Morgan Stanley

Washington Update

A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

JUNE 2025

Sprinting Out of the Gate

The 119th Congress convened on January 3rd, and with the inauguration of President Trump on January 20th, a period of unified Republican control of government commenced. Expectations for major legislation to advance in the first half of 2025 were low, which has proven accurate. However, the volume and breadth of executive actions from the White House have significantly exceeded expectations. As of May 31, President Trump has issued more than 245 Executive Orders (EOs) affecting nearly every sector of the economy.

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The legislative branch has not matched the flurry of activity from the executive branch. The Senate has spent much of the past several months processing and confirming the President's political appointees. On March 3rd, Linda McMahon's confirmation as Secretary of Education marked the final nomination as a member of Trump's cabinet, except for the open position as the next U.S. Ambassador to the United Nations. However, the pace of confirmations for sub-cabinet level nominees has remained sluggish, and this process will continue on the Senate floor for many months to come.[1]

In addition to nominations, Congress has utilized the Congressional Review Act (CRA), which provides for simple "joint resolutions of disapproval" allowing Congress to directly repeal administrative rules. There are two key features of the CRA: it allows the Senate to pass resolutions of disapproval with a simple majority vote, bypassing the usual 60-vote threshold needed to break a filibuster, and it enables a new president and Congress to repeal rules finalized during the final months of the preceding administration.

To date, 43 resolutions of disapproval have been introduced targeting rules finalized at the end of the Biden Administration. However, Congress has only passed five joint resolutions of disapproval, significantly fewer than the 14 CRA resolutions of disapproval passed in the early months of the first Trump term. One major reason for the passage of fewer CRA resolutions of disapproval is the tight margins Republicans face in the House and Senate. In the Senate, the Republican majority is 53-47, and in the House, it is 220-212, with three vacancies. Apart from budget reconciliation legislation, which is protected from filibuster rules and can move to passage via majority vote (but is limited in legislative reach), securing final votes on most bills will be difficult this year without bipartisan support.

Legislation

Tax Reconciliation Dominates the Agenda

At the outset of this Congress, Republicans in the House and Senate extensively debated whether to pursue their government-wide policy agenda through two budget reconciliation bills (the Senate's preferred approach) or one comprehensive bill (the approach preferred by the House). Under the two-bill scenario, the first bill would primarily focus on increasing funding for border security and implementing spending cuts, while the second bill would focus on extending the expiring provisions from the Tax Cuts and Jobs Act (TCJA). As of this writing, advocates for the one-bill path appear to have prevailed.

The House on February 25 voted 217-215 to adopt H. Con. Res. 14, a budget resolution providing reconciliation instructions to 11 House committees to submit legislation conforming with revenue and spending targets, and to raise the statutory debt limit by $4 trillion. On April 5, the Senate voted 51-48 to adopt an amended version of H. Con. Res. 14, with all Democrats and two Republicans voting against it. The Senate amendment made significant changes to the House resolution, notably setting a lower floor for spending cuts ($4 billion over ten years), allowing a $1.5 trillion deficit increase using a "current policy" baseline that assumes TCJA provisions will not expire (reducing their scored cost to $0), and increasing the debt ceiling by $5 trillion. After a short delay due to objections from fiscal conservatives to the Senate's lower required level of spending cuts, the House on April 10 agreed to the Senate's changes to H. Con. Res. 14, formally approving the concurrent budget resolution and enabling instructed congressional committees to work on the policy portions of the bill within their jurisdictions.

From late April to late May, House Republicans held legislative markups in the 11 committees that received reconciliation instructions. The House worked long hours, including some overnight sessions, to advance the bill through the legislative process. After a marathon session beginning on May 21, the House passed H.R.1, the One Big Beautiful Bill Act,* by a vote of 215-214 on the morning of May 22. The Congressional Budget Office estimates that H.R. 1 will add $2.4T to the debt over the ten-year budget window.[2]

At a high level, the bill aims to make permanent the lower tax rates from the TCJA Act, set to expire at the end of the year.[3] It includes various other tax-related changes detailed below, allocates billions of dollars for border security and defense, and enacts other Republican priorities in energy, agriculture, and health care. The bill underwent significant changes during its progression through the House Committee process and onto the House floor, and further modifications are expected from the Senate. Certain aspects, such as the permanent extension of individual rate and bracket structures, are unlikely to change. However, many other components, including potential revenue raisers not currently in the bill, could be added by the Senate. Below is a high-level overview of the major provisions, key dynamics, and timeline for passage.

Key Provisions (not exhaustive)

What's in?

- **Individual Tax Rates, Other Notable Individual Changes:** makes permanent all of the current income thresholds for individuals, estates and trusts. All brackets, except for the top 37% bracket, would be indexed to inflation for one additional year. Itemized deductions would be cut back for those in the 37 percent bracket.
- **Increased Alternative Minimum Tax Thresholds:** makes permanent the alternative minimum tax exemption amounts and phase-out thresholds established by the TCJA.
- **State and Local Tax Deduction (SALT) Cap:** increases the SALT cap from $10,000 to $40,000, subject to a phasedown above $500,000 in income. Both the cap and the phasedown threshold are increased 1% each year for ten years before being made permanent.
- **Estate and Gift Tax:** increases and makes permanent the estate and gift tax exemption at an inflation-adjusted $15 million ($30 million for couples), starting in tax year 2026.
- **Tax Deduction for Pass-Through Businesses:** increases the size of the deduction from 20% to 23% and makes it permanent.
- **Business Tax Extenders:** extends through 2029 the TCJA business tax extenders (100% immediate expensing, immediate expensing for research and development, and interest deductibility based on EBITDA (as opposed to EBIT)). Temporarily creates accelerated expensing for manufacturing structures.
- **International:** slightly increases and makes permanent the current rates for three major international tax provisions: the global intangible, low-tax income (GILTI), base erosion anti-abuse tax (BEAT), and foreign-derived intangible income (FDII).
  - Imposes higher taxes on income of foreign entities from countries

* At time of publication, the Senate had just released text of its version of the One Big Beautiful Act. Accordingly, the details of that draft are not included in this update.

Legislation (cont.)

with tax policies deemed to be discriminatory.

- **Opportunity Zones:** makes several changes to the Opportunity Zones Program, under which tax incentives are provided to businesses to encourage investment and development in lower-income or economically distressed areas in the U.S. primarily through temporary deferrals of taxes on capital gains and related "basis" benefits through 2026. The measure would create a new round of opportunity zones whose benefits would be offered from 2027 through 2033. States would have to ensure that:
  - At least 33% of the new opportunity zones are comprised entirely in a rural area.
  - The zones are Census tracts with a poverty rate of at least 20% or a median family income that isn't more than 70% of the area's median income—down from 80% under current law.
  - The zones are not Census tracts with a median family income of at least 125% or greater than the metropolitan or statewide median family income.
  - The zones are not contiguous.
  - **President Trump's Campaign Proposals:** versions of no tax on tips, no tax on overtime, no tax on social security (through an enhanced standard deduction for seniors of $4,000), and deductible car loan interest (up to $10,000) made it into the bill. There are qualification restrictions and limitations on all four provisions, and they are generally only in effect for tax years 2025 through 2028.
- **Trump Accounts (formerly known as "MAGA Accounts"):** The measure would create tax-advantaged "Trump Account" trusts, effective Jan. 1, 2026. Account funds could be used to pay for higher education, make a first-time home purchase, or pay off small business-related loans under regulations provided by the Treasury Department. The bill would establish a pilot program for the Treasury Department to provide a one-time $1,000 contribution to accounts for U.S. citizens born after Dec. 31, 2024.
- **529 Plans:** Expands eligible uses of 529 funds to cover additional expenses for K-12 education, including homeschooling costs. The bill would also allow funds to be used to purchase curricular materials, online educational materials, tutoring, standardized testing fees, and education-related therapies for students with disabilities. It would also allow 529 plan assets to be used for tuition, fees and supplies associated with obtaining postsecondary credentials through recognized vocational and certificate programs.
- **ABLE Accounts:** extends the increases in contribution limits for ABLE accounts, along with the extension for the applicable savers credit and rollover ability.

