

FINANCIAL LIFE BENEFITS®

Legislative and regulatory brief

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Legislative Activity

- “SECURE Act 2.0”
- Build Back Better – reconciliation bill
- Additional congressional activity



“SECURE Act 2.0”

STATUS: Retirement legislation still enjoys bi-partisan support in both the House and Senate. While Congress is occupied with domestic and international issues, it is still possible we could see passage of expanded retirement legislation provisions by the end of 2022.

Status in Washington

House status. Securing a Strong Retirement Act of 2021 (SSRA), H.R. 2954 still in process; a full floor could happen in the early spring. There was a move to get this legislation added to an omnibus bill early in 2022, but it was not successful.

Ways & Means Committee (W&M). In May 2021, the House W&M approved by unanimous consent the *Securing a Strong Retirement Act of 2021* (SSRA), H.R. 2954. We could see a vote by the full House this spring.

Senate status. Senate Finance and HELP committees will first need to mark up a bill from various proposals introduced in the Senate including the *Retirement Security and Savings Act*, the *Retirement Improvement and Savings Act (RISE)*, and the *Securing a Strong Retirement Act (SSRA)*.

Senate committees could mark up a bill early this summer. Once a combined bill is voted out of committee it could be voted on by the full Senate some time this summer.

Passage of a bill with the various SECURE 2.0 provisions could happen by the end of 2022.

Highlights of elements common to both House and Senate proposals:

- Additional \$5,000 catch-up contribution at age 60.
- Expand charitable distributions at age 70½ to employer plans.
- Increased required beginning age for required minimum distributions (RMD) to age 75.
- Permit “matching contributions” based on student loan payments.
- Enhance Saver’s Credit and make it refundable.
- Provide long-term, part-time employees access to elective deferrals after two years.

A final bill could include some or all of these as well as other provisions added in.

Our Point of View

- Most elements of the proposals enjoy bi-partisan support. There was concern that the involvement of the House Labor committee and the Senate HELP committee late in 2021 could see the addition of more partisan elements to the legislation, but that did not occur and the bi-partisan support remains in both houses of congress.
- Both proposals provide for simplification of administration of employer plans, which is positive for plan sponsors.
- There remain provisions that are good for the participant or taxpayer, but will provide administrative challenges for providers and plan sponsors if they come to fruition, including:
 - An RMD exemption for individuals with \$100,000 or less in aggregate retirement savings, which presents a challenge for plan sponsors’ compliance with RMD rules as there is no way to know what assets individuals may hold outside of their plan account.
 - Shortening the years of service requirement for access to elective deferrals for long-term, part-time employees (recently created under the SECURE Act).
 - Requirement for an annual hard copy benefit statement, particularly on the heels of expanded electronic delivery safe harbors, feels like a step backward and may impact plan sponsor use of the new safe harbor.



Build Back Better Reconciliation Bill

STATUS: Stalled, but possibility of passage in some form remains through the end of September 2022.

Status in Washington

Reconciliation bills are unique

Reconciliation bills only need a simple majority to pass, and the Democrats can leverage this to advance their legislative priorities in the fall, even with a slim majority. They have until the end of the budget year, September 30, 2022, to pass a reconciliation bill. While the Build Back Better bill has been stalled, it is still possible a revised and possibly renamed version of a reconciliation bill could be passed early this fall.

Retirement and benefits provisions that remain in the reconciliation bill

- *Cap on IRA and Defined Contribution Plan Vested Balances for High Income Individuals:* Limit accumulations in all of an individual's traditional and Roth IRAs as well as their vested defined contribution plan balances to \$10 million with a grandfather provision for Roth IRAs that already exceed that amount. Applies to individuals with adjusted taxable income in excess of \$400,000 (\$450,000 for married individuals filing jointly, \$425,000 for head of household). Amounts in excess of \$10 million would be required to be removed subject to new Required Minimum Distribution rules.
 - For aggregate amounts over \$10 million, distribution of 50% of the excess amount would be required to be distributed each year until the balance is below the \$10 million cap.
 - For aggregate amounts exceeding \$20 million, an accelerated required distribution calculation would apply, drawing first from any Roth amounts the high-income individual has.
- *Elimination "Back Door Roth:"* Elimination of after-tax conversions from IRAs and defined contribution plans to Roth IRAs and Roth designated accounts in defined contribution plans. This would apply to all individuals regardless of income.
- *End to Roth Conversions for high-income individuals:* No conversions of pre-tax savings would be permitted after 2031 for individuals with adjusted taxable income in excess of \$400,000 (\$450,000 for married individuals filing jointly, \$425,000 for head of household).

