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Benefit Plan Audit Specialists

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**DOL Files Amicus Brief
Supporting Use of Forfeitures
to Reduce Employer
Contributions**



The Department of Labor (“DOL”) has recently filed an amicus brief in the case of Paul Hutchins, plaintiff, versus HP, Inc., defendant, in support of the defendant’s use of forfeitures.

(Hutchins vs HP Amicus-Brief)

The case claims that the defendant improperly used forfeited employer contributions to satisfy the defendants matching contributions to the Plan and that the forfeitures should have been used to offset administrative expenses. The case questions the legality of the Plan sponsor’s use of forfeitures to reduce employer contributions which has been a long-established and [permitted practice](#) that has existed for several decades. Numerous similar complaints have been filed against Plan sponsors. A district court dismissed the case in 2024, and the plaintiff appealed to the U.S. 9th Circuit Court of Appeals.

The DOL’s brief states that the plaintiff “alleges that the HP Plan Committee’s decision to allocate forfeitures to fund matching contributions for the remaining participants, rather than using those funds to defray administrative expenses, breached its fiduciary duties of loyalty and prudence. The established understanding for several decades has been that defined contribution plans, such as the Plan ...may allocate forfeited employer contributions to pay benefits for remaining participants rather than using those funds to defray

administrative expenses. The Secretary has not previously spoken directly to this issue. The Secretary has a substantial interest in fostering established standards of conduct for fiduciaries by clarifying the Secretary's view that a fiduciary's use of forfeited employer contributions in the manner alleged in this case, without more, would not violate ERISA."



In the brief, the Secretary of the DOL requests that the court hold that Plaintiff failed to adequately plead a breach of the fiduciary duties of loyalty and prudence and uphold the district court's decision dismissing the amended complaint.



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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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