What's out (for now)?

- Business SALT Cap: For months, rumors have swirled about congressional plans to cap the deductibility of state and local taxes for corporations as a way to raise revenue (and perhaps thematically pay for an increase in the $10,000 individual SALT cap). Those proposals were not added in this bill, which does not impose a business SALT cap. However, the bill does apply the individual SALT cap to passthroughs that do not earn qualified business income.
- Stock Buyback Excise Tax: There is no change to the current 1% excise tax on stock buybacks.
- Executive Compensation Deductibility: publicly traded corporations are, very generally, prohibited from deducting the compensation above $1 million of their top five executives. The draft bill makes very minor changes to this section of the tax code.
- Carried Interest – Nothing in the bill would touch the current tax treatment of carried interest.
- Municipal Bond Tax Exemption: Nothing in the bill changes broader tax exemption of municipal bonds or private activity bonds.

What are the notable offsets?

- Phase-outs of Inflation Reduction Act Energy Tax Credits: repeals tax credits for electric vehicles, hybrids, charging infrastructure, clean hydrogen, and home efficiency upgrades, starting in 2026.
  - Eliminates clean electricity production and investment tax credits for most projects that begin construction 60 days after enactment or are placed into service after 2028.
- Endowment Excise Tax: The existing 1.4% tax on net investment income from university endowments is maintained and expanded into a four-tier system, with rates ranging from 1.4% to a top rate of 21% for endowments with a ratio of more than $2 million per student. There are some exemptions, including for religious institutions.
- Private Foundation Excise Tax: Similar to endowments, private foundations currently face a 1.39% excise tax on

Legislation (cont.)

net investment income. This provision would create a four-tier system that maintains the current excise tax for foundations with less than $50 million in total assets, but applies higher excise tax rates on private foundations reporting $50 million or more in total assets, with a top rate of 10% on private foundations with $5 billion or more in total assets.

- Remittance Tax: imposes a new 3.5% excise tax on all remittance transfers sent from an individual in the U.S. to a recipient in a foreign country using a financial institution. Financial institutions providing remittance services would be required to collect the tax from the sender and to transmit the collected revenue to the Treasury Department every quarter. Service providers would be liable for any taxes not paid by senders. Transfers sent by U.S. citizens or nationals using a qualified remittance service provider—a provider that enters into an agreement with the Treasury to verify the citizenship status of senders—would be exempt from the tax.
- 1% Floor on Corporate Charitable Contributions: Corporate taxpayers could deduct charitable contributions between 1% to 10% of taxable income. The measure would allow contributions beyond the cap to be carried forward for as long as five tax years.
- Debt Ceiling: The bill would increase the debt ceiling by $4 trillion, to a new level of $40.1 trillion. Treasury Secretary Bessent indicated in a recent letter to Congress that there is a "reasonable probability" the debt-ceiling "X-Date" could be reached in August. More on the debt ceiling below.

The Path Forward

The Senate is expected to spend the month of June seeking consensus on amendments to the House-passed bill. Given the emphasis being placed on speed, it is possible that the Senate could skip committee markups for the various components of the legislation. In practice, this would mean that negotiations would occur behind the scenes over the coming weeks, before a bill is bundled together and moved to the floor for consideration. Once formal floor consideration begins, the process would take approximately one week, culminating in a vote-a-rama exercise in which any senator can offer amendments. Unlike the vote-a-rama for the budget resolution, which largely focused on messaging, this is a live exercise during which major changes could potentially be made to the bill. One way Senate leadership avoids major policy pitfalls stemming from adopted amendments is to conclude the vote-a-rama process with a "wrap-around" amendment that incorporates only germane changes.

Here are a few of the major issues that will shape discussions over the coming weeks:

Permanence vs. Temporary Extensions: Several key Senators, including Senate Majority Leader Thune, have made clear that they would like to make many of the TCJA business tax incentives made permanent (they are extended only through 2029 in the House-passed bill).

Deficit Reduction: The Senate is generally less concerned about deficit reduction, but there is likely a large enough contingent of fiscal hawks to restrain the amount the bill will add to the debt. Under pressure from fiscal hawks, there is a chance that the level of spending reductions could increase.

SALT: The aforementioned deal is the absolute high-water mark for SALT. Certain Senators have already called for the increased SALT cap in the House bill to be eliminated. Senators from red states do not face the same political dynamics that certain blue-state Republicans (namely, those from the NY and CA delegations) face.

House Speaker Johnson has stated and will continue to stress that changes to SALT would jeopardize overall passage, so Senate Republicans will be restrained in the scale of modifications.

IRA Energy Credits: The IRA energy credit phaseouts in the Ways and Means draft were met with frustration by centrist House Republicans. Senate Republicans were quick to indicate that they would look to make changes.

Despite this, the fiscal hardliners secured further changes accelerating those phase outs. This means the Senate is likely to make IRA-favorable modifications to the House-product. However, similar to the deficit impact dynamic, there are limits to how far the Senate will be able to go back to the middle.

Medicaid Cuts: Fiscal hawks in the House secured accelerated phase-ins for Medicaid/SNAP work requirements. Look for key moderate and populist Senators to make a strong push for these dates to be pushed farther into the future.

Takeaway: There are likely to be some significant changes from the House-passed legislation, but expect Republicans to be successful in passing their reconciliation bill, with final passage likely occurring in July or early August.

Legislation (cont.)

Retirement Policy in the 119th Congress

The focus on the tax bill and TCJA extension this year means that Congress will likely spend little time separately addressing retirement policy. While Members will continue to introduce retirement-focused legislation, such bills will receive little attention until conclusion of the debate over the fate of the One Big Beautiful Bill Act. Ways and Means Chairman Jason Smith has expressed an interest in pursuing a bipartisan tax bill later this year, but it is unclear what that would look like, and whether there will be bipartisan interest in such legislation.

Ahead of the second half of the year, we highlight below many of the notable pieces of legislation that have been introduced this Congress.

Retirement Legislation:

S. 3305 – Helping Young Americans Save for Retirement Act Sen. Bill Cassidy (R-LA) and Sen. Tim Kaine (D-VA): expands eligibility for certain employer-sponsored retirement plans and qualified trusts. Specifically, the bill allows an employee to participate in a pension plan if the employee has served at least 500 hours of service during the first 24-month period. The bill also allows a qualified public account to be counted as a participant for five years after the employee first becomes a participant in the plan.

