Morgan Stanley

Washington Update

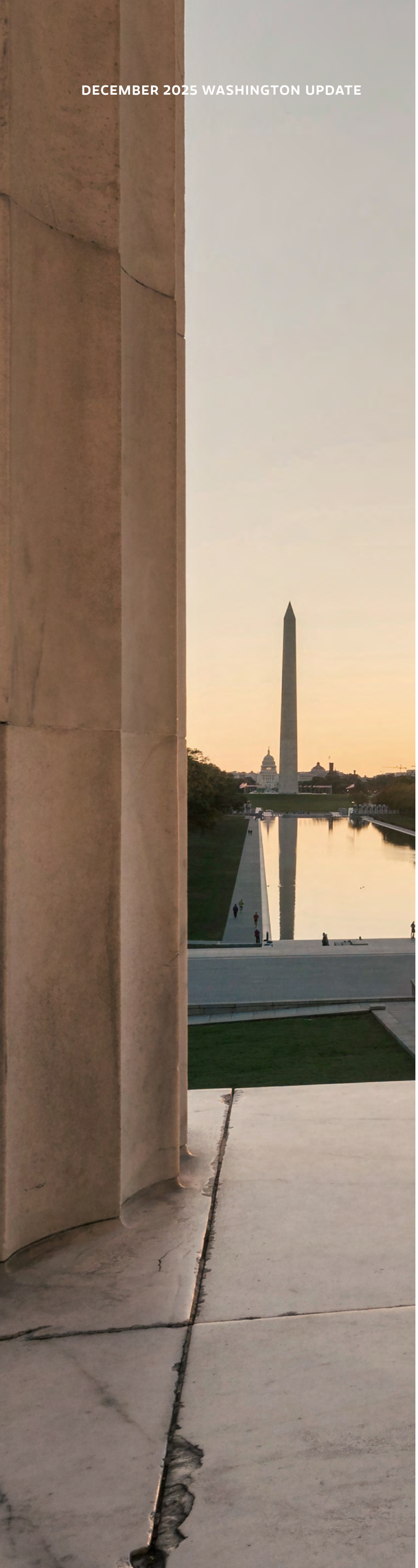
A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

DECEMBER 2025

119th Congress—Unpacking the Government Shutdown

The September edition of the Washington Update suggested that, due to a number of factors, the federal government was more likely than not to shut down at the end of that month. That prediction turned out to be prescient, as Congress failed to pass any of the 12 annual appropriations bills by September 30 and could not agree on a stopgap funding measure to keep the government open, thus starting what became the longest federal government shutdown in history.

TABLE OF CONTENTS



At the heart of the shutdown was a demand by Democrats for Republicans to negotiate an extension of enhanced subsidies for Affordable Care Act (ACA) health insurance plans, which are set to expire at the end of this year and could cause premiums to rise by 26 percent on average for those with ACA marketplace plans. Republicans balked at this demand, and instead put forward a "clean" continuing resolution (CR) through November 21.[1] After six weeks of steadily increasing pressure and rising consequences from continuing the shutdown, a deal was finally reached. On November 12, 2025, the President signed legislation reopening the government through January 30, 2026, with certain agencies funded until September 30, 2026. At a high level, the deal included the following:

- Three full fiscal year appropriations bills (Military Construction and Veterans Affairs; Agriculture/Food and Drug Administration; and Legislative Branch (Congress)) provide funding through 9/30/26, with a continuing resolution funding the rest of the government through 1/30/26.[2]
- Promise of a December Senate vote on ACA subsidy legislation (not specified, but Democrats will be able to choose the bill that gets a vote).[3]
- Retroactive restoration of employees subject to "reduction in force (RIF)" notices, and prohibition of future federal workforce reductions through the duration of the stopgap funding bill (1/30/26).

Democrats did not accomplish their main goal of extending the expiring enhanced ACA health insurance subsidies, but the party did succeed in significantly increasing the profile of the issue. If a deal to extend the enhanced subsidies does not materialize later this year or early next year, Democrats will surely pin the blame on Republicans for rising healthcare costs and make healthcare a key issue in November's midterm elections, with an aim of flipping control of the House of Representatives and potentially the Senate.

Republicans did not "win" the shutdown either, but did successfully hold the line on their initial position of not negotiating on healthcare until the government reopened. If a deal is not reached and voters do indeed blame Republicans in the midterm elections for increasing health insurance premiums, their perceived victory may be short-lived.

With the government reopened (at least temporarily), Congress will attempt to shift its focus toward enacting into law more ambitious pieces of legislation. The Administration's efforts on the regulatory front (both to promulgate new regulations and modify/revoke existing regulations) were not entirely halted by the shutdown, but were certainly impacted. Regaining the furloughed employees and returning to a normal functioning process should help agencies accomplish the large task they face over the next several months. At the center of this will be enactment by the IRS of regulations stemming from the tax reconciliation bill commonly referred to as the One Big Beautiful Bill Act (OBBBA).[4]

On the following pages, we provide an update on the status of certain legislation, provide updated information on regulatory initiatives related to retirement security and policy, and outline recently-released changes to certain benefits-related tax limits of interest to individuals.

