SEI Trust Company
Quarterly Update
Second Quarter 2026

LEGAL/REGULATORY UPDATE

In an effort to keep you updated on changing regulations, requirements and/or litigation that may affect our industry, we are providing you with a summary of recent legislation, legal decisions and/or regulatory guidance that may impact collective investment trusts ("CITs") and their service providers, such as banks and investment managers.

LEGISLATIVE UPDATE

Continued Pressure on Legislators to Approve 403(b) Legislation on CITs Mounts; Still No Action Taken

Various industry group and 403(b) plan sponsors continue to press Congress to move on legislation that would permit 403(b) plans to invest into CITs.

First, in June, a Christian policy group filed a letter calling on Congress to prioritize legislative action to allow 403(b) plans to invest in collective investment trusts. The National Association of Christian Lawmakers (NACL) is urging policymakers in Washington to fix the "longstanding inequity" affecting approximately 14.5 million Americans who rely on 403(b) retirement plans by changing the securities laws to permit 403(b) plans to offer CITs to their participants.[1]

Additionally, leaders of industry groups have called on leaders of the Senate Banking, Housing, and Urban Affairs Committee to modernize federal securities regulation of 403(b) retirement plan investments, which includes giving 403(b)s access to collective investment trusts (CITs). A letter filed in July by National Association of Insurance and Financial Advisors, The Investment Company Institute, The SPARK Institute, the Coalition of Collective Investment Trusts, as well as businesses Mercer, T. Rowe Price, State Street Investment Management, The Vanguard Group, Inc., and others, noting that 40% of 401(k) plan assets are in CITs that provide lower costs and a more streamlined operational structure supporting retirement plans, stated that 403(b) plan participants should have the same access to those investments as 401(k) plan participants. Again, noting that these changes have broad bipartisan support, the authors of the July 13th urge Congress to take action on the legislation already introduced that would permit the securities laws to be amended to permit 403(b) plans broadly to invest into CITs. SEI Trust Company participated in this letter through its membership in the Coalition of Collective Trusts, which was also a signatory to the letter.[2]

Restoring 'Balance': DOL's Aronowitz Pushes Back on ERISA Lawsuit Surge

Daniel Aronowitz, Assistant Secretary of Labor for the Employee Benefits Security Administration ("EBSA"), has recently emphasized that reducing litigation risk for retirement plan fiduciaries is a significant priority for the Department of Labor ("DOL"). In both congressional testimony and remarks delivered at the 2026

[1] A copy of the NACL letter can be found here: https://www.prnewswire.com/news-releases/nacl-urges-congress-sec-and-white-house-to-modernize-retirement-rules-for-14-5-million-faith-based-and-nonprofit-workers-302801990.html

[2] A copy of the industry group letter can be found here: https://www.irionline.org/wp-content/uploads/2026/07/CEO-Letter-403b-CIT-Legislation-FINAL-07-13-2026-.pdf

NAPA 401(k) Summit, Aronowitz expressed concern that litigation and regulatory burdens have affected fiduciary decision-making and discouraged innovation in retirement plans. According to Aronowitz, many fiduciaries are focused on avoiding litigation rather than evaluating options that may benefit plan participants[3].

Aronowitz characterized many excessive-fee and investment-related lawsuits as examples of "hindsight second-guessing" and stated that litigation frequently challenges routine fiduciary decisions. He further noted that many fiduciaries view litigation risk as a substantial factor when making investment and plan design decisions. During his NAPA remarks, Aronowitz cited the Intel imprudent investment litigation as an example of a case he believes illustrates broader concerns regarding ERISA litigation and investment decision-making[4].

At the same time, Aronowitz acknowledged that not all ERISA litigation lacks merit. During congressional testimony, Representative Randy Fine (R-Fla.) asked Aronowitz to identify an example of a lawsuit he did not consider frivolous. Aronowitz cited the UnitedHealth litigation, which involved allegations that the company's 401(k) plan retained an underperforming Wells Fargo target-date fund because of UnitedHealth's broader business relationship with Wells Fargo. According to reports, the case settled for $69 million in December 2024. Aronowitz described the allegations as involving a potential breach of the fiduciary duty of loyalty[5].

A significant focus of Aronowitz's remarks involved the DOL's proposed Investment Selection Rule. Aronowitz described ERISA as a "law of process" and stated that the proposal is intended to provide fiduciaries with a clearer roadmap for evaluating investments. He emphasized that fiduciaries would still be required to follow a rigorous, objective, thorough, and analytical process when selecting and monitoring investments. According to Aronowitz, fiduciaries who follow such a process should receive greater deference when their decisions are challenged in court.