- Would reduce the eligibility age to 18 (from age 21 today) for participation in an ERISA-covered defined contribution plan.
- Would be limited to employees between the ages of 18 and 21 in certain circumstances.
- Such employees may be excluded from nondiscrimination and top-heavy rules.
- Employees under age 21 who are eligible to participate in the plan would not be counted for purposes of determining whether the plan is subject to an annual audit (would not be counted until five years after becoming a participant in the plan).
- Would not be effective until 2027, if enacted this year.

S. 928 – The Protecting Americans' Retirement Savings Act Sen. Jim Banks (R-IN): prohibits employers of employee retirement plans from investing in foreign adversary entities or sanctioned entities. Specifically, the bill would amend Section 404 of ERISA to prohibit ERISA-covered retirement plans from making future investments in foreign adversary countries, collecting interest in, lending money to, engaging in transactions with, or transferring plan data to entities associated with foreign adversary countries. The bill would define "covered entity" via various cross-references to other laws that identify certain nations and entities as foreign adversaries or sanctioned entities, primarily North Korea, China, Russia, and Iran. Section 404(a) of ERISA, as amended by this bill, would provide that such fiduciary standard of care (and the fiduciary duties set forth under ERISA) will be deemed to be violated if a fiduciary of a retirement plan fails to ensure that the plan does not engage in a transaction that the fiduciary knows, or should know, will result in the plan: acquiring an interest between the plan and a sanctioned entity; lending money or extending credit to such entity; furnishing goods, services, or facilities to a covered entity; or transferring, directly or indirectly, any assets of the plan or any data to, for use by, or for the benefit of a covered entity. The bill also requires plan fiduciaries to disclose continued investments in such entities (including, but not limited to, the mandate such fiduciaries provide a statement of justification to explain why the fiduciary continues to hold such investment on behalf of the plan). Additionally, the bill directs the DOL to publish regulations implementing the new law within 180 days of enactment.

S. 988 – The Women's Retirement Protection Act of 2025 – Women's Retirement Protection Act Sen. Tammy Baldwin (D-WI): This bill revises the spousal protection requirements for defined contribution retirement plans (excluding non-ERISA 403(b) plans and governmental 457(b) plans) to provide greater spousal protections under these plans that are similar to those available for defined benefit plans. Specifically, the bill (1) requires a plan participant to have their spouse's consent for distributions from their defined contribution plan accounts, with limited exceptions; (2) provides grants for community-based organizations to improve financial literacy of women of working or retirement age; (3) provides grants to community-based organizations to assist women in obtaining benefits via qualified domestic relations orders; and (4) The Department of Labor must establish an interagency task force to study and report on the implementation of these requirements. In addition, the Department of Health and Human Services (HHS) must establish a program to award grants to states and Indian tribes to implement the requirements.

H.R. 2163 – No Penalties for Victims of Fraud Act Rep. Hailey Stevens (D-MI): This bill waives the 10% early withdrawal penalty for those victims who made early retirement plan account distributions that are the result of fraud, provided

Legislation (cont.)

such victims can document their fraud losses through law enforcement or court verification. Such victims would be permitted to repay the amount withdrawn from such retirement accounts without penalty. The bill defines a victim of fraud as an individual who (1) submits an application for waiver to the Internal Revenue Service (IRS) that fulfils the documentation requirement, and (2) is designated as a fraud victim by the IRS. The IRS must conduct a public awareness campaign to educate the public about the protections and relief available under this bill.

H.R. 3248 – America Ownership and Resilience Act Rep. Blake Moore (R-IL): This bill requires the Department of Commerce to establish a domestic ownership succession investment facility to finance the sale of an ownership interest of a business concern to an employee stock ownership plan or eligible worker-owned cooperative if such sale results in (1) holding a majority interest of the outstanding stock of the business concern, and (2) the provision of capital to finance such a sale. The bill would create a zero-subsidy investment facility administered by the Commerce Department to provide loan guarantees support to support "licensed private investment funds devoted to expanding employee ownership at small and mid-size businesses." The bill aims to make it easier for retiring business owners to exit their business by selling it to their employees through the creation of an ESOP by expediting the liquidity timeline for business owners to make more capital available for ESOP creation — thereby enabling American workers to build substantial retirement assets while preventing the sale of American businesses to foreign investors.

S. 1727 – Employee Ownership Fairness Act of 2025 – Sen. Bill Cassidy (R-LA): The bill requires institutions of higher education that participate in federal student-aid programs to report to the Department of Education on foreign gifts and contracts with foreign sources valued at $50,000 or more. The bill would amend ERISA to omit ESOP contributions from the total annual defined contribution plan contribution limits and would add new special rules for ESOPs to permit such ESOPs to exclude employer stock against 401(k) plan limits.

S. 1728 – Employee Ownership Representation Act Sen. Bill Cassidy (R-LA): expands the membership of the Advisory Council on Employee Welfare and Pension Benefit Plans — otherwise known as the ERISA Advisory Council — to include representatives of employee ownership organizations. The council is an interagency task force that works with the Department of Labor to develop and recommend best practices for the development and implementation of employer-sponsored retirement plans. Specifically, the bill aims to give ESOPs representation on the council by amending ERISA to include two new positions, increasing membership from 15 to 17 members.

S. 1831 – Auto Reenroll Act of 2025 Sen. Tim Kaine (D-VA) and Sen. Bill Cassidy (R-LA): would encourage automatic enrollment in employer-sponsored retirement plans and usage of employer matches. Specifically, it would amend safe harbors in ERISA and the Internal Revenue Code to permit plan sponsors to reenroll non-participants at least once every three years, unless the individual affirmatively opts out again.

H.R. 2089 – Generating Retirement Ownership Through Long-Term Holding (GROWTH) Act Rep. Beth Van Duyne (R-TX): allows an individual to defer recognition of a capital gain dividend if the dividend is automatically reinvested in additional shares of the company pursuant to a dividend reinvestment plan. The gain shall be recognized upon a subsequent sale or redemption of stock in the distributing company or upon the death of the individual. A companion bill (also entitled the Generating Retirement Ownership Through Long-Term Holding (GROWTH) Act) was recently reintroduced to the Senate by Senator John Cornyn (R-TX) on May 21, which would similarly defer taxation of automatically reinvested capital gain distributions until shareholders sell their fund shares.

S. 1576 – Stop Subsidizing Multimillion Dollar Corporation Bonuses Act Sen. Jack Reed (D-RI): expands the denial of a tax deduction for excessive employee remuneration to include any employee who was the principal executive officer or principal financial officer of the taxpayer during the year after December 31, 2016 and before January 1, 2025. The bill would amend Section 162(m) of the tax code to impose a deductibility cap of $1 million per employee. Section 162(m) restrictions under the current law are only applied to a publicly traded corporation's top five executives, so the bill would apply such restrictions to all employees of such publicly traded corporations receiving compensation packages over $1 million.

S. 424 – Retirement Fairness for Charities and Educational Institutions Act: Sen. Katie Britt (R-AL): reintroduced legislation that would allow 403(b) plans to include collective investment trusts ("CITs") as part of the plan's investment line-up. The bill would amend the

Legislation (cont.)

Investment Company Act of 1940, the Securities Act of 1933 and the Securities Exchange Act of 1934 to allow 403(b) plans and governmental plans to invest in unregistered insurance company separate accounts and collective investment trusts ("CITs"), which are generally lower-cost investment options available for inclusion in other defined contribution plans, including 401(k) plans.