Legislation

What Comes Next?

Unlike most years in recent memory, Congress does not have a year-end appropriations cliff. The only legislation that "must pass" before the end of the year is the National Defense Authorization Act (NDAA). The NDAA has not historically included tax provisions, but could be a vehicle for certain small-scale retirement changes. There are ongoing bipartisan discussions on legislation governing the taxation of digital assets, and while it is possible that Congress could act before year-end, it is more likely that such legislation would get kicked into next year. Ahead of the January 30th funding cliff, Congress will focus primarily on passing as many of the nine remaining appropriations bills as possible. While lawmakers may pass another "minibus" packaging together a few additional appropriations bills, it is highly unlikely that all nine bills will pass, meaning another stopgap funding bill will almost certainly be necessary to avert a partial government shutdown.

Retirement Policy in the 119th Congress

Ahead of 2026, we highlight below many of the notable pieces of legislation that have been introduced (or reintroduced) so far during this Congress. While the prospects for enactment of each of these bills vary, all have generated discussion within the financial services industry.

Notable Legislation

S. 2003—Strengthening Benefit Plans Act of 2025 (Sen. Tim Scott, R-SC)

Permits (i) overfunded 401(h) retiree pension account assets to be transferred and used to help pay for active healthcare programs, (ii) surplus defined benefit plan assets to fund employer contributions to defined contribution plans, and (iii) the corresponding transfer of such excess assets from these overfunded plans to fund active employee benefits. These transfers are limited to one per taxable year and must meet minimum cost and benefit requirements over a five-year period. The assets transferred are not treated as employer reversions or prohibited transactions, and the employer cannot deduct the transfer or related benefits. The bill also includes provisions to ensure transparency through participant notices and maintains compliance with existing retirement plan regulations. The bill has been referred to the Senate Finance Committee and, if passed, would be effective for tax years beginning after December 31, 2025. The bill has been referred to the Senate Committee on Finance.

S. 2403—Retire Through Ownership Act (Sen. Roger Marshall, R-KS and Sen. Tim Kaine, D-VA)

Would address the longstanding issue of employee stock ownership plans ("ESOPs") valuation by aligning ESOP valuation standards with IRS standards under existing valuation law, thereby allowing fiduciaries of ESOPs to rely on IRS Revenue Ruling 59-60 for such determinations. This reliance is permitted under the principles and methodologies established in that ruling as it existed on the date of enactment of the ERISA Adequate Consideration Act of 2025. The bill would further permit the Department of Labor (DOL) to issue "additional guidance" and provide a safe harbor for those fiduciaries relying on "well-established IRS provisions." The amendments apply to determinations made on or after the date the bill is enacted. The Senate unanimously passed the legislation on October 9. The bill now advances to the House of Representatives and, if passed by the chamber, would advance to President Trump to consider signing it into law.

S. 2461—Promotion and Expansion of Employee Ownership Act of 2025 (Sen. Steve Daines, R-MT and Sen. Maggie Hassan, D-NH)

Encourages S corporations to create an ESOP when looking to transition ownership by offering tax incentives, ensuring continued eligibility for small business programs, and establishing new offices to promote and support employee ownership. The bill has been referred to the Senate Committee on Finance.

H.R. 4996—Financial Opportunities for Retirees and Warriors Advancing Retirement Development (FORWARD) Act (Rep. Jen Kiggans, R-VA and Rep. Wesley Bell, D-MO)

Would expand contribution eligibility for the federal 401(k) plan–the Thrift Savings Plan, also known as the "TSP"–to allow military retirees and disabled veterans to contribute to their TSP accounts even if such individuals are no longer in service or employed by the government. The bill directs the Federal Retirement Thrift Investment Board (which governs the TSP) to coordinate with the Department of Defense and the Department of Veterans Affairs to issue regulations implementing the changes under the legislation within 180 days after enactment. The bill clarifies that no additional matching government contributions would be made on behalf of these participants. The bill has been referred to the House Committee on Oversight and Government Reform.

Legislation (cont.)

S. 2335—Pensions for All Act
(Sen. Bernie Sanders, I-VT)

Aims to provide comprehensive retirement coverage to those individuals without access to an employer-sponsored retirement plan. The legislation requires all employers and self-employed individuals to either provide a traditional defined benefit retirement plan equivalent to, or better than, the plan provided to new members of Congress under the Federal Employees Retirement System ("FERS") or to elect and pay into FERS at a level that ensures their employees receive the same amount of retirement benefits as members of Congress. The bill includes provisions for annual elections and tax penalties for noncompliance, and generally would require the government to subsidize up to 50% of the cost to small- and mid-sized employers. Employers are prohibited from reducing any employee's compensation due to the extra costs associated with the provision of a defined benefit plan to their employees.

The bill has been referred to the Senate Committee on Finance.

