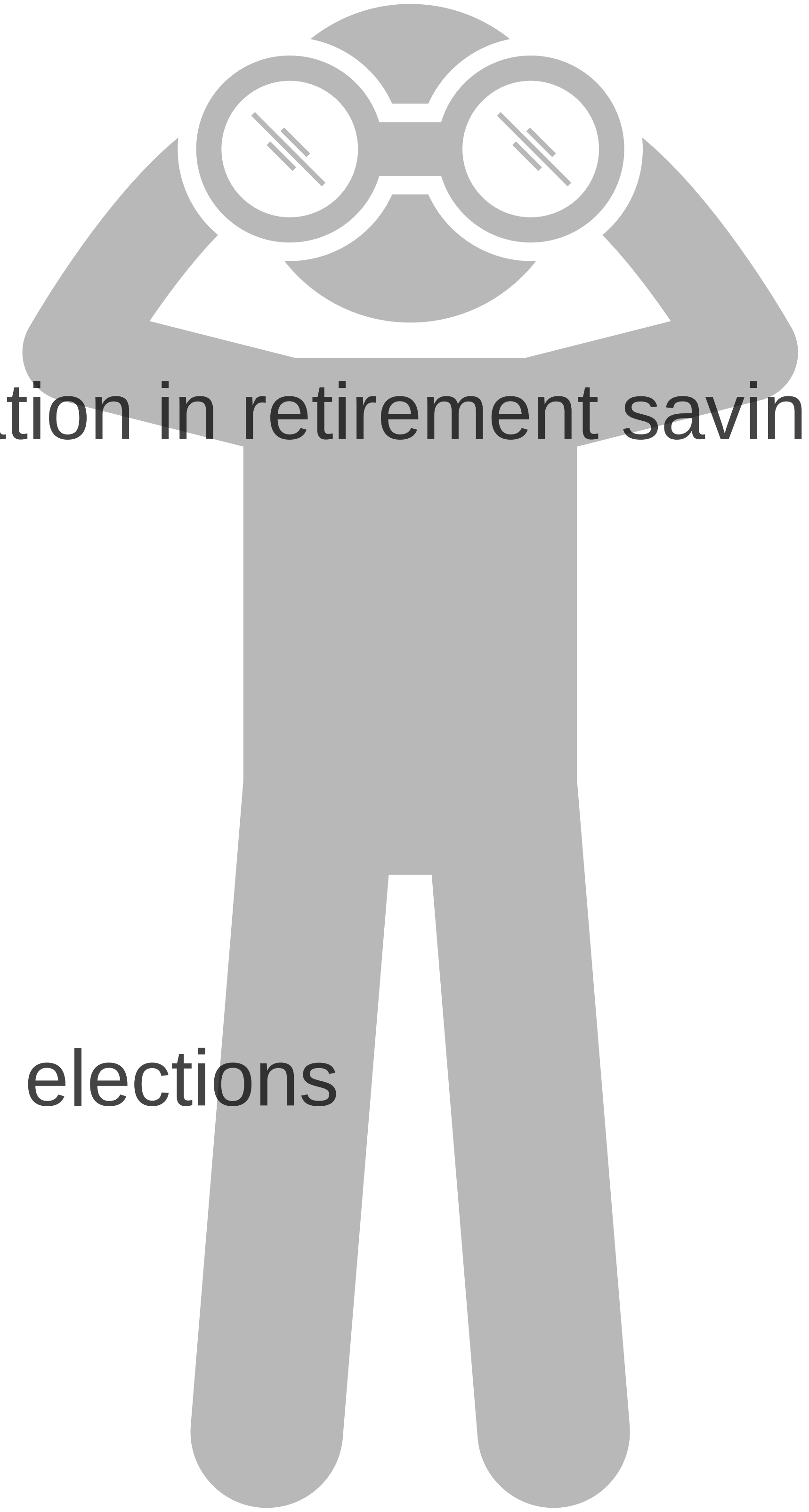
SECURE 3.0 is projected to build on the original SECURE Act and SECURE 2.0

Potential Focus Areas

- Expanded retirement plan coverage
- Continued efforts to increase access and participation in retirement savings plans
- Broader automatic enrollment mandates
- Clarification of SECURE 2.0 provisions

Timing

- No formal timeline
- Unlikely to move forward before the next mid-term elections



Questions?

Trust Company Oklahoma

Stacey Curtis, CTFA
Senior Vice President
Director of Retirement Plan Solutions
SCurtis@trustok.com | 918.744.0553

Holly Ferguson, ERPA, QPA, QKA®
Senior Vice President
Retirement Plan Solutions
HFerguson@trustok.com | 918.744.0553