S. 627 – The Ensuring Nationwide Access to a Better Life Experience ("ENABLE") Act Sen. Eric Schmitt (R-MO): makes permanent certain provisions with respect to qualified ABLE programs otherwise set to expire in 2025. It also makes permanent the allowance of the Savers Credit and the ABLE tax credit. It makes tax-exempt savings accounts for individuals with disabilities a priority. Other key provisions that would be permanently extended by this bill include:

- "ABLE to Work," allowing an individual with a disability who is employed to contribute an additional amount to their ABLE account beyond the standard limit (subject to certain other limits);
- "ABLE Saver's Credit," enabling an individual with a disability to qualify for a non-refundable saver's credit of up to $1,000 for qualified contributions made to their ABLE account; and
- ="529 to ABLE Rollover," permitting the rollover of funds from a 529 plan account into ABLE accounts without incurring income taxes, provided the amounts are within the annual ABLE contribution limit.

A companion bill (also dubbed the ENABLE Act) was similarly reintroduced to the House by Representatives Lloyd Smucker (R-PA) and Donald Beyer (D-VA), along with other bipartisan cosponsors. The bill has been referred to the House Committee on Ways and Means.

S. 1222 – Financial Freedom Act Sen. Tommy Tuberville (R-AL): prohibits the Department of Labor from limiting the type of investments (including cryptocurrency investments) a fiduciary may offer to participants and beneficiaries of employer-sponsored retirement plans who exercise control over the assets in their account. Specifically, the bill prohibits Labor from issuing regulations or sub-regulating guidance that constrain or prohibit the range or type of investment that may be offered through a self-directed brokerage window, so long as participants retain the ability to select a particular investment from a broad range of a plan's investment offerings. In the event that fiduciaries select such a brokerage window as an investment alternative, Labor shall not issue any regulations or guidance constraining or prohibiting the investment window. Similar versions of this bill were previously introduced by Senator Tuberville and Representative Donalds in May 2022 in direct response to the DOL's March 2022 Compliance Assistance Release No. 2022-01 (which discouraged retirement plans from including cryptocurrency assets and other alternative investments in their investment offerings), and again in 2023, but these prior iterations did not advance. The 2022 guidance has since been rescinded.

H.R. 2696 – The Retirement Savings for Americans Act (RSAA) Rep. Lloyd Smucker (R-PA): The bill establishes the American Worker Retirement Fund administered by the Department of the Treasury, a federally-run retirement plan accessible to those low- and middle-income workers that do not otherwise have access to an employer-sponsored retirement plan. The board must establish policies and investment policies for the fund, including the selection of asset managers. The bill establishes a government matching tax credit for contributions to the fund. It also establishes an advisory council to advise the board on matters relating to the plan. On April 30, Senator John Hickenlooper (D-CO) reintroduced a companion bill to RSAA, which is cosponsored by Senator Thom Tillis (R-NC). This bill would similarly provide uncovered private-sector workers with access to a federal-run retirement plan. The text of this bill has not been made publicly available to date, although it has been referred to the Senate Committee on Finance.

H.R. 2958 – Balance the Scales Act Rep. Michael Rulli (R-OH): requires the Employee Benefit Security Administration (EBSA) to report annually on adverse interest agreements (i.e., assistance or advice that is directed specifically toward an attorney for potential use in a civil action) entered into with plaintiffs firms. The bill would require (i) the DOL to disclose a copy of any such agreement to affected employers, plan sponsors or fiduciaries, (ii) the DOL to submit an annual report to Congress outlining key information regarding such agreements, and (iii) would amend ERISA to include a statement explicitly reaffirming one of the key principles of the statute. EBSA must also provide a copy of such an agreement to any employer, plan sponsor or fiduciary that may be directly and adversely impacted by such assistance.

H.R. 2869 – Employee Benefit Security Administration (EBSA) Investigations Transparency Act Rep. Lisa McClain (R-Mich.): requires EBSA to annually report to Congress on the status of cases

Legislation (cont.)

in enforcement status. Specifically, the bill targets the DOL's prolonged and burdensome audits of ERISA plans and would obligate the DOL to submit annual reports to Congress regarding the status of ongoing ERISA plan audits, with special attention to, and specific reporting requirements imposed on, any investigations lasting three years or longer. The report shall not include information identifying any private party to the investigation. The bill also requires the report to include investigations that are active or in relation to which EBSA asserted investigative authority.

S. 1381 – Protecting Employees and Retirees in Business Bankruptcies Act of 2025 (Sen. Dick Durbin (D-IL): revises protections for employees and retirees in business bankruptcies. It increases the wage priority of employees in certain employee benefit plans and revises the definition of stock value losses in defined contribution plans. It provides priority for severance pay and contributions to the employee benefit plan and would expand the maximum value of employee wage claims entitled to priority payment from $10,000 to $20,000. It requires the Department of Labor to establish a process for the payment of retired employees in a bankruptcy sale. It also prohibits executive compensation from being enhanced if the debtor's business exits from bankruptcy. The bill has been referred to the Senate Committee on the Judiciary for further consideration.

H.R. 2988 Protecting Prudent Investment of Retirement Savings Act Rep. Rick Allen (R-GA): requires fiduciaries of retirement plans to prioritize financial returns over non-pecuniary factors when making plan investment decisions and would amend ERISA so that a plan fiduciary may only consider pecuniary factors in its plan investment decisions, with very limited exceptions. Specifically, the bill would amend ERISA to specify that a plan fiduciary shall be deemed to be acting solely in the interest of plan participants and beneficiaries only if: (1) the investment does not subordinate the interests of participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives (including ESG goals); and (2) the fiduciary does not sacrifice investment returns or take on additional investment risks to promote goals unrelated to the plan or purposes of the plan. Under ERISA, a fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives and may not sacrifice investment return or take on additional investment risk to promote non-pecuniary benefits or goals. The weight given to a factor must reflect a prudent assessment of the impact of such factor on risk and return. The bill would permit the limited use and consideration of non-pecuniary factors in a brokerage window, subject to the satisfaction of certain conditions (including various participant disclosure requirements) as well as in a "tie-breaker test" scenario, although the consideration of such factors would trigger stringent documentation requirements for plan fiduciaries. Non-pecuniary factors — such as ESG considerations — would be prohibited for use in a plan's default investment option under the bill.

H.R. 2748 – First Time Homeowner Savings Plan Act Rep. Haley Stevens (D-MI): On April 8, Representative Haley Stevens (D-MI) introduced the First Time Homeowner Savings Plan Act, legislation to increase the amount that can be withdrawn without penalty from qualified retirement plans as first-time homebuyer distributions. The legislation would increase the amount that can be withdrawn without penalty from retirement plans as first-time homebuyer distributions, from $10,000 to $25,000 (as indexed for cost-of-living inflation adjustments, beginning in calendar year 2026). As proposed, the bill would be effective for distributions made in tax years ending after December 31, 2025. The bill has been referred to the House Committee on Ways and Means.

H.R. 2891 – IRA Charitable Rollover Facilitation and Enhancement Act Rep. Adrian Smith (R-NE): allows tax-exempt charitable rollovers from individual retirement accounts to donor-advised funds. If passed, the bill would amend the Internal Revenue Code of 1986, as amended (the "Code") to repeal a restriction under Section 408(d)(8)(B)(i) of the Code on charitable rollovers from IRAs to donor-advised funds or accounts. It also repeals the limitation on the amount of such rollovers that may be transferred to a donor-advised fund.