H.R. 4548—Small Nonprofit Retirement Security Act of 2025
(Rep. Vern Buchanan, R-FL)

A bipartisan, bicameral bill to address a gap in federal tax policy that excludes nonprofit organizations from accessing the retirement start-up tax credits established under the under the Setting Every Community Up for Retirement Act of 2019 (the "SECURE Act") and the SECURE 2.0 Act of 2022 ("SECURE 2.0"). Extends retirement credits, including startup costs and auto-enrollment benefits, under both the SECURE Act and SECURE 2.0 to tax-exempt small nonprofit organizations and specifically, would provide a tax credit of up to $5,000 for the first three years of a retirement plan's operation and an additional $500 annually for plans that adopt auto-enrollment features. Such tax credits could be applied directly to the nonprofit organization's payroll tax liability.

The bill has been referred to the House Committee on Ways and Means.

H.R. 1155—Recovery of Stolen Checks Act (Rep. Nicole Malliotakis, R-NY)

Requires the Department of the Treasury to establish procedures that allow an eligible taxpayer to elect to receive by direct deposit a replacement of a federal tax refund amount that was originally issued as a paper check and was lost or stolen. (Currently, taxpayers eligible to receive a replacement of a lost or stolen federal tax refund check are generally issued another paper check.)

The bill has been referred to the House Committee on Ways and Means.

A companion bill (S. 2449) under the same title was introduced by Senators Mark Warner (D-VA) and Marsha Blackburn (R-TN) to similarly allow taxpayers whose paper checks from the Treasury were lost or stolen in the mail to receive payments via electronic deposit. The bill mandates that the Treasury establish procedures allowing taxpayers to receive such funds electronically.

Pursuant to an executive order issued by President Trump earlier this year, federal agencies were directed to cease the use of paper checks as of September 30, 2025.

S. 1707—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.

The bill has been referred to the Senate HELP Committee for further consideration.

A companion bill (H.R. 4718), also entitled the Helping Young Americans Save for Retirement Act, was reintroduced by Reps. Brittany Pettersen (D-CO) and Michael Rulli (R-OH) on July 23, which generally mirrors the terms of S. 1707.

Legislation (cont.)

S. 928—The Protecting Americans' Retirement Savings (PARSA) 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 those other 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: (i) acquiring an interest between the plan and a sanctioned entity; (ii) lending money or extending credit to such entity; (iii) furnishing goods, services or facilities to a covered entity; or (iv) 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 that such fiduciaries provide a statement of justification explaining 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.

The bill has been referred to the Senate HELP Committee.

S. 988—The Women's Retirement Protection Act of 2025 (Sen. Tammy Baldwin, D-WI)

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 spouses' 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 DOL 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 must establish a program to award grants to states and Indian tribes to implement the requirements.

The bill has been referred to the Senate HELP Committee.

H.R. 2163—No Penalties for Victims of Fraud Act (Rep. Hailey Stevens, D-MI)

Waives the 10 percent early withdrawal penalty for those victims who made early retirement plan account distributions that are the result of fraud, provided 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 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.

The bill has been referred to the House Committee on Ways and Means.

H.R. 3248—America Ownership and Resilience Act (Rep. Blake Moore, R-IL)

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 ESOP 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 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.

Legislation (cont.)

The bill has been referred to the House Committee on Financial Services and the House Committee on Ways and Means.

S. 1728—Employee Ownership Representation Act of 2025 (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 DOL 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.

The Senate unanimously passed the Employee Ownership Representation Act of 2025 on October 9. The bill now advances to the House of Representatives and, if passed by the chamber, would advance to President Trump to consider signing it into law.

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 of 1986, as amended (Code), to permit plan sponsors to reenroll non-participants at least once every three years, unless the individual affirmatively opts out again.

The bill has been referred to the Senate HELP Committee.

H.R. 2089—Generating Retirement Ownership Through Long-Term Holding (GROWTH) Act (Rep. Beth Van Duyne, R-TX and Rep. Terri Sewell, D-AL)

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 reintroduced in 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.

The bill has been referred to the House Committee on Ways and Means.

S. 424—Retirement Fairness for Charities and Educational Institutions Act (Sen. Katie Britt, R-AL)

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 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 CITs, which are generally lower-cost investment options available for inclusion in other defined contribution plans, including 401(k) plans.

The bill has been referred to the Senate Committee on Banking, Housing and Urban Affairs.

S. 627—The Ensuring Nationwide Access to a Better Life Experience ("ENABLE") Act (Sen. Eric Schmitt, R-MO)

It makes permanent certain provisions with respect to qualified Achieving a Better Life Experience (ABLE) programs otherwise set to expire in 2025. It also makes permanent the allowance of the Saver's 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 529 plan accounts into ABLE accounts without incurring income taxes, provided the amounts are within the annual ABLE contribution limit.

The bill has been referred to the Senate Committee on Finance.

Legislation (cont.)

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. This legislation was enacted as part of the OBBBA.

S. 1222—Financial Freedom Act (Sen. Tommy Tuberville, R-AL)

Prohibits the DOL 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 the DOL 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, the DOL 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.

