Benefits Report April 2026

IN THIS ISSUE...

Actuarial Equivalence Litigation Update: Courts Still Struggling with Whether "Reasonableness" Is Required

Robert F. Schwartz

It has been nearly seven years since we last wrote about "actuarial equivalence" litigation—a new flavor of ERISA class action lawsuits that emerged in 2018. (See *Defined Benefit Plan Actuarial Equivalence Litigation – A Formidable Threat or An Unfounded Theory? (https://www.truckerhuss.com/2019/08/defined-benefit-plan-actuarial-equivalence-litigation-a-formidable-threat-or-an-unfounded-theory/))* More than three dozen such lawsuits have been filed to date, but we still do not have definitive answers to the fundamental questions at the heart of this litigation: what does ERISA §205(d)(2)(A), which requires "actuarial equivalence" between single-life and joint and survivor annuity options,[1] actually mean—and what must plan sponsors do to comply? A spate of recent court decisions—mostly favorable to defendants—shows that the federal courts are still struggling with these questions, and ultimately they will likely need to be decided by the Supreme Court.

Most of the actuarial equivalence cases have been brought against defined benefit pension plans sponsored by large corporations and their fiduciaries: American Airlines, PepsiCo, Kellogg Company, Intel, U.S. Bancorp and FedEx are among the notable defendants. A few have been brought against university plans and multiemployer pension plans. Almost all of the lawsuits share a common allegation: that the actuarial assumptions—in particular, the mortality table used to estimate how long a participant is expected to live—used to calculate "joint and survivor" (and sometimes other) benefit options are outdated and unreasonable, resulting in reduced pension payments to retirees and their spouses.[2] These reduced payments, the lawsuits allege, do not satisfy ERISA's "actuarial equivalence" requirement and result in an impermissible forfeiture of a participant's accrued benefit, in violation of both Section 1055(d) as well as 29 U.S.C. 1053(a).

A little actuarial background may be helpful. A single-life annuity, or "SLA," is typically a monthly benefit amount paid out solely over the life of the plan participant, while a joint and survivor annuity, or "JSA," is paid out over *two* lifetimes—those of the participant and their spouse. Because of the likelihood that JSA payments

will last longer than SLA payments (*i.e.*, if the spouse survives the participant), plans typically pay smaller amounts to participants who elect JSAs, so that the two types of benefits are "actuarially equivalent." To achieve this actuarial equivalence, plans employ either a set of assumptions—a specific mortality table along with an interest rate, which is necessary to calculate the present value of the expected stream of benefit payments—or a table of percentages (sometimes a single percentage) that in turn was derived from mortality and interest assumptions. So, for example, a participant who has earned an SLA benefit of $1,000 a month might have the option under the plan terms of choosing a 50% JSA that pays him $900 per month for life and his spouse $450 per month for her life if she survives him.[3] Under the plan's assumptions, the JSA and SLA are said to be "actuarially equivalent."

In fact, ERISA *requires* that the primary types of JSAs offered to married participants—known as the qualified joint and survivor annuity and qualified optional survivor annuity—be the "actuarial equivalent" of an SLA "for the life of the participant."[4] But the statute provides no further elaboration on what "actuarial equivalent" means, or how it must be calculated, leaving plan sponsors to their own devices to choose the method by which actuarial equivalence is determined. Many pension plans still use mortality tables from the 1970s or 1980s, which may have been the most recently available mortality tables at the time the provisions were put in place, and ERISA contains no express requirement that the tables must be updated to reflect more current mortality. Using a more recent mortality table (with longer life expectancy) will *generally* result in higher benefits for most participants, as a lower reduction is then needed to cover the cost of the joint annuitant's expected benefit. In the example above, the retiree's $1,000 monthly benefit might only be reduced to $950 per month, and his spouse's to $475, if a more recent mortality table is used.

All of that said, courts have now wrestled for eight years with the question of whether the ERISA provision requiring actuarial equivalence in this context includes an implicit requirement that the underlying actuarial assumptions be "reasonable." The word does not appear in the relevant statutory provision. Nevertheless, a number of federal district courts have ruled that there *is* an implicit "reasonableness" requirement and allowed actuarial equivalence cases to proceed beyond the pleadings stage.[5] A number of other courts, however, have hewn more strictly to the law's plain language and ruled that there is no such requirement, dismissing cases that relied on an allegation that a plan's mortality assumptions were outdated and therefore "unreasonable."[6]