H.R. 6007 – Retirement Investment in Small Employers (RISE) Act Senators Maggie Hassan (D-NH) and Ted Budd (R-NC): would increase the tax credit certain small employers (with fewer than 10 employees) are permitted to use to cover administrative and start-up costs of setting up a retirement plan. Sponsors of the bill highlight that the current tax credit available to such small businesses is typically insufficient, as it is calculated on a per-employee basis. To remedy this issue, the bill would raise the minimum tax credit that such small businesses can receive from a minimum threshold of $500 to $2,500 to assist such businesses with those costs associated with starting a retirement plan for its employees.

Regulatory

The Regulatory Process and What it May Mean for Proposed and Certain Final Rules From the Prior Administration

When a new Administration comes into office, one of the first orders of business is usually for the President to place a freeze on the regulatory process to allow for a review of pending initiatives. Thus, on January 20, 2025, President Trump issued an Executive Order entitled "Regulatory Freeze – Pending Review" that ordered all executive departments and agencies to refrain from proposing or issuing any rule, in any manner (including sending to the Office of the Federal Register), until a department/agency head appointed or designated by the President could approve the rule. The Order further instructed agencies to consider postponing for 60 days (from January 20) the effective date for any rules that have been published in the Federal Register as of January 22 (or issued in any manner) but not yet effective — to allow for review and possible comment from the public. Thus, for rules listed herein that remain under consideration from prior Administrations, a delay in their consideration, and possibly a withdrawal of the rule, are possible over the coming months. Of course, it is also possible that a number of these rules are ultimately approved and finalized by the Trump Administration or, in the case of issued guidance, allowed to remain in effect. However, for the immediate future, it is likely that we will see little action on these rules, pending their review.

Nonetheless, below we provide a brief synopsis of key proposals:

Department of Labor

Field Assistance Bulletin No. 2025-01 – Missing Participants and Beneficiaries – Pension Plans' Transfer of Small Retirement Benefit Payments to State Unclaimed Property Funds DOL FAB 2025-01: Missing Participants and Beneficiaries – Pension Plans' Transfer of Small Retirement Benefit Payments to State Unclaimed Property Funds – On January 14, 2025, the DOL issued Field Assistance Bulletin 2025-01 ("FAB 2025-02"), which sets forth a temporary relief policy to provide retirement plan fiduciaries with an option to help manage small benefit amounts owed to missing participants and beneficiaries that cannot be located. Such relief is applicable to small retirement benefit payments owed to missing participants or beneficiaries that a responsible plan fiduciary voluntarily decides to pay over to a state unclaimed property fund from an ongoing defined contribution or defined benefit pension plan. DOL announced via FAB 2025-01 that, pending further guidance, it would not pursue violations of Section 404(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") in connection with a decision to transfer retirement benefit payments owed to a missing participant/beneficiary from an ongoing plan to a state unclaimed property fund, provided the present value of the participant/beneficiary's nonforfeitable accrued benefit is $1k or less. FAB 2025-01 also sets forth conditions under which the plan fiduciary must adhere when engaging in such a transfer.

DOL FAB 2025-02: ERISA's Annual Funding Notice Requirements Following SECURE 2.0 – The DOL issued Field Assistance Bulletin 2025-02 ("FAB 2025-02") on April 3, which provides interim guidance on how pension plans annually calculate and disclose the value of a plans' assets and liabilities in connection with the modifications made to Section 101(f) of ERISA under Section 343 of SECURE 2.0. The appendices to FAB 2025-02 also provide updated model notices for single-employer and multiemployer defined benefit pension plans. Pending further guidance, the DOL will treat compliance with FAB 2025-02 as a plan administrator's reasonable, good faith interpretation of the annual funding notice disclosure requirements.

View the Field Assistance Bulletin

Voluntary Fiduciary Correction Program

a. **Voluntary Fiduciary Correction Program/Updates to PTE 2002-51 – final rule** – On January 15, 2025, DOL published in the Federal Register its amended and restated Voluntary Fiduciary Correction Program ("VFC Program") under Title I of ERISA. The amendments simplify and expand the VFC Program to make it "easier to use and more useful for employer and others" who wish to take advantage the relief it provides. Amendments to the VFC Program include:

- Adding a self-correction feature for delinquent transmittal of participant contributions and loan repayments to a plan under certain circumstances;
- Clarifying some existing transactions that are eligible for correction under the VFC Program;

Regulatory (cont.)

- Expanding the scope of other transactions currently eligible for correction; and
- Simplifying certain administrative/procedural requirements for participation in and correction of transactions under the VFC Program.

Additionally, the amendments add a self-correction feature (per section 305(b)(2) and (3) of SECURE 2.0) for certain participant loan features self-corrected under the IRS's Employee Plans Compliance Resolution System ("EPCRS"). Amendments to the VFC Program went into effect on March 17, 2025.

View the Updated VCF Program

b. **Prohibited Transaction Exemption (PTE) 2002-51 To Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program**

In conjunction with publication of the amended and restated VFC Program, on January 15, 2025, DOL also published final amendments to Prohibited Transaction Exemption ("PTE") 2002-51 – to conform the exemption to align with the changes to the VFC Program.

With regard to consistency with self-correction feature under the VFC Program, the final amendments would:

- Require those who take advantage of self-correction to pay into accounts of otherwise affected participants the amount of the excise tax that would otherwise be imposed by IRC section 4975's prohibited transaction excise tax; and
- Require document retention for proof of payment of the amounts paid to the plan (either completed IRS Form 5330 – Return of Excise Taxes Related to Employee Benefit Plans, or other such written documentation).

With regard to other changes included in the final amendments to PTE 2002-51, they include:

- An elimination of the three-year limitation period for taking advantage of the VFC Program (for those who, on more than one occasion during prior three years, took advantage of the VFC Program) to encourage greater use thereof; and
- Any required notice under PTE 2002-51 (of the self-correction) to interested persons must be provided, in addition to posting online, by other means such as regular mail or electronic mail.

The Amendments to PTE 2002-51 went into effect on March 17, 2025.

Proposed Information Collection Request Submitted for Public Comment: Retirement Savings Lost and Found

On April 16, 2024, the DOL published in the Federal Register a Notice seeking public comment on the agency's proposed collection of information from plan administrators of retirement plans subject to ERISA for the purpose of establishing the Retirement Savings Lost and Found online searchable database (as required under Section 303 of SECURE 2.0) to help connect missing participants and other individuals with retirement benefits earned over their working lives for which they may have lost track.

Per the Notice, the DOL sought comments on its proposal to request plan administrators to voluntarily furnish information specified therein directly to the agency, focused in three distinct areas: plans with separated vested participants; plans that distributed benefits under Code Section 401(a)(31)(pertaining to certain mandatory distributions); and plans that distributed annuities.

On November 20, the DOL published in the Federal Register a notice to plan administrators, recordkeepers and other service providers encouraging them to voluntarily submit data to populate the DOL's Retirement Lost and Found database.

Written comments in response to the Notice were due to the DOL by June 17, 2024. The DOL launched its Retirement Savings Lost and Found database on December 27, ahead of the December 29, 2024 deadline imposed by SECURE 2.0.