The bill has been referred to the Senate HELP Committee.

H.R. 2696—The Retirement Savings for Americans Act (RSAA) (Rep. Lloyd Smucker, R-PA)

Establishes the American Worker Retirement Fund administered by the Department of the Treasury, a federally run retirement plan accessible to low- and middle-income workers who 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.

The bill has been referred to the House Committee on Education and Workforce and the House Committee on Ways and Means.

On April 30, Senator John Hickenlooper (D-CO) and Sen. Thom Tillis (R-NC) reintroduced a companion bill to RSAA. This bill would similarly provide uncovered private-sector workers with access to a federally run retirement plan.

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 plaintiff firms. The bill would require (i) the DOL to disclose a copy of any such agreement to affected employers, plan sponsors or fiduciaries, (ii) require 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.

The House Education and Workforce Committee voted to advance the Balance the Scales Act on September 17. The bill now advances to a full floor vote in the House of Representatives.

H.R. 2869—Employee Benefit Security Administration (EBSA) Investigations Transparency Act (Rep. Lisa McClain, R-MI)

Requires EBSA to annually report to Congress on the status of cases 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. The House Education and Workforce Committee voted to advance the EBSA Investigations Transparency Act on September 17.

The bill now advances to a full floor vote in the House of Representatives.

Legislation (cont.)

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 environmental, social and governance (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.

On June 25, the House Education and Workforce Committee voted to approve the legislation, which now awaits the full chamber's consideration.

H.R. 2748—First Time Homeowners Savings Plan Act (Rep. Haley Stevens, D-MI)

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 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.

The bill has been referred to the House Committee on Ways and Means.

S. 1840—Retirement Investment in Small Employers (RISE) Act (Sen. Maggie Hassan, D-NH and Sen. 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.

The bill has been referred to the Senate Committee on Finance.

H.R. 5325—Unclaimed Retirement Rescue Plan (Rep. Seth Magaziner, D-RI and Rep. Ron Estes, R-KS)

Would direct the DOL to issue regulations permitting–but not requiring–plan fiduciaries to transfer unclaimed retirement distributions to the relevant state unclaimed property program. The legislation limits these types of transfers to distributions valued between $50-$5,000 and imposes waiting periods prior to effectuating such transfer, along with certain conditions–for example, that the plan fiduciary attempt to contact the recipient of such unclaimed distributions prior to initiating a transfer and that the fiduciary report any subsequent transfer of assets to the DOL for purposes of populating the agency's newly established Retirement Savings Lost and Found Database.

Legislation (cont.)

The bill has been referred to the House Committee on Education and Workforce and the House Committee on Ways and Means.

S. 2966—Emergency Relief for Federal Workers Act of 2025 (Sen. Tim Kaine, D-VA and Rep. Don Beyer, D-VA)

Would permit furloughed TSP participants to withdraw up to $30,0000 from their TSP accounts without incurring a 10 percent early withdrawal penalty during government shutdowns exceeding two weeks, although such workers remain responsible for paying income taxes on any amounts so withdrawn. Further, the legislation would permit such furloughed workers to replace any withdrawn funds back into their TSP accounts. The legislation would also suspend TSP loan repayments during shutdowns, with any outstanding payments to be deducted from the participant's back pay once the government resumes operations. Notably, missed loan payments during such periods are prohibited from being classified as taxable distributions. The bill has 28 Democrat cosponsors and is unlikely to receive support from Congressional Republicans.

The bill has been referred to the Senate Committee on Finance.

H.R. 5748—Retirement Investment Choice Act (Rep. Troy Downing, R-MT)

A one-page bill that would codify President Trump's August 7 Executive Order into law, stating that such order "shall have the full force and effect of the law." However, it remains unclear as to what exactly it would codify into law, as the Alt. Asset Executive Order does not amend any law itself, and applicable existing laws do not currently prohibit the inclusion of private market investments in a defined contribution plan.

The bill has been referred to the House Committee on Education and Workforce and the House Committee on Financial Services.

S. 3086—Restoring Integrity in Fiduciary Duty Act (Sen. Bill Cassidy, R-LA and Sen. Jim Banks, R-IN)

Would essentially codify the sub-regulatory guidance issued in 2020 during the first Trump Administration on the use of ESG factors in retirement plan investment decisions by amending Section 404(a) of ERISA to only permit fiduciaries to consider "pecuniary factors" in such plan investment decisions. If passed, the bill would impose a capita aut navia standard in a tiebreaker scenario when choosing between two or more potential investment options–meaning the fiduciary must flip a coin or otherwise decide between such options at random. The legislation would similarly impose the pecuniary only limitation with respect to a fiduciary's exercise of shareholder rights.

The bill has been referred to the Senate HELP Committee for further consideration.

S. 3083—Providing Complete Information to Retirement Investors Act (Sen. Jim Banks, R-IN)

Would require employer-sponsored defined contribution plans to provide participants with information explaining the difference between investment options selected by their plan fiduciaries and those selected through a self-directed brokerage window. Under the legislation, such plans must "provide a notice to investors each time they allocate money into or out of a brokerage window that such investments were not selected by a fiduciary and may result in lower returns."