As part of the proposal, Aronowitz identified six non-exclusive factors that fiduciaries may consider when evaluating plan investments, particularly more complex investments[6]:

- Performance;
- Investment fees;
- Liquidity;
- Valuation;
- Performance benchmarking; and
- Complexity.

The proposal has generated differing views. Representative Fine highlighted the ERISA Litigation Reform Act, which would, among other reforms, delay discovery until after a case survives a motion to dismiss. Aronowitz stated that litigation costs can create substantial settlement pressure even where claims may ultimately be unsuccessful. Other lawmakers expressed concerns that the proposal could encourage use of higher-cost or more complex investments, including cryptocurrency or private equity. Aronowitz responded that the proposal is not intended to promote any particular asset class, but rather to establish a framework for evaluating investments through an appropriate fiduciary process.

For plan sponsors, fiduciaries, investment managers, and service providers, Aronowitz's comments provide insight into the current administration's approach to ERISA enforcement. The proposed Investment Selection Rule and ongoing discussions regarding litigation reform may be important developments to monitor as they continue through the regulatory and legislative process.

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[3] NAPA, *Restoring "Balance": DOL's Aronowitz Pushes Back on ERISA Lawsuit Surge* (Apr. 2026); NAPA, *EBSA Chief Aronowitz Warns Against ERISA Litigation Abuse, Regulatory Overreach* (Apr. 2026).
[4] NAPA, *Restoring "Balance": DOL's Aronowitz Pushes Back on ERISA Lawsuit Surge* (Apr. 2026).
[5] NAPA, *EBSA Chief Aronowitz Warns Against ERISA Litigation Abuse, Regulatory Overreach* (Apr. 2026).
[6] NAPA, *Restoring "Balance": DOL's Aronowitz Pushes Back on ERISA Lawsuit Surge* (Apr. 2026).

REGULATORY UPDATE

SEC Provides Guidance on Pooled Employer Plans and Access to Collective Investment Trusts

The Securities and Exchange Commission ("SEC") has issued staff guidance addressing the treatment of pooled employer plans ("PEPs") under certain federal securities laws. The guidance responds to questions that have existed since enactment of the SECURE Act and focuses on the application of the "single trust exclusion" under the Investment Company Act of 1940 and Rule 180 under the Securities Act of 1933.

PEPs permit multiple unrelated employers to participate in a single defined contribution retirement plan. Congress created PEPs through the SECURE Act in an effort to expand retirement plan access and reduce administrative burdens for employers, particularly small businesses. Since the creation of PEPs, questions have arisen regarding how these arrangements should be treated under existing securities laws.[7]

The SEC staff first addressed whether PEPs may rely on the "single trust exclusion" contained in Section 3(c)(11) of the Investment Company Act. Historically, SEC staff interpreted this exclusion as applying to trusts maintained for employees of a single employer, related employers, or trusts established and controlled by employers and unions. Because PEPs generally consist of multiple unrelated employers, uncertainty existed regarding whether they could rely upon the exclusion. The SEC staff stated that it would not object if a PEP treats itself as a single employer plan for purposes of the Investment Company Act and relies upon the exclusion, provided the plan remains subject to ERISA and satisfies the applicable Internal Revenue Code requirements[8].

The guidance also addresses Rule 180 and its application to CITs offered to PEPs that cover self-employed individuals. According to the SEC staff, some CIT sponsors have interpreted Rule 180 as unavailable because PEPs include multiple unrelated employers and because uncertainty existed regarding satisfaction of the rule's sophistication requirement. As a result, certain PEPs covering self-employed individuals have not had access to CIT investments, and some PEPs may have excluded self-employed individuals in order to preserve access to CITs.

The SEC staff stated that it is reasonable to treat PEPs as single employer plans for purposes of Rule 180 and further indicated that the sophistication requirement may be satisfied by evaluating the pooled plan provider rather than each participating employer. The staff noted that pooled plan providers typically assume significant administrative and fiduciary responsibilities under ERISA and are therefore positioned to represent participant interests for these purposes.

While the guidance represents the views of SEC staff and does not carry the force of law, it provides important clarity for pooled plan providers, employers, and CIT sponsors. In particular, the guidance may help facilitate broader access to CIT investments for PEPs, including those covering self-employed individuals, while supporting the SECURE Act's goal of expanding retirement plan coverage.

