

[\(484\) 574-8782](tel:4845748782)

# Torrillo & Associates

Benefit Plan Audit Specialists

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## “Actual Knowledge” Required by Participants



As detailed in an [article by Nick Thornton of BenefitsPro](#), in February 2020, the Supreme Court ruled unanimously against the fiduciaries of two Intel Corp. defined contribution plans.

At issue before the court in Intel Corp. Investment Policy Committee v. Sulyma was a statute of limitation provision under the Employee Retirement Income Security Act. The High Court upheld a decision in the Ninth Circuit Court of Appeals, ruling that a **plan participant needs “actual knowledge” of a fiduciary breach to trigger a three-year statute of limitation to file suit against a plan sponsor.**

The decision also settles a circuit split on ERISA’s actual knowledge provision. Many expect it will have real ramifications for plan sponsors going forward. **“Receipt of a document does not give a participant actual knowledge of what’s in it,”** said Kevin Walsh, a partner with The Groom Law Group. “Before this case, it was unclear if you needed to get confirmation that a participant has read a document, or if sending a notice was sufficient. The Supreme Court has said it is not,” added Walsh.

### **Plan Sponsors May More Quickly Adopt Electronic Disclosures**

The ruling also comes in front of a new rule on electronic documents and disclosure. The DOL expects to issue such rules in 2020. “I think the decision creates another big push towards electronic disclosure,” said Walsh. “In a paper world, it’s impossible for a sponsor to confirm everyone has read the mail they’ve been sent.” In reaction to the decision, **more sponsors can be expected to include check-the-box disclosures confirming participants’ understanding of plan documents,** thinks Walsh.



Alito’s brief concedes that the decision may “substantially” diminish ERISA’s protections for fiduciaries. He also said ruling in favor of Intel would reduce ERISA’s protections for participants. “Choosing between these alternatives is a task for Congress, and we must assume that the language of (ERISA) reflects Congress’s choice,” wrote Alito. In other words, if plan sponsors do not like that participants must have “actual knowledge” of a fiduciary breach, they will need Congress to act to fix it.



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## Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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