The bill has been referred to the Senate HELP Committee for further consideration.

H.R. 5887—Saving for the Future Act (Rep. Scott Peters, D-CA and Rep. Norma Torres, D-CA)

Would establish a hybrid emergency savings and 401(k)-type government-run program that would require employers to pay a minimum of 50 cents into an employee's savings plan account for every hour worked. The minimum employer contribution amount would increase after two years from 50 to 60 cents and again with wage growth. The legislation permits businesses with fewer than 10 workers to opt out of the employer contribution mandate, and an UP account would still be available to such employers' workers with a direct, individual credit for their savings.

The bill has been referred to the House Ways and Means Committee and the House Education and Workforce Committee for further consideration.

H.R. 998—Internal Revenue Service Math and Taxpayer Help Act (Rep. Randy Feenstra, R-IA)

The Senate unanimously advanced the Internal Revenue Service Math and Taxpayer Help Act on October 20, which now awaits President Trump's signature codifying the bill into law. The legislation, if signed, would (i) require the IRS to include a clear description of the relevant

Legislation (cont.)

error in math and clerical error notices sent to taxpayers, highlighting the exact line(s) where the error was made in the federal return; (ii) provide a clear deadline for taxpayers requesting an abatement of their tax assessment; and (iii) create a pilot program to examine the benefits of sending such math or clerical error notices via certified or registered mail.

H.R. 6084—ERISA Litigation Reform Act (Rep. Randy Fine, R-FL)

Would amend Section 502 of ERISA to clarify that, for purposes of litigation alleging certain prohibited transactions under Section 406 of ERISA, the applicable statutory exemption under Section 408 of ERISA is effectively an element of the prohibited transaction–effectively overriding the recent decision in Cunningham v. Cornell, which held that prohibited transaction exemptions are an affirmative defense that must be raised by the defendant and that cannot be considered in the context of a motion to dismiss.

The legislation has been referred to the House Committee on Education and Workforce and the Committee on Judiciary.

Outlook

Without a funding "cliff" at year-end, legislators will look to the end of January to attach any broader legislative package to must-pass government funding legislation. In the absence of a deal to extend the expiring ACA subsidies, the odds for which we would currently put well below 50 percent, it is unlikely that the needed bipartisan cooperation for other legislation will be present. If Congress cannot reach an agreement on a deal to extend the ACA subsidies, which will have expired by January but could theoretically be dealt with retroactively, a partial government shutdown is within the realm of possibilities.

Congressional Republicans are having discussions amongst themselves about the contents of another reconciliation package, but those have not yet materialized into a coherent legislative direction. It is possible that those conversations could pick up steam early next year, but it is more likely that Republicans instead spend their time continuing to market the provisions in the OBBBA, with an emphasis on the provisions that retroactively went into effect for tax year 2025. However, a major intervening event, such as a weakening economy or a political imperative to address cost-of-living issues, could help motivate Republicans to coalesce around a tax or healthcare package in a reconciliation bill.

Regulatory

A Full Regulatory Plate

Hundreds of thousands of employees across the federal government were furloughed during the government shutdown, including tens of thousands of IRS employees. They return to an agency that has its work cut out for it in implementing the OBBBA and preparing for the filing season. Further complicating the task of Treasury and IRS employees is the lack of a full-time, permanent IRS commissioner or general counsel. However, Commissioner of the Social Security Administration, Frank Bisignano, was appointed as the first ever CEO of the IRS in October, and is responsible for overseeing all day-to-day operations of the agency.[5]

Treasury/IRS are likely to be exceedingly busy issuing regulations from now until the end of the year following the passage of the OBBBA, with an emphasis on tax provisions that were made effective retroactively (e.g., no tax on tips, no tax on overtime, etc.). Some outside observers have speculated that tax filing season may need to be delayed, but government officials have made no formal announcements and are projecting confidence that the tax filing season will run smoothly. Treasury/IRS are also actively identifying and rescinding or modifying regulations from prior administrations as part of the Administration's broader deregulatory agenda, which will also occupy a great deal of time.

With the caveat that some of the proposed rules (and guidance) highlighted below will be subject to review, delay and possible withdrawal by the Trump Administration (while others are in direct response to various Presidential actions furthering the Administration's policy goals), we nonetheless provide a brief synopsis of the proposals in the event they remain viable going forward

Notable Presidential Action:

New Executive Order—Democratizing Access to Alternative Assets for 401(k) Investors

President Trump issued the long-anticipated Executive Order entitled "Democratizing Access to Alternative Assets for 401(k) Investors" on August 7, which directs the DOL, the SEC and other relevant federal agencies to revise regulatory guidance and reduce legal barriers that currently restrict defined contribution retirement plans (e.g., 401(k) plans) from offering alternative investment options. Pursuant to the Executive Order, within 180 days (by February 3, 2026) the DOL must (i) reevaluate existing guidance–including the 2021 Supplemental Private Equity Statement, which the DOL promptly rescinded on August 12; (ii) issue guidance clarifying fiduciary duties when considering alternative assets as an investment option in a 401(k) plan; (iii) propose rules or safe harbors to limit fiduciary litigation exposure; and (iv) coordinate with other federal agencies on potential parallel regulatory updates on this issue.