Our Point of View

- This bill is more partisan will need every Democrat vote to pass the simple majority requirement.
- Democrats have not yet been able to gather full support for this legislation.
- If a reconciliation bill is to pass in 2022, it will likely be a pared down version of the Build Back Better Bill and may even be renamed something else.
- While some provisions of the Build Back Better Bill will come out of a revised bill, the indication now is that the retirement provisions listed are likely to remain *in* as they generate tax revenue.
- It is possible the reconciliation process still happens, but is increasingly more challenging with various domestic and international issues that are more immediately pressing for Congress.



Additional Congressional Activity

STATUS: Committee hearings in both the House and Senate reflect continued congressional focus on retirement savings and employee benefits as a topic of importance to policy makers in Washington. See the Appendix for additional legislative proposals of interest.

Status in Washington

House Education and Labor Subcommittee

- On March 1, 2022, the committee held a hearing entitled, *“Improving Retirement Security and Access to Mental Health Benefits.”*
- Witnesses included:
 - Aron Szapiro from Morningstar
 - Amy Matsui from the National Women’s Law Center
 - Karen Handorf, Senior Counsel from Berger Montague
 - Andrew Biggs from AEI (Republican witness)
- Retirement issues addressed in the hearing included:
 - Fee disclosures
 - Including annuities in QDIAs
 - Spousal consent rules for DC plans
 - Requiring new automatic contribution plans to also include automatic reenrollment for employees who have opted out in past years.

Our Point of View

- Committee focus on these issues can provide a sense of what issues are most important to the chair and minority leaders, and could influence what makes it into retirement legislative proposals this year.
- We are seeing a focus on interest in expanding spousal consent in defined contribution plans, similar to what exists in defined benefit plans.
 - This is being framed as a women’s rights issue at a time where there has been a good deal of research on the gender gap in retirement savings.
 - Expanded spousal consent in DC plans could create more administrative concerns for plan sponsors.
- Expansion of the ability to leverage annuities as QDIAs would provide more variety and flexibility for plan sponsors, and would be an option not a mandate.
- Auto enrollment provisions have been effective in getting participants into plans. Adding auto enrollment and auto re-enrollment in newly established plans could increase the number of Americans saving for retirement going forward and would not have an impact on existing plans.



Regulatory Updates

- Department of Labor



Department of Labor (DOL) Updates

STATUS: We are in the second year of the Biden administration, and the Senate still has yet to vote on the nomination of Lisa Gomez for Assistant Secretary of the Employee Benefits Security Administration (EBSA). Until Ms. Gomez is confirmed, Acting Assistant Secretary, Ali Khawar continues to advance a very busy EBSA agenda.

Status in Washington

DOL report on e-delivery rules. As part of the *Consolidated Appropriations Act of 2020*, Congress directed the DOL to assess the impact of the new electronic delivery safe harbor that the DOL released in 2020.

The 2020 safe harbor is in addition to the 2002 electronic delivery safe harbor. Under the newer safe harbor released in 2020, if the plan meets various conditions, the plan may *default participants to receive many plan documents electronically*.

The DOL report emphasized that the 2020 e-delivery rules were “**unlikely to have any negative impacts**” on rural, remote, and/or older populations of retirement savers because of the “specific safeguards” that were included in the final DOL e-delivery rules.

DOL releases RFI on Climate Risk. On February 14, 2022, the DOL published a Request for Information (RFI) on “*Possible Agency Actions to Protect Life Savings and Pension from Threats of Climate-Related Financial Risk.*”

The DOL is looking for public input through a series of questions about how the DOL can use its authority under ERISA to mitigate climate-related financial risks. Included are questions about how “...*the Form 5500 could try to collect information about whether and how plan investment policy statements specifically address climate-related risk*” and whether ERISA plans should “*be required to publicly report on the steps they take to manage climate-related financial risk and the results and outcomes of any such steps taken, in a form that is more easily accessible to the public, and timelier, than the Form 5500.*”

Comments are due May 16, 2022.

ERISA Advisory Committee (EAC) Final Report on 2021 Topics

The EAC made several recommendations to the DOL related to gaps in retirement savings based on race, ethnicity and gender.

Additionally, the EAC made a single recommendation related to open brokerage windows that they do not believe that any additional guidance is needed in this area.

Compliance Assistance Release (CAR) 2022-01 - 401(k) plan investments in cryptocurrencies. Following an Executive Order from the White House on March 9, 2022, the DOL issued this CAR on March 10 expressing concerns about cryptocurrency and related products as part of the menu in 401(k) plans or their availability in open brokerage windows.