This year has started with three rulings for defendants and one for plaintiffs, and one that had a little something for both sides. In April, Judge Edward Davila of the Northern District of California granted summary judgment for Intel Corporation, ruling that actuarial equivalence "merely reflects a mathematical principle, devoid of an implied 'reasonableness' requirement."[7] The court noted that Congress used the word "reasonable" in many other sections of ERISA, and its absence in the actuarial equivalence provision at issue indicated that Congress did not intend to include it there.[8] A month earlier, Judge Cristian Stevens of the Eastern District of Missouri reached the same conclusion (on a motion to dismiss) and dismissed a case brought against the Olin Corporation.[9] And in January, Judge Nancy Brasel of the District of Minnesota ruled similarly in favor of U.S. Bancorp, granting summary judgment for the plan and its fiduciaries in a case challenging early retirement factors.[10]

One thing notable about these three decisions is that they were issued by judges with seemingly quite different philosophical bents, perhaps demonstrating some broadening appeal of the strict constructionist "let's hew to the plain language of the statute" argument. Judge Davila was appointed by President Obama, while Judge Stevens and Judge Brasel were both appointed by President Trump—Stevens (a Federalist Society member) in

2025, and Brasel (a moderate put forward by Democratic Senator Amy Klobuchar) in 2018. Yet these three judges were able to find common ground in three distinct cases with a straightforward, literal analysis of the statute.

In yet another case out of Minnesota, Judge Jeffrey Bryan (appointed by President Biden in 2023) allowed an actuarial equivalence claim to proceed beyond the pleadings stage—without clearly deciding whether actuarial assumptions must be reasonable or continuously updated — but threw out other claims based on statute of limitations grounds.[11]

Plaintiffs are not without their own recent victory—at least for now. In March, a divided panel of the Sixth Circuit Court of Appeals reversed two district court rulings that had dismissed cases filed against the Kellogg Co. and FedEx Corporation, holding that actuarial equivalence does in fact require up-to-date, professionally reasonable actuarial assumptions.[12] Majority opinion author Judge Jane Stranch echoed similar rulings and noted that without a "*reasonableness*" requirement, plan sponsors would be free to calculate JSAs using outrageously outdated mortality assumptions—say, from 500 years ago (or more).[13] Judge John Nalbandian, the third judge on the panel, wrote a strongly-worded dissent, taking the majority to task for relying on peripheral sources and straining to go beyond the simple language of the statute.[14] As for the 500-year-old mortality table bugaboo, Judge Nalbandian noted that even if ERISA's actuarial equivalence provision contains no reasonableness requirement, the IRS has promulgated regulations that *do* impose such a requirement,[15] and therefore any plan that employed a mediaeval mortality table ran the risk of *plan disqualification*—a much more severe penalty than an ERISA lawsuit might impose.[16] Thus, he wrote, "the majority needn't rush in to do the work of the legislature."[17]

Whether Judge Stranch's majority opinion or Judge Nalbandian's dissent eventually carries the day remains to be seen. Shortly after the decision was issued, the defendants/appellees petitioned for a rehearing "en banc" (*i.e.*, by the entire 6th Circuit bench), and the court thought enough of their arguments that they took the uncommon step of ordering the plaintiffs to respond to the petition, indicating that an en banc rehearing is at least somewhat likely.

Meanwhile, down in Georgia, the parties in Drummond v. The Southern Company await a decision from the 11th Circuit, which heard oral arguments on the actuarial equivalence issues in September 2025 (after a ruling for defendants in the district court). Parties in other cases are awaiting the 11th Circuit ruling before proceeding further. Roughly one-third of the cases filed have been settled, with no rulings yet in any case on what the bounds of reasonableness actually are (assuming there is even such a requirement).

For those defendants that have chosen not to settle and instead fight on, there is still much uncertainty. That uncertainty will likely remain until a clear pattern emerges from the circuit courts or the issues reach the Supreme Court, leaving these defendants the difficult decision of settling or litigating on an unknown landscape. In the meantime, plan sponsors may want to consult with their legal and actuarial professionals and undertake an evaluation of their plans' actuarial equivalence provisions and the litigation risk they may pose—that would seem to be both a prudent and *reasonable* step.

[1] 29 U.S.C. 1055(d)(1)(b).

[2] Some of the actuarial equivalence lawsuits challenge the assumptions used to calculate other forms of benefits, such as early or late retirements, but the argument is essentially the same—that the assumptions, in particular the mortality table, are outdated and unreasonable.

[3] In this example, the "factor" was .9. Typically, table factors vary with the ages of the participant and their spouse.

[4] *See* 29 U.S.C. 1055(d).