View the Retirement Savings Lost and Found Database

Automatic Portability Transaction Regulations

On January 29, 2024, DOL published in the Federal Register a notice of proposed rulemaking that would implement the statutory PTE under Section 4975 of the Code, as added by SECURE 2.0 and which provides for the receipt of fees and compensation by an automatic portability provider for services provided in connection with an automatic portability transaction. The proposed rule would incorporate SECURE 2.0's statutory conditions for relief into the PTE, while adding thereto additional conditions DOL believes are necessary to grant exemptive relief.

Comments on the proposal were due to DOL by March 29, 2024.

Regulatory (cont.)

View the proposed automatic portability rule

Retirement Security Rule: Definition of an Investment Advice Fiduciary

On April 25, 2024, DOL published in the Federal Register its final fiduciary rule regulatory package, which revises the definition of an investment advice fiduciary. Under the final rule, a person would be an investment advice fiduciary under ERISA:

- If the investment advice/recommendation is made to a retirement investor (a plan, plan fiduciary, plan participant or beneficiary, IRA, IRA owner or beneficiary, or IRA fiduciary);
- The advice/recommendation is provided "for a fee or other compensation, direct or indirect" (defined in the proposal);
- The person makes the recommendation in one of the following contexts:
  - The person either directly or indirectly has discretionary authority or control, whether or not per an agreement, arrangement, or understanding, with respect to purchasing/selling securities or other investment property for the retirement investor;
  - The person either directly or indirectly makes investment recommendations on a regular basis as a part of his/her business and the recommendation is provided under circumstances indicating it is based on the particular needs/individual circumstances of the retirement investor and may be relied upon as a basis for investment decisions that are in the retirement investor's best interest, or;
- The person making the recommendation represents/acknowledges that they are acting as a fiduciary when making investment recommendations.

View the Final Rule

Litigation Response

There have been several challenges in federal district court to the DOL's final rule defining an investment advice fiduciary as well as the amendments to certain existing prohibited transaction class exemptions/PTEs. The location and status of the litigation appears below:

- On July 25, 2024, in the matter of *FACAC et al. v. Department of Labor* (Case No. 6:24-cv-163-JDK)-the U.S. District Court for the Eastern District of Texas stayed the effective date (September 23, 2024) of DOL's new definition of fiduciary investment, as well as the amendments to Prohibited Transaction Exemption (PTE) until further order of the Court.
- On July 26, 2024, in the matter of American Council of Life Insurers v. Department of Labor (Civil Action No. 4:24-cv-00482-O), the U.S. District Court for the Northern District of Texas stayed the effective date of DOL's new definition of fiduciary investment, as well as amendments to Prohibited Transaction Exemption (PTE 2020-02), until further order of the Court. This means the final fiduciary rule regulatory package will no longer go into effect while the litigation progresses.
- On September 20, 2024, DOL filed notices in both of the proceedings referenced above indicating it would appeal the stays. On November 1, 2024, the parties to the litigation in both cases jointly moved to consolidate the appeals in the 5th Circuit Court of Appeals, which was granted on November 4, 2024. The parties also moved the court to extend the time for filing briefs in the matter to December 20, 2024 for the DOL, and to February 14, 2025 for the plaintiffs. The 5th Circuit granted the motion with regard to DOL's filing date, but denied the plaintiff's requested filing date as "premature" while leaving open the opportunity to again request an extension after DOL has filed its brief.

Amendment to Various PTEs

On April 25, 2024, and in conjunction with the publication of the new regulatory definition of an investment advice fiduciary (see above), DOL published in the Federal Register amendments to various class exemptions that work in conjunction with ERISA's fiduciary provisions.

These affected class exemptions are as follows:

Amendment to Class Exemption PTE 2020-02

According to DOL, the amendment to PTE 2020-02 would seek to build upon the existing conditions included therein by:

- Providing additional disclosures to ensure that retirement investors have sufficient information to make informed decisions about the costs of the investment advice transaction and services of the investment advice fiduciary and any material conflicts of interest;
- Requiring compliance with the Impartial Conduct Standards;

Regulatory (cont.)

- Establishing, maintaining and enforcing policies and procedures to ensure compliance with the Impartial Conducts Standards;
- Requiring financial institutions to report any non-exempt prohibited transactions in connection with fiduciary investment advice (via IRS form 5330) and make corresponding corrections thereto; and
- Adding the failure to report and correct PTEs to the list of behaviors that could make a financial institution ineligible to rely on the exemption (for ten years)

The Amendment was set to go into effect on September 23, 2024, and is applicable to transactions pursuant to investment advice provided on or thereafter. However, the challenges to the DOL's fiduciary rule regulatory package have stayed the effective date for the amendments to PTE 2020-02 until the ongoing litigation is resolved. For transactions occurring prior to such time, the prior version of PTE 2020-02 will remain available for parties currently relying on the exemption. The Amendment provides a one-year phase-in period beginning on the effective date, during which Financial Institutions and Investment Professionals may receive reasonable compensation during the phase-in period, if in compliance with the Impartial Conduct Standards and in acknowledgment of fiduciary status.

View the Amendment to PTE 2020-02

Litigation Response

See–Matter of American Council of Life Insurers v. Department of Labor–noted herein.

Amendment to PTE 84-24

According to DOL, the amendment to PTE 84-24 will limit the universe of investment advice fiduciaries eligible for exemptive relief thereunder to only those entities or persons defined as Independent Producers (persons/entities licensed to sell, solicit or negotiate insurance contracts of multiple unaffiliated insurance companies) and who are not insurance company employees or statutory employees under Section 3121 of the Code selling only non-securities annuities or other insurance products (not regulated by the SEC) to Retirement Investors.

To rely upon PTE 84-24, Independent Producers would have to sell annuities of two or more unrelated insurers. Such relief would be provided only for the fully disclosed eligible forms of compensation, defined as "Insurance Sales Commissions," received in connection with recommendations for non-security annuity or other insurance products.

Independent Producers that sell or recommend investment products other than non-security annuity contracts or other insurance products not regulated by the SEC (e.g., mutual funds, stocks, bonds and CDs), could not rely upon PTE 84-24, but rather must rely on PTE 2020-02 or another available exemption when receiving fees or other compensation connected with investment recommendations related to those products.

The Amendment was set to go into effect on September 23, 2024, and is applicable to transactions pursuant to investment advice provided on or after the effective date. However, the challenges to the DOL's fiduciary rule regulatory package have stayed the effective date for the amendments to PTE 84-24 until the ongoing litigation is resolved. For transactions pursuant to investment advice provided before such time, the prior version of PTE 84-24 will remain available for insurance agents and insurance companies that currently rely on the exemption. The Amendment provides a one-year phase-in period beginning on the effective date, during which an Independent Producer may receive certain compensation if in compliance with the Impartial Conduct Standards condition in Section VII(a) and the fiduciary acknowledgment condition under Section VII(b)(1).

View the Amendment to PTE 84-24

Litigation Response

See matter of FACC et al v. Department of Labor–noted herein

Amendments to PTEs 75-1, 77-4, 80-83, 83-1 and 86-128

According to DOL, the amendments to these existing PTEs eliminate the ability of investment advice fiduciaries to obtain exemptive relief with respect to the covered transactions in each exemption (as well as make other administrative changes thereto). Instead, and to ensure a universal standard of care for the provision of investment advice, exemptive relief for investment advice fiduciaries with respect to such transactions would be provided going forward under one exemption–PTE 2020-02 (as amended).