Our Point of View

- Congress requested the DOL report on the 2020 safe harbor as there have been concerns that individuals living in rural areas with less easily accessible access to the internet would be disadvantaged by the new safe harbor. Likewise, there were concerns that older individuals who might not be as technologically adept would also be negatively impacted by the new rule.
- The finding in the DOL’s report that the new safe harbor was “unlikely to have any negative impacts” was a very positive outcome for the use of electronic delivery going forward. As the DOL report states, the very protections included in the safe harbor sufficiently protect participants who would prefer to receive their important plan communications in hard copy are able to do so.
- DOL also cited data on the broad availability of internet access among the United States population at large and the near universal internet access found among retirement savers specifically.
- The RFI on Climate Risk is a clear indication that this topic is not going away. It will be interesting to see the comment letters the DOL receives and what action the DOL then takes related to plan fiduciary responsibilities in evaluating climate risk as it pertains to plan investments. We will be watching this closely.
- The EAC findings on race, ethnicity and gender are consistent with research that Bank of America and others have done on these topics. Additionally, the EAC statement that open brokerage windows do not need any additional guidance was a positive outcome.
- The Compliance Assistance Release related to cryptocurrencies will be closely watched as well. This emerging investment has had some interest with plans and participants, and it seems the DOL has notable concerns from the language in the CAR. While the DOL has not traditionally prohibited types of investments in plans, their statement in the CAR that plan fiduciaries “*should expect to be questioned about how they can square their actions with their duties of prudence and loyalty*” is something plan sponsors should consider carefully if they are contemplating making cryptocurrency investments available to participants.



Appendix: Additional legislative proposals

Various legislative proposals that address the following subjects:

- Emergency Savings
- Expanded use of QDIA including annuities
- Expanding auto enrollment and mandating auto re-enrollment
- Pooled Employer Plan (PEP) clarifications



Additional legislative proposals of interest

STATUS: While it is not likely all of these proposals will move forward on their own, elements of these proposals could be added to other legislation.

Proposal	Sponsor	Provisions
Emergency Savings Act	Senator Patty Murray (D-WA)	<ul style="list-style-type: none"> • Would create an optional additional contribution source in a defined contribution plan dedicated to emergency savings. • Participants could designate up to \$5,000/year in the designated account for emergency use, subject to existing overall contribution limits • Contributions would be after tax and could be withdrawn as frequently as monthly if needed. • Bill needs more clarity on impact on discrimination testing and how emergency distributions are requested and processed from a tax perspective.
Lifetime Income for Employees Act	Rep. Don Norcross (D-NJ) and Rep. Tim Walberg (R-MI)	<ul style="list-style-type: none"> • QDIA Expansion: Would amend QDIA regulations to allow (but not require) a QDIA to include a limited investment in a non-liquid annuity component in the mix of asset classes, which provides a guaranteed return on investment. • Default Annuity Component. Permitted: Limits the default annuity component to no more than 50 percent of the periodic contributions, and no more than 50 percent of the total account value after a rebalancing, and must be an annuity contract that does not impose any liquidity restriction on amounts invested during the 180-day period beginning after the initial investment. • Notice Requirement: Each participant or beneficiary would be required to receive a new notice at least 30 days before the imposition of a liquidity restriction on the defaulted investment.
Pooled Employer Plan Act	Rep. Rick Allen (R-GA) and Rep. Mark DeSaulnier (D-CA)	<ul style="list-style-type: none"> • Would clarify whether a trustee of a PEP (Pooled Employer Plan) must be responsible for the collection of contributions from participating employers. • The bill clarifies that any named fiduciary may have that responsibility, thus enabling directed trustees to serve as trustees of PEPs. • There is a similar provision in the Senate Rise Act.
Retirement Improvements and Savings Enhancements (RISE) Act	Senator Ron Wyden (D-OR)	<ul style="list-style-type: none"> • First introduced in 2016, the legislation would cap IRA at \$5MM, but this could change to a higher threshold. • Eliminate Roth IRA conversions. • Extend RMDs to Roth IRAs. • Prohibit any investment in an IRA that was acquired for less than fair market value and require a qualified appraisal for assets without a recognized market. • Prohibit IRA owners from investing in their own business. • Make transactions between IRAs and their owners prohibited transactions.
Enhancing Emergency and Retirement Savings Act	Senators James Lankford (R-OK) and Michael Bennet (D-CO)	<ul style="list-style-type: none"> • Creates a new penalty-free distribution from plans and IRAs for “emergency personal expense distributions” (EPED). • Limited to one EPED per calendar year. • Maximum amount that may be treated as an EPED by any individual in any calendar year is the lesser of (i) \$1,000 and (ii) the amount of the individual’s nonforfeitable accrued benefit that exceeds \$1,000. • May be repaid within three years.
Auto Reenroll Act	Sen. Tim Kaine (D-VA) and Rep. Kathy Manning (D-NC)	<ul style="list-style-type: none"> • Would require all new automatic contribution arrangements to institute automatic re-enrollment. • Auto re-enrollment would have to occur at least every three years in order to (1) satisfy the 401(k) automatic contribution nondiscrimination safe harbor, and (2) permit plans to allow employees who are automatically enrolled to take “permissive withdrawal” of the automatic contributions within 90 days of the first such contribution.

