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What Is Reasonable? Lessons in Pension Plan Actuarial Equivalence from Three Recent Cases

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In this article, the authors discuss recent court decisions holding that ERISA's actuarial-equivalence requirement mandates reasonable actuarial assumptions, rather than assumptions that simply produce mathematically equivalent optional forms of benefits to the default form of payment.

In fewer than three months, two federal courts of appeals have held that ERISA's actuarial-equivalence requirement mandates *reasonable* actuarial assumptions, rather than assumptions that simply produce mathematically equivalent optional forms of benefits to the default form of payment. *In Reichert v. Kellogg Co.*, decided March 16, 2026, the Sixth Circuit reversed dismissals of actions involving the Kellogg and FedEx plans. The Kellogg and FedEx plans use allegedly outdated mortality data from the 1960s and 1970s. On May 26, 2026, the Eleventh Circuit reached the same basic conclusion in *Drummond v. Southern Company Services, Inc.*, where the plan allegedly uses a 1951 mortality table.

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While both appellate courts concluded that actuarial equivalence assumptions must be reasonable, neither court reached a substantive conclusion as to whether the challenged assumptions are actually reasonable; rather, the courts remanded the matters to the respective district courts to proceed with that analysis. A preview of how that analysis may play out is offered by the District of Minnesota's recent decision in *Adams v. U.S. Bancorp*, in which the court granted defendants' motion for summary judgment after concluding that ERISA does not require reasonable actuarial assumptions at all and, in any event, that the plan's assumptions are not unreasonable. *Adams* illustrates that the reasonableness analysis may ultimately turn on expert witness testimony, and a developed record examining the plan's specific factors and the affected benefit form. Therefore, while these decisions are notable, they do not offer clear guidance for plan sponsors or plan actuaries as to the legal requirements for actuarial equivalence assumptions.

ACTUARIAL EQUIVALENCE IN A NUTSHELL

Defined benefit plans often express a participant's accrued benefit as a single-life annuity, payable monthly for the participant's lifetime. However, unless the participant elects and the spouse consents to a different form of payment, defined benefit plans are required to pay benefits to married participants in the form of a qualified joint-and-survivor annuity (QJSA), which pays a reduced (as compared to the single life annuity) monthly benefit for the participant's life and thereafter a monthly payment equal to at least 50% of that amount to the participant's spouse following the participant's death. To further protect spouses, defined benefit plans are also required to pay a qualified preretirement survivor annuity (QPSA) to the surviving spouse of a participant who dies before retirement. Plans can charge the participant for QPSA coverage, and coverage or payment of the QPSA can be waived with spousal consent.

Plaintiffs in the actuarial assumptions cases have argued that ERISA requires that these optional forms of benefit be "actuarially equivalent" to the normal form of benefit using reasonable actuarial assumptions. However, even if there is such a requirement, ERISA does not define actuarial equivalence, specify how or when to determine reasonableness, or, other than for lump sum payments, mandate specific assumptions. Actuarial equivalence assumptions or factors are required to be specified in the plan, meaning that any change in those assumptions or factors may be subject to the Code and ERISA's anti-cutback requirements.

RELEVANT BACKGROUND

Drummond involves vested Plan participants who received joint-and-survivor annuities and had not waived QPSA coverage. The plaintiffs challenge two related calculations: (i) QPSA charges that reduced their accrued benefits, and (ii) the later conversion of their benefit to joint-and-survivor annuities. The Plan used the 1951 Group Annuity Mortality Table, with a 6-year setback for employees and a 1-year setback for spouses, together with a 5% interest rate, in calculating both the QPSA charge and the joint-and-survivor annuity conversion. The plaintiffs allege that the Plan's assumptions did not reflect current mortality expectations, resulting in lower monthly benefits and excessive QPSA charges. Plaintiffs allege on a present value basis that reasonable assumptions would have increased their lifetime benefits by more than \$15,000 for one plaintiff and more than \$19,000 for the other.

Reichert is consolidated with *Watt v. FedEx Corp.* and involves married participants in the Kellogg and FedEx defined benefit plans who challenged the conversion of single-life annuities into joint-and-survivor annuities, including QJSAs. The Kellogg plans used the UP-1984 Mortality Table and the FedEx plan used the UP-1984 and 1971 GAM Mortality Tables with certain setbacks. Plaintiffs allege that the mortality tables are outdated and that their use yielded lower monthly annuity payments than a more modern table would have.

Adams involves the use of early-retirement reduction factors in the plan. The plan does not specify the mortality table and interest rate underlying those factors. The plaintiffs, former U.S. Bank employees, challenged early commencement factors that reduced benefits when a participant elected to commence their benefits prior to age 65.

Plaintiffs in each of these cases generally seek declaratory and equitable relief, alleging violations of ERISA's actuarial-equivalence requirement and/or anti-forfeiture rules, and breach of fiduciary duty claims.

THE SIXTH AND ELEVENTH CIRCUITS HOLD THAT ACTUARIAL EQUIVALENCE REQUIRES REASONABLE ASSUMPTIONS

At the heart of the Sixth and Eleventh Circuit opinions is the courts' interpretations of the term "actuarial equivalent" under ERISA. While several district courts have held that ERISA does not require actuarial equivalence assumptions to be reasonable, the only two appellate courts to address the matter, the Sixth and Eleventh Circuits, went in a different direction in their recent decisions, holding that such assumptions must be reasonable.