View the Mass Amendment

DEPARTMENT OF TREASURY

On October 3, 2024, the Treasury Department released the 2024-2025 Priority Guidance Plan that contains 231 guidance projects that are priorities for the agency during the 12-month period

Regulatory (cont.)

from July 1, 2024, through June 20, 2025. Included in the Guidance Plan are retirement and/or other related benefit priorities, some of which are addressed elsewhere in this Update, and include the following (a sampling):

- Regulations under Section 72(t) relating to the 10% additional tax on early distributions.
- Regulations relating to the timing of the use or allocation of forfeitures in qualified retirement plans (see below).
- Updating IRA regulations under Sections 219, 408, 408A and 4973 for statutory changes and additional issues (see below).
- Final Regulations relating to the SECURE Act and SECURE 2.0 modifications to 401(a)(9) and other issues under 401(a)(9) (see below).
- Regulations updating electronic delivery rules (see below).
- Guidance on student loan payments and qualified retirement plans and 403(b) plans.
- Regulations relating to the SECURE Act and SECURE 2.0 modifications to certain rules governing 401(k) plans (see below).
- Guidance on missing participants including guidance on uncashed checks.
- Guidance on contributions to and benefits from paid family and medical leave programs.
- Guidance on SECURE 2.0 changes relating to 529 college savings plans.

Guidance Under Section 110 of SECURE 2.0 with Respect to Matching Contributions Made on Account of Qualified Student Loan Payments

On August 19, 2024, the IRS published Notice 2024-63, to provide guidance, in the form of questions and answers, regarding section 110 of SECURE 2.0, which allows employers to make matching contributions on account of employees' qualified student loan payments under 401(k) plans, 403(b) plans, SIMPLE IRA plans, and governmental 457(b) plans.

The Notice applies for plan years beginning after December 31, 2024. For plan years beginning before January 1, 2025, plan sponsors may rely on a good faith, reasonable interpretation of section 110 of SECURE 2.0. According to the IRS, the guidance provided in the Notice is an example of a good faith, reasonable interpretation of section 110 of SECURE 2.0.

Comments on Notice 2024-63 were due to the IRS by October 18, 2024.

View a copy of the Guidance

IRS Notice 2024-22 – Guidance on Anti-Abuse Rules Under Section 127 of SECURE 2.0 – Initial Guidance

On January 12, 2024, the IRS released Notice 2024-22, providing initial guidance to employers setting up "pension-linked emergency savings accounts" ("PLESAs") for their employees. PLESA's were authorized by SECURE 2.0 as "short-term savings accounts established and maintained in connection with a defined contribution plan — and are treated as a type of designated Roth account."

Should an employer offer a PLESA as a part of a defined contribution plan, the plan may either offer to enroll eligible employees into the PLESA or automatically enroll such eligible participants via an automatic contribution arrangement.

A defined contribution plan that includes a PLESA must separately account for contributions to the PLESA (and any earnings thereon); maintain separate recordkeeping with respect to each PLESA; and allow withdrawals from the PLESA, in whole or in part, at least once per month. An employer that makes matching contributions to a plan that includes a PLESA option is generally required to make matching contributions to an employee's PLESA contributions at the same rate as with the plan. Such matching contributions would be deposited into the participant's plan account (not into the PLESA). The IRS guidance also highlights reasonable measures employers are permitted to take to discourage potential abuses of the PLESA matching contribution rules.

View a copy of Notice 2024-22

Separately, on January 17, 2024, DOL issued a series of Frequently Asked Questions ("FAQs") to provide "general compliance information" under ERISA pertaining to PLESAs. The FAQs seek to address questions pertaining to: eligibility and participation in a plan's PLESA; contribution requirements for PLESAs; distributions and withdrawals from PLESAs; and administrative and investment requirements for PLESAs. DOL anticipates releasing additional guidance in the coming months.

View a copy of the FAQs

IRS/DOL/PGBC – Joint RFI SECURE 2.0 Section 319 Effectiveness of Reporting and Disclosure Requirements

Regulatory (cont.)

On January 23, 2024, the IRS, DOL and the PBGC jointly published in the Federal Register an RFI to develop a public record to assist the agencies in addressing the requirement, outlined in section 319 of SECURE 2.0, that they review existing reporting and disclosure requirements for certain retirement plans under ERISA and the Code to assess their effectiveness, and thereafter to make recommendations to Congress regarding such requirements.

The RFI seeks public input, via a series of questions, regarding the effectiveness of required notices and disclosures to plan participants, and, separately, questions regarding the effectiveness of plan reporting requirements under the Code and ERISA.

Per section 319, the agencies must report their findings and recommendations to Congress by December 29, 2025.

Comments on the RFI were due to the agencies by May 22, 2024.

View a copy of the RFI

IRS – Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k)

On November 27, 2023, the IRS published in the Federal Register a notice of proposed rulemaking to amend the rules applicable to cash or deferred arrangements under Section 401(k) plans, to provide guidance regarding long-term, part-time employees. The proposed rules provide guidance on the special eligibility and vesting rules for longer-term part-time employees as originally enacted as a part of the SECURE Act, and as later modified by SECURE 2.0.

Comments were due to IRS by January 26, 2024, and a public hearing on the proposed regulation was held on March 15, 2024.

One thing to note; the proposed regulations would apply to most plan years beginning on/after January 1, 2024 and may be relied upon prior to publication of the rule as final.

View a copy of the proposed rule

Additional Guidance with Respect to Long-Term, Part-Time Employees, Including Guidance Regarding Application of Section 403(b)(12) to Long-Term, Part-Time Employees Under Section 403(b) Plans

On October 3, 2024, the Treasury Department/IRS released Notice 2024-73, to provide guidance on discrete issues related to the application of the nondiscrimination rules of section 403(b)(12) with respect to long-term, part-time employees under a section a 403(b) plan.

Comments on the contents of the Notice were due to the IRS by December 20, 2024. The IRS also stated separately therein that final regulations related to section 401(k) long-term, part-time employees in 401(k) plans will apply no earlier than to plan years that begin on or after January 1, 2026.

View a copy of Notice 2024-73

IRS – IR 2025-07: Catch-Up Contributions (update)

On January 13, 2025, the Treasury Department/IRS published in the Federal Register IR 2025-07, setting forth proposed regulations relating to catch-up contributions to certain defined contribution plans. The proposed regulations would amend the regulations under Code section 414(v) to reflect changes to the catch-up contribution requirements for certain eligible participants pursuant to the following provisions of SECURE 2.0:

- Section 109 of SECURE 2.0, which allows additional catch-up contributions to a 401(k), 403(b), governmental 457(b), SARSEP, SIMPLE IRA and SIMPLE 401(k) plans for employees ages 60, 61, 62, or 63;
- Section 117, which increases the contribution limits for SIMPLE IRA and SIMPLE 401(k) plans sponsored by employers with 25 or fewer employees, to 110% of the limits that would otherwise apply to such plans (2024 limits), as adjusted for inflation; and
- Section 603, which provides that plan participants in 401(k), 403(b), and governmental 457(b) plans, with FICA wages in the prior year (from the employer sponsoring the retirement plan) of over $145k (indexed), can make age-based catch-up contributions on a Roth basis only (not on a pre-tax basis).