Department of Labor

DOL Issues Advisory Opinion 2025-04A

The DOL issued A.O. 2025-04A on September 23, which concluded that the applicant's lifetime income strategy program meets the criteria to be a qualified default investment alternative (QDIA) under ERISA and the corresponding regulations. A.O. 2025-04A is in direct response to the Trump Administration's August 7 Executive Order directing the DOL to reexamine its guidance regarding fiduciary duties under ERISA in connection with making asset allocation funds that include alternative asset investments available as a plan investment option to participants. A.O. 2025-04A also underscores that those plan fiduciaries selecting annuity providers for such programs may rely on either (i) the 2008 regulatory safe harbor, or (ii) the statutory safe harbor created by the SECURE Act in 2019. In an accompanying press release, the DOL stated that it intends to issue formal rulemaking that clarifies the fiduciary duties owed to plan participants when considering the inclusion of investments such as private equity or cryptocurrency (for example) in retirement plan investment menus.

DOL Rescinds Biden-Era Supplemental Statement Questioning the Suitability of Private Investments in 401(k) Plans

On August 12, the DOL rescinded the Biden-era 2021 Supplemental Guidance that questioned whether private investments belonged in 401(k) plans, finding that many plan fiduciaries were "not likely suited to evaluate the use of [private equity] investments in designated

Regulatory (cont.)

alternatives in individual account plans." According to the DOL's announcement, the 2021 Supplemental Guidance departed from the agency's normal neutral stance on specific type of investments and a principled-based approach to fiduciary investment decisions as the 2021 Supplemental Guidance cautioned against private-market valuation risks, illiquidity, and lack of transparency. The DOL's action in repealing the 2021 Supplemental Guidance was in direct response to the Executive Order issued by President Trump on August 7, which directed the agency to reevaluate existing guidance on alternative assets in 401(k) plan investment menus. The DOL's 2020 Guidance was not impacted by the rescission of the 2021 Supplemental Guidance and remains in effect.

DOL Issues Compliance Assistance Release No. 2025-01: 401(k) Plan Investments in "Cryptocurrencies" ("2025 CAR")

On May 28, the DOL issued the 2025 CAR, which rescinded Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in "Cryptocurrencies" (the "2022 CAR"), stating that the 2022 CAR was overreaching and strayed from the requirements set forth under ERISA.

In the 2022 CAR, the DOL expressed that it had "serious concerns about the prudence of a fiduciary's decision to expose 401(k) plan's participants to direct investments in cryptocurrencies" or other products whose value is tied to cryptocurrencies and the guidance raised concerns regarding risks associated with crypto, including fraud, theft and volatility in retirement accounts and further warned plans offering cryptocurrency menu options to expect a possible DOL investigation resulting from such plan fiduciary's investment decision. The 2022 CAR further directed plan fiduciaries to exercise "extreme care" prior to adding a cryptocurrency option to their plans.

Marking a return to the DOL's neutral stance on fiduciary investment decisions and asset type, the DOL stated that by rescinding the 2022 CAR, "the department reaffirms its neutral stance, neither endorsing nor disapproving of plan fiduciaries who conclude that the inclusion of cryptocurrency in a plan's investment menu is appropriate." The 2025 CAR applies broadly to a wide range of digital assets, including tokens, coins, crypto assets and derivatives. Further, the 2025 CAR eliminates the vague "extreme care" standard under the 2022 Guidance and restores traditional fiduciary discretion under ERISA

DOL Issues Multi-Part Regulatory Package: "Pooled Employer Plans: Big Plans for Small Business" Guidance and RFIs

On July 29, the DOL published a multi-part regulatory package dubbed "Pooled Employer Plans: Big Plans for Small Businesses," including interpretive sub-regulatory guidance and two requests for information (RFIs). The guidance generally provides tips to help small employers select and manage participation in a pooled employer plan (PEP) (including with respect to investment selection and management), and the RFIs solicit stakeholder feedback about the PEP business environment, conflicts of interest and potential need for fiduciary safe harbors. According to the DOL, the purpose of this guidance is to help small employers select high-quality, low-cost PEPs and to gather information about PEP market practices with a view toward developing a potential regulatory safe harbor. Comments on both RFIs were due to the DOL by September 29.

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. The DOL announced via FAB 2025-01 that, pending further guidance, it would not pursue violations of Section 404(a) of 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.

Regulatory (cont.)

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.

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.

The 2025 Spring Regulatory Agenda released by the IRS and the Treasury Department on September 4 listed, among other agenda items, the issuance of a new fiduciary rule that "will ensure that the regulation is based on the best reading of the statute," although the agenda does not provide any further details as to what such final rule may state. According to the agenda, this is in final rule stage and will be issued by May 2026 (although the government shutdown may impact this timeframe).