To support their holdings that ERISA requires reasonable actuarial equivalence assumptions, both courts looked to actuarial norms, including guidelines under the Actuarial Standards of Practice and other technical literature, some of which predated ERISA's actuarial equivalence requirement. Both courts also found support in Treasury's regulations interpreting a similar requirement under the Internal Revenue Code (Code) Sections 401 and 417 that the QJSA be the actuarial equivalent of the normal form of annuity; those regulations require that the QJSA be "determined on the basis of consistently applied reasonable actuarial factors." Both courts found that Treasury's interpretation of the actuarial equivalence requirement is entitled to respect under *Loper Bright v. Raimondo*. The *Reichert* court found relevant that Treasury has interpretive authority over ERISA's actuarial equivalence requirement, while the *Drummond* court found relevant that, among other things, the Treasury regulation was issued contemporaneously with the statute. The *Drummond* court further concluded that its holding is consistent with the plain meaning of the statute and the overarching purposes of ERISA. Neither court addressed the fact that ERISA is explicit that the QJSA be the "actuarial equivalent of a single annuity for the life of the participant" whereas ERISA contains no such similar explicit requirement in the case of other optional forms of payment or in determining a QPSA charge or making adjustments for early or late retirement.

U.S. BANCORP DISTRICT COURT RULED ERISA DOES NOT REQUIRE REASONABLE ASSUMPTIONS, BUT ASSUMPTIONS ARE REASONABLE; APPEAL WAS ABANDONED

Unlike the *Reichert* and *Drummond* decisions, which were appeals from motions to dismiss, the *Adams v. U.S. Bancorp* decision from the District of Minnesota provides insight into how a court may assess the reasonableness of actuarial assumptions at a merits stage of litigation. The *Adams* court granted the defendants' motion for summary judgment, holding that ERISA does not require that actuarial equivalence assumptions be reasonable, but even if it did, the defendants provided un rebutted evidence that the U.S. Bancorp plan assumptions are reasonable.

In concluding that ERISA does not require use of reasonable actuarial assumptions, the *Adams* court found that actuarial equivalence is a mathematical process that compares relative values, and does not mandate underlying assumptions. According to the court, the plan document provides consistent assumptions upon which actuarial equivalence is calculated.

In reaching the conclusion on the reasonableness of the plan's conversion factors, the *Adams* court weighed actuarial expert testimony. The plaintiffs' expert took the position that reasonableness of actuarial assumptions must be compared to the assumptions mandated under Code Section 417(e) for lump sum payments. Ultimately, the court excluded the testimony of the plaintiffs' expert, concluding that the testimony was inconsistent with actuarial professional standards and practice, and was not reliable. Therefore, the only testimony left was that of the defendants' expert, who testified that the plan's actuarial equivalence assumptions are reasonable because, among other things, the life expectancy and capital market investment returns remained largely unchanged from 2002, when the reduction factors were put into the plan. That testimony was un rebutted.

The plaintiffs appealed the district court's judgment to the Eighth Circuit. However, on July 8, 2026, the appeal was dismissed.

TAKEAWAYS

These decisions raise important questions that none of the cases fully resolve. The Sixth and Eleventh Circuits have now held that on the facts of those cases actuarial equivalence assumptions must be reasonable, regardless of the written plan terms. So far, no other circuit court has considered this issue.

But the decisions leave a lot of questions unanswered.

Neither circuit court identified the criteria or processes for determining reasonableness. Nor do the decisions address how mortality and interest assumptions should be assessed together when determining whether the resulting benefit is actuarially equivalent. The decisions also do not address *when* reasonableness is determined, such as when the assumptions are put into the plan or when the participant commences benefits. Finally, the decisions do not address the intersection of the anti-cutback provision of the Code with actuarial equivalence, and the reality that regularly updating actuarial equivalence assumptions will ultimately result in a plan using *unreasonable* assumptions to the extent that the anti-cutback rules do not permit any change in actuarial assumptions that would reduce a participant's accrued benefit, early retirement benefits, retirement-type subsidies, or payment under an optional form of payment.

In contrast, the *Adams* court, like several other district courts, held that actuarial assumptions need not be reasonable so long as the actuary uses assumptions set forth in the plan document.

While messaging is mixed from the courts, there are several practical takeaways from these recent decisions:

- Reasonableness is a range, not a point. There is no single “right answer” when it comes to reasonable assumptions.

Practice Pointer: When assessing or defending a plan’s assumptions, actuaries may consider the range of actuarial approaches considered and the rationale for selecting the plan’s specific assumptions. Note also that an actuary may conclude that the combination of what may appear to be an outdated mortality table and outdated interest assumption in fact produces a result that is actuarially equivalent.

- Plan sponsors may want to review their plan’s current actuarial assumptions with counsel and actuarial advisers, particularly plans in the Sixth and Eleventh Circuits.

Practice Pointer: Consider how to best structure such a review to maximize the potential availability of the attorney-client privilege.

- The *Drummond* court acknowledged defendants’ concerns that a reasonableness requirement would force plans to constantly re-evaluate the actuarial assumptions. And, a recent preliminary settlement in a case challenging actuarial equivalence provides that the plan will review actuarial factors every decade. Plans may want to consider the implications for such a process, if ultimately mandated by courts.

Practice Pointer: Review relevant service agreements to confirm the process and responsibility for making changes to actuarial assumptions, as well as any indemnification obligations. If there is interest in making changes, consider alternatives to periodic review of the assumptions that may be available.

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