[5] *E.g., Belknap v. Partners Healthcare Sys., Inc.*, 588 F. Supp. 3d 161 (D. Mass 2022); *Drummond v. S. Co. Servcs., Inc.*, No. 2:23-CV-00174-SCJ, 2024 WL 4005945 (N.D. Ga. July 30, 2024).

[6] *E.g., Urlaub v. CITGO Petroleum Corp.*, No. 21 C 4133, 2022 WL 523129, at *6 (N.D. Ill. Feb. 22, 2022); *Smith v. Rockwell Automation, Inc.*, 438 F. Supp. 3d 912, 924 (E.D. Wis. 2020).

[7] *Berkeley v. Intel*, No. 5:23-cv-00343-EJD, 2026 WL 948725, at *4 (N.D. Ca., April 8, 2026).

[8] *Id.* at *6.

[9] *Landel v. Olin Corp.*, No. 4:25-cv-00096-CMS, 2026 WL 785044 (E.D. Mo., Mar. 20, 2026).

[10] *Adams v. U.S. Bancorp*, No. 22-CV-509 (NEB/LIB), 2026 WL 151825 (D. Minn., Jan. 16, 2026). Plaintiffs have filed a notice of appeal in the Eighth Circuit.

[11] *Bennett v. Ecolab, Inc.*, No. 24-CV-0546 (JMB/SGE), 2026 WL 810758 (D. Minn. Mar. 24, 2026)

[12] *Reichert v. Kellogg Co.*, 170 F.4th 473, 480-84 (6th Cir. 2026).

[13] *Id.* at 485. Here, too, seemingly strange bedfellows joined forces, this time in reading "reasonableness" *into* the statute. Judge Stranch was appointed by President Obama, while Judge Bush, who joined her opinion, is another Federalist Society member appointed by President Trump.

[14] *Id.* at 488 (Nalbandian J., dissenting)

[15] *See* Treasury Reg. 1.401(a)-11(b)(2).

[16] *Id.* at *496. Indeed, it is likely that every pension plan that has been sued in these actuarial equivalence cases was reviewed by the IRS for compliance with the Code's qualification requirements in conjunction with determination letter applications (and perhaps on other occasions as well), and yet allegations have not emerged that the IRS ever found their actuarial equivalence assumptions to be defective.

[17] *Id.*

IRS Issues Frequently Asked Questions Regarding

Educational Assistance Programs

Elizabeth Loh

The Internal Revenue Service ("IRS") recently issued a series of Frequently Asked Questions (IRS "FAQs") addressing Educational Assistance Programs under Section 127 of the Internal Revenue Code (the "Code"). The first set of IRS FAQs was issued in June of 2024, and the second set was recently published on April 20, 2026. These IRS FAQs help provide general information regarding educational assistance programs, contain certain clarifying information, and provide updates based on recent law (such as the One Big Beautiful Bill Act).

What is an educational assistance program? An employer may sponsor an educational assistance program for its employees. If the program complies with the requirements of Code Section 127, an employee may receive tax advantaged reimbursement for their eligible educational assistance expenses through the program.

A written plan document is required. To comply with the requirements of Code section 127, the employer must maintain a written plan document for its educational assistance program. The employer should tailor its written plan document to describe (for example) the program's eligibility requirements, when participation begins and ends, the benefits provided, program exclusions, and the claims submission process. In its FAQs, the IRS provides a sample (https://www.irs.gov/pub/irs-pdf/p5993.pdf) educational assistance program plan document that employers can use as a starting point for drafting their program.

> **Note:** The IRS FAQs also clarify that an employer *must* inform its employees if it offers an educational assistance program and advise them of the terms of the program. To meet this notice requirement, the employer could (for example) make its plan document available for review on its human resources website.

What educational assistance benefits may be provided? To receive reimbursement on a tax-advantaged basis, only "educational assistance benefits" may be provided under the educational assistance program. The Code defines "educational assistance" very broadly to include "any form of instruction or training that improves or develops the capabilities of an individual." It is worth noting that the payments do not have to be for work-related courses. The IRS FAQs provide examples of "educational assistance benefits," such as tuition, fees, books, supplies, and equipment.

The Code and IRS FAQs also describe the types of benefits that will *not* be considered qualified "educational assistance benefits" under an educational assistance program. These include:

- Meals, lodging, or transportation.
- Tools or supplies (other than textbooks) that an employee can keep after completing the course of instruction (for example, educational assistance does not include payments for a computer or laptop that the employee can keep).
- Courses involving sports, games or hobbies—unless they have a reasonable relationship to the business of the employer, or are required as part of a degree program.