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 *FACC 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 84-24several PTEs) 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

Regulatory (cont.)

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.

- On November 24, the DOL filed an unopposed motion to dismiss its appeal of the district court findings in *FACC et al vs. DOL* and *ACLI et al vs. DOL* regarding the validity of the Biden-era fiduciary rule entitled "Retirement Security Rule: Definition of an Investment Advice Fiduciary" signaling the DOL's decision to stop defending the Biden-era rule. The 5th Circuit Court of Appeals granted the DOL's motion on November 28, meaning each case will go back to the relevant district court for final judgments as to the validity of the 2024 rule, although it seems virtually certain that the courts will both find the rule invalid.

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;
- Establishing, maintaining and enforcing policies and procedures to ensure compliance with the Impartial Conduct 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

On July 9, a federal judge issued a partial ruling in favor of plaintiffs challenging the DOL's guidance under PTE 2020-02. Plaintiffs argued that the DOL exceeded its statutory authority under the Administrative Procedure Act, and the court agreed that certain portions of PTE 2020-02 represented "arbitrary and capricious interpretations" of the five-part test used to determine fiduciary status. The 5th Circuit Court granted Federation of Americans for Consumer Choice's August 6 motion to delay the due date for the status report (*Fed'n of Ams. for Consumer Choice, Inc. v. Couch* and *Federation of Americans for Consumer Choice, Inc. et al v. United States Department of Labor et al*).

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

Regulatory (cont.)

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/IRS

On September 30, 2025, the Treasury Department released the 2025-2026 Priority Guidance Plan (PGP) that contains 105 guidance projects that are priorities for the agency during the 12-month period from July 1, 2025, through June 30, 2026. Included in the PGP are retirement and/or other related benefit priorities, some of which are addressed elsewhere in this Update, and include the following (a sampling):

- Guidance under §128, 139J, 530A, 6434 and 6659 regarding Trump accounts.
- Guidance under §529 regarding enhancements to qualified tuition programs.
- Final regulations updating electronic delivery rules and other guidance for providing applicable notices and making participant elections and spousal consents. Proposed five regulations were published on December 30, 2022.
- Guidance updating safe harbor explanations for eligible rollover distributions to satisfy the notice requirement under §402(f).
- Revenue Procedure updating and consolidating procedures for a sponsoring organization or a mass submitter to apply to the IRS for opinion letter on whether an IRA or SEP arrangement satisfies the applicable requirements under §408.
- SECURE 2.0 Guidance:
    - Guidance implementing provisions of the SECURE 2.0 Act, including §103 (savers match), §110 (qualified student loan matching contributions), §125 (long-term part-time employees), §127 (pension-linked emergency savings accounts), §324 (rollover rules), and §334 (qualified long-term care distributions), and guidance under Code §72(t) relating to the repayment provisions for certain distributions added by the SECURE 2.0 Act.

Regulatory (cont.)

- Final regulations relating to modifications to §401(a)(9) and related provisions made by the SECURE 2.0 Act and regarding other issues under §401(a)(9) and related provisions. Proposed regulations were published on July 19, 2024.
- Final regulations and related guidance on the exception to the unified plan rule for §413(e) multiple employer plans as modified by the SECURE Act. Proposed regulations were published on March 28, 2022.
- Final regulations on automatic enrollment requirements under §414A as added by the SECURE 2.0 Act. Proposed regulations were published on January 10, 2025.
- Final regulations on updates to catch-up contribution rules under §414(v) as added by the SECURE 2.0 Act. Proposed regulations were published on January 10, 2025.

IRS Issues Revenue Procedure 2025-31 Regarding Safe Harbor Guidance for Cryptocurrency Staking

The Treasury Department and the IRS release guidance in the form of Revenue Procedure 2025-31 on November 10 that provides a safe harbor for investment and grantor trusts that stake digital assets without jeopardizing their tax status, provided the requirements set forth in Rev. Procedure 2025-31 are satisfied. Staking is the process by which cryptocurrency holders lock up their tokens to validate transactions on the blockchain. Such investment and grantor trusts may stake digital assets on "proof-of-stake networks" if they (1) hold only cash and one type of digital asset; (2) use a qualified custodian to exercise the rights of ownership over the trust's digital assets; (3) comply with the liquidity risk policies established by the SEC to ensure assets are available to meet redemption requests even with staked assets; (4) maintain an "arm's-length" arrangement with staking providers; and (5) limit activities to holding, staking and redeeming digital assets and cannot try to beat the market by making investment decisions.

IRS Issues Revenue Procedure 2025-32 Setting Forth 2026 Tax Year Adjustments

On October 9, the IRS issued Revenue Procedure 2025-32, which provides inflation adjustments for the 2026 tax year for over 60 tax code provisions and incorporates additional changes to the tax code made under the OBBBA. These adjustments will apply for the 2026 tax year and shall be reflected on tax returns filed in 2027. The IRS is expected to release the updated 2026 contribution and benefit limits (as well as other retirement-related COLA adjustments) within the coming weeks.