Comments on the proposed regulations were due to the IRS by March 14, 2025, and a public hearing was held on April 7, 2025.

View the proposed regulation

IR 2025-09: Automatic Enrollment Requirements Under Section 414A – proposed regulations – On January 14, 2025, the Treasury Department/IRS published in the Federal Register IR 2025-09, setting forth proposed regulations that would, among other things, generally require newly

Regulatory (cont.)

established 401(k) and 403(b) plans to automatically enroll eligible employees starting in the 2025 plan year, absent an exception (e.g., plans established before the December 29, 2022 enactment date for SECURE 2.0). The requirement to include an automatic enrollment feature would exclude:

- SIMPLE 401(k) plans, governmental plans, church plans, and new businesses in existence for less than three years.
- Small businesses with fewer than 10 employees (until such time as they employed greater than 10 employees).
- Plans established before the date of enactment of SECURE 2.0 (December 29, 2022)

Comments on the proposed regulations were due to DOL by March 17, 2025, and a public hearing was held on April 8, 2025.

View the Automatic Enrollment Proposal

IRS – Required Minimum Distributions (Final Rule)

On July 19, 2024, the IRS published in the Federal Register final regulations relating to required minimum distributions from 401(a) qualified plans; 403(b) annuity contracts; custodial accounts and retirement income accounts; individual retirement accounts and annuities; and certain eligible deferred compensation plans.

The final rules address the required minimum distribution requirements for 401(a) qualified plans and to update the regulations to reflect amendments to 401(a)(9) via enactment of the SECURE Act) (P.L. 116-94), and via various sections included as part of SECURE 2.0 (Public Law 117 – 328).

Among the provisions of interest in the final rule are the following:

- Retention of the proposed rule's 10-year distribution requirement for "Required Minimum Distributions" of inherited assets
- Eliminate RMD's for in-plan "designated Roth accounts" during the life of the employee
- For annuity contracts, clarifies that the determination of status as an "eligible designated beneficiary" occurs as of the annuity starting date, not the date of the employee's death
- For qualified longevity annuity contracts (QLACs) – eliminate the percentage-based limitation on premiums; increase the dollar limitation on QLAC premiums; allow for certain free-look provisions; and clarify when a divorce occurring after the QLAC is purchased but before annuity payments begin trigger payout changes
- Clarifies the ability of plans to maintain different RMD rules for different types of eligible designated beneficiaries

The final rules went into effect on September 17, 2024. The applicability date will apply for distributions made, and for distribution calendar years beginning, on or after January 1, 2025. For earlier years, taxpayers must apply the final regulations published in 2002 and 2004, taking into account a "reasonable, good faith interpretation" of amendments to the RMD rules enacted as a part of the SECURE Act, and SECURE 2.0.

View the Final Rule

Certain Exceptions to the 10% Additional Tax under Code Section 72(t)

On June 7, 2024, the IRS published Notice 2024-55, to provide guidance, primarily in question and answer format, on the application of the exception to the 10% additional tax under Code Section 72(t), for emergency personal expense distributions and domestic abuse victim distributions. These new exceptions were added to the Section 72(t) of the Code via enactment of SECURE 2.0 (P.L. 117-328), effective as of January 1, 2024.

Comments on the published guidance were due to the IRS by October 7, 2024.

View a Copy of the Notice

Appendix

Appendix A: TCJA Provisions Set to Expire

Marginal Tax Rates

- Under TCJA, the marginal rates are 10%, 12%, 22%, 24%, 32%, 35%, and 37%
- Upon expiration, the marginal rates revert to their pre-TCJA levels of 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%

Estate and Gift Tax

- Under TCJA, the estate/gift tax exemption amount increased to $10 million per individual (indexed)—and as of 1/1/2025 the exemption amount is $13.99 million per individual
- Upon expiration, the estate/gift tax exemption amount reverts to $5 million per individual (indexed)
- The annual gift tax exclusion, which is $19k per individual in 2025 (indexed) is not affected by the expiration of the TCJA

State and Local Deduction (SALT)

- Under TCJA, taxpayers that itemize deductions can only deduct up to $10,000 in state and local income, sales (in lieu of income), and property taxes
- Upon expiration, the cap on such deductions will no longer apply

Alternative Minimum Tax

- Under TCJA, both the AMT exemption amount and the phaseout thresholds applicable thereto, are substantially increased (indexed)
- Upon expiration, both the AMT exemption amount and the corresponding exemption phaseout will return to pre-TCJA levels (indexed)

Deduction for Pass-Through Business Income (199-A Deduction)

- Under TCJA, a deduction equal to 20% of qualified business income is allowed for pass-through business income (otherwise taxed at ordinary individual income tax rates), with limitations
- Upon expiration, the 20% qualified business income deduction will no longer be available to pass through businesses

Charitable Contribution Deduction

- Under TCJA, the AGI limit for cash donations to public charities increased to 60%
- Upon expiration, the AGI limit for cash donations to public charities will revert to 50%

Standard Deduction

- Under TCJA, the standard deduction (for non-itemizers) was $12,000 (single) and $24,000 (joint) (indexed)
- Upon expiration, the standard deduction reverts to pre-TCJA levels of $6,500 (single) and $13,000 (joint) (indexed)

Personal Exemptions

- Under TCJA, the personal exemption amount was temporarily suspended
- Upon expiration, the deduction for personal exemptions returns (in 2017 the exemption amount was $4,050)

Child Tax Credit

- Under TCJA, the credit is up to $2,000 per qualifying child, with up to $1,400 of that amount refundable at certain income levels
- Upon expiration, the credit reverts to $1,000 per child (refundable at certain income levels)

Itemized Deduction for Miscellaneous Expenses Subject to the 2% Floor

- Under TCJA, all miscellaneous itemized deductions that are subject to the 2% floor are suspended (e.g., includes investment fees/expenses; IRA trustee fees if separately billed/paid)
- Upon expiration, taxpayers that itemize will be able to deduct miscellaneous expenses to the extent such expenses collectively exceed 2% of AGI

Mortgage Interest Deduction

- Under TCJA, taxpayers who itemize may deduct interest on only the first $750k (joint filers) of mortgage debt for loans incurred after Dec. 31, 2017 and before Jan. 1, 2026
- Under TCJA, the deduction for interest on home equity indebtedness is suspended through 2025
- Upon expiration, the $750k limitation will increase to $1 million, and interest on the first $100k of home equity debt will also be deductible (regardless of use)

Overall Limitation on Itemized Deductions

- Under TCJA, the overall limitation on itemized deductions (the "Pease" limitation) is suspended
- Upon expiration, the Pease limitation returns and for taxpayers with AGI above certain thresholds, the total amount of itemized deductions are reduced by 3% of the amount by which AGI exceeds such thresholds

[1] Nominees for key positions, such as Billy Long for Commissioner of the Internal Revenue Service and Daniel Aronowitz as Assistant Secretary of Labor for the Employee Benefits Security Administration, are moving through the process but have yet to be confirmed.

[2] Estimated Budgetary Effects of H.R. 1, the One Big Beautiful Bill Act | Congressional Budget Office

[3] See Exhibit A for sample list of the major TCJA provisions set to expire.

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