DOL Issues Guidance on Proxy Advisory Firms and ERISA Fiduciary Duties

On April 1, 2026, the DOL, through the EBSA, issued Technical Release 2026-01 addressing the application of ERISA fiduciary requirements to proxy advisory services and the interaction between ERISA and certain state laws regulating proxy advisory firms. The guidance is directed toward ERISA plan fiduciaries that utilize proxy advisory services, as well as proxy advisory firms themselves.[9]

The Technical Release addresses two primary issues. First, it explains circumstances under which proxy advisory firms may be treated as ERISA fiduciaries. Second, it discusses whether certain state laws regulating proxy advisory firms are preempted by ERISA.

The DOL begins by reaffirming its longstanding position that shareholder rights associated with securities held by ERISA-covered plans are themselves plan assets. As a result, decisions regarding how proxies are

[7] NAPA, *SEC Clarifies How Pooled Employer Plans Fit Under Existing Securities Law* (May 2026).
[8] NAPA, *SEC Clarifies How Pooled Employer Plans Fit Under Existing Securities Law* (May 2026).
[9] Department of Labor, Employee Benefits Security Administration, *Technical Release 2026-01* (Apr. 1, 2026).

voted constitute fiduciary acts and are subject to ERISA's duties of prudence and loyalty. The Technical Release cites decades of prior guidance, including the DOL's 1988 Avon Letter, Interpretive Bulletin 94-2, Interpretive Bulletin 2008-02, and Interpretive Bulletin 2016-01, all of which recognize proxy voting as a fiduciary function[10].

The guidance reiterates that proxy voting decisions must be made solely in the interests of participants and beneficiaries. According to the DOL, fiduciaries should consider factors affecting the economic value of the plan's investment when exercising shareholder rights. The Technical Release further cites prior guidance indicating that plan fiduciaries risk violating ERISA's exclusive purpose rule when shareholder rights are used to advance legislative, regulatory, political, social, or other objectives unrelated to participants' economic interests.

The Technical Release also discusses fiduciary status. Under ERISA's functional fiduciary framework, fiduciary status depends upon actions taken rather than contractual titles or disclaimers. The DOL notes that proxy advisory firms may become fiduciaries if they exercise authority or control over proxy voting decisions involving ERISA plan assets. Similarly, firms providing investment advice regarding proxy voting may become fiduciaries if their activities satisfy the Department's longstanding five-part investment advice test.[11]

Under the five-part test, a person generally becomes an investment advice fiduciary if the person:

1. Provides advice regarding securities or other property;
2. Does so on a regular basis;
3. Pursuant to a mutual agreement or understanding;
4. Where the advice serves as a primary basis for investment decisions; and
5. The advice is individualized to the needs of the plan.

According to the DOL, proxy advisory services that provide ongoing, individualized recommendations concerning the exercise of shareholder rights may satisfy this test depending upon the specific facts and circumstances. The Technical Release further cautions that contractual disclaimers alone are not necessarily determinative when evaluating fiduciary status.

The second portion of the guidance addresses ERISA preemption. The DOL explains that certain state laws requiring disclosures when proxy advisory recommendations are based upon non-financial considerations generally would not be preempted by ERISA. According to the DOL, ERISA fiduciaries are already obligated to act solely for the purpose of providing benefits and maximizing risk-adjusted returns for participants and beneficiaries. Therefore, a proxy advisory firm providing advice to an ERISA-covered plan generally should not be providing the type of non-financial advice that would trigger such disclosure requirements. The DOL notes, however, that any preemption analysis ultimately depends upon the facts and operation of the specific state law at issue.

For plan fiduciaries, investment managers, and proxy advisory firms, the Technical Release serves as a reminder that proxy voting rights are treated as plan assets and must be managed in accordance with ERISA's fiduciary standards. It also highlights circumstances in which proxy advisory firms may be considered functional fiduciaries and reinforces the DOL's position that proxy voting decisions should remain focused on participants' and beneficiaries' economic interests.

This information is for educational purposes only and should not be considered investment advice.

[10] Department of Labor, Employee Benefits Security Administration, *Technical Release 2026-01* (Apr. 1, 2026).
[11] Department of Labor, Employee Benefits Security Administration, *Technical Release 2026-01* (Apr. 1, 2026).

About SEI Trust Company
SEI Trust Company (STC) is a non-depository trust company chartered under the laws of the Commonwealth of Pennsylvania that provides trust and administrative services for various collective investment trusts. SEI Trust Company is a wholly-owned subsidiary of SEI Investments Company (SEI). For more information, visit www.seic.com/stc.

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