Qualified education loans may be reimbursed through an educational assistance program. The IRS FAQs highlight that beginning March 27, 2020, an educational assistance program may also reimburse qualified education loans (principal and/or interest payments) on a tax-advantaged basis. In response to the COVID-19 pandemic, Congress had previously amended Code section 127 to temporarily allow qualified educational loans to be reimbursed on a tax-advantaged basis through an educational assistance program. This provision was originally slated to sunset on January 1, 2026. However, in 2025 legislation, this exclusion was extended permanently.

A qualified education loan is a loan for education at an "eligible educational institution" (e.g., college, university, vocational school, or other postsecondary educational institution). The IRS FAQs highlight that an employer may provide payments of principal or interest on an employee's qualified education loan directly to a third party (e.g., an educational provider or loan servicer), or make payment directly to the employee.

> **Note:** The IRS FAQs also provide helpful clarification that the qualified education loan may have been incurred by the employee *prior to* employment with the employer, and that payments of principal and interest may be made by the employer in a subsequent year. Previously, it was unclear whether an educational assistance program could reimburse preemployment loans.

Limit on reimbursements. Currently, the maximum amount that may be provided on a tax-advantaged basis through an Educational Assistance Program is $5,250 per calendar year. This maximum limit includes amounts for both qualified education loans and other educational expenses combined. For example, if an employer pays $2,000 of principal on a qualified education loan, only $3,250 in additional educational assistance may be excluded from the employee's income. The employee is not allowed to carry over any "unused" amounts of the $5,250 annual limit to a subsequent year.

> **Note:** The IRS FAQs reflect that the $5,250 annual limit was amended by the One Big Beautiful Bill Act (the "Act"). Under the Act, this $5,250 limit is indexed for inflation for taxable years beginning after 2026. This limit has been capped at $5,250 since 1986. Employers should decide whether to increase their program limits. If the employer decides to adopt an increased limit, it should amend its qualified educational program document for this new limit, and communicate it to plan participants.

When must the educational assistance benefit be incurred? The Code does not require that an educational assistance expense be incurred at any particular time relative to when the employer makes reimbursement for that expense. In other words, the Code does not require that expenses for the course be paid in the same year that the employer provides reimbursement for that course. However, the 2024 IRS FAQs had stated that "expenses must be paid by the employee in the same calendar year for which reimbursement is made by the employer." The IRS updated its position on reimbursement timing in its 2026 IRS FAQs. In the 2026 IRS FAQs, the IRS updated its guidance on reimbursement timing to simply provide that educational assistance expenses (other than qualified education loans) must *not* have been "incurred prior to employment."

> **Note:** The revision found in the 2026 FAQs will allow employers to have more flexibility in designing their educational assistance programs. For example, an employer can sponsor a program where the employee must obtain a certain GPA to receive reimbursement for their course (e.g., an employee pays for their course in year one, and the employer reimburses the course in the subsequent year—once the employee has received their final grade).

Spouses and dependents may not receive benefits under an educational assistance program. The IRS rules provide that only "eligible employees" may participate in an educational assistance program (e.g., current employees, retirees, employees on a leave of absence, etc.). Further, the recent IRS FAQs confirm that an educational assistance program cannot provide benefits to the spouse or dependents of an employee.

Conclusion. The IRS FAQs provide a helpful refresher regarding the IRS rules governing educational assistance programs. Employers can look to this most recent round of guidance when designing and administering their programs. If you have any questions regarding this article, please contact us.

PUBLICATION INFO:

The Trucker Huss Benefits Report is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of the Benefits Report are posted on the Trucker Huss website (www.truckerhuss.com (https://www.truckerhuss.com))

Editor: Nicholas J. White, nwhite@truckerhuss.com (mailto:nwhite@truckerhuss.com)

In response to IRS rules of practice, we inform you that any federal tax information contained in this writing cannot be used for the purpose of avoiding tax-related penalties or promoting, marketing or recommending to another party any tax-related matters in this Benefits Report.

SAN FRANCSICO
135 Main Street, 9th Floor
San Francisco, California 94105-1815

LOS ANGELES
15760 Ventura Blvd, Suite 910
Los Angeles, California 91436-3019

PORTLAND
329 NE Couch St., Suite 200
Portland, Oregon 97232-1332

Tel: (415) 788-3111
Fax: (415) 421-2017
Email: info@truckerhuss.com (mailto:info@truckerhuss.com)
Website: www.truckerhuss.com (https://www.truckerhuss.com)