IRS Revenue Ruling 2025-15: Withholding and Reporting With Respect to Uncashed Retirement Plan Distribution Checks (and Subsequent Checks)

On July 16, the IRS released Rev. Rul. 2025-15, which sets forth guidance on withholding and reporting concerning uncashed retirement plan distribution checks and specifically addresses an employer's withholding and reporting obligations when a subsequent check is issued, after the original check was not cashed and subsequently voided. The primary conclusion taken from Rev. Rul. 2025-15 is that the plan administrator is not required to report or withhold any tax related to a reissued check, provided the amount of the second check is less than or equal to the original amount of the uncashed check. Because the guidance addresses a very specific factual instance and application, questions still remain about potential variations in the circumstances surrounding these obligations with respect to uncashed checks and the subsequent reissuance thereof.

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 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.

Regulatory (cont.)

IRS – IR 2025-07: Catch-Up Contributions

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.

On September 15, the IRS and Treasury Department released final regulations providing guidance regarding catch-up contribution changes under SECURE 2.0, including the requirement that contributions made by certain eligible participants be made on a Roth basis. Specifically, the final regulations implement the changes to Code Section 414(v) made by Sections 109, 117 and 603 of SECURE 2.0, which establish a higher catch-up limit for participants turning 60, 61, 62 or 63 years old during a taxable year, increases the contribution limits for SIMPLE plans, and require that catch-up contributions by certain higher-earning employees be made as Roth contributions. The final regulations will now apply with respect to contributions in taxable years beginning after December 31, 2026, with limited exceptions for governmental and collectively bargained plans. For prior taxable years (and collectively bargained and governmental plans), a reasonable, good-faith interpretation standard applies. The IRS published the final regulations in the Federal Register on September 16, with an effective date of November 17.

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 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 employ 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.

Miscellaneous

Simply for reference, below we provide updated inflation-adjusted amounts, applicable for the upcoming calendar year 2026, that pertain to social security benefits, retirement benefits, health savings accounts and the estate and gift tax exclusion amounts:

Social Security Benefits for 2026

- Social Security and Supplemental Security Income beneficiaries:
  - 2.8% Cost of Living Adjustment for 2026.
- Taxable Wage Base:
  - $184,500.
- Retirement Earnings Test Exempt Amounts:
  - Under full retirement age: $24,480/ year or $2,040 per month.
    - $1 in benefits withheld for every $2 in earnings above the limit.
  - The year an individual reaches full retirement age: $65,160/year or $5,430 per month.
    - Applies only to earnings for months prior to attaining full retirement age.
    - $1 in benefits withheld for every $3 in earnings above the limit.
  - There is no earnings limit beginning the month an individual reaches full retirement age.

View a copy of the 2026 Social Security Fact Sheet.

Income Taxes and Social Security Benefits

- Individual filers with combined income between $25,00 and 34,000–may pay income tax on up to 50% of benefits.
  - If more than $34,000–up to 85%.
- Joint filers with combined income between $32,000 and $44,000–may pay income tax on up to 50% of benefits.
  - More than $44,000–up to 85%.
- *Combined income = adjusted gross income plus nontaxable interest plus ½ of social security benefits.*

View a copy of the Social Security Income FAQs.

Retirement Plan Limits

For quick reference, selected 2026 plan limits are as follows:

- Elective deferral (contribution limit) for 401(k), 403(b), 457 plans:
  - **$24,500**
- Catch-up contribution limit for 401(k), 403(b), 457 plans:
  - **$8,000**
- Annual contribution to traditional and Roth IRAs:
  - **$7,500**
- Catch-up contribution limit for traditional and ROTH IRAs:
  - **$1,100 (is indexed)**
- SIMPLE employee deferrals:
  - **$17,000**
- SIMPLE catch-up limit:
  - **$4,000**
- Simplified Employee Pensions (SEPs) minimum compensation threshold:
  - **$800**
- SEP maximum compensation limit:
  - **$360,000**
- SEP annual contribution limit:
  - **$72,000**
- Annual total defined contribution plan contribution limit:
  - **$72,000**
- Catch-up contribution limit for individuals age 50–59 participating in 401(k), 403(b) and governmental 457 plans:
  - **$8,000**
- "Super" catch-up contribution limit for individuals age 60, 61, 62 and 63 participating in 401(k), 403(b) and governmental 457 plans:
  - **$11,250**
- Annual Compensation limit for calculating contributions (401(k), 403(b), profit-sharing plans, etc:
  - **$360,000.**
- Limit on annual benefit provided through a defined benefit plan:
  - **$290,000.**
- Employee Stock Ownership Plan ("ESOP") maximum account balance:
  - **$1,455,000.**

View a copy of the Cost of Living Adjustments for 2026.

Miscellaneous (cont.)

Health Savings Accounts (Inflation Adjusted Amounts for 2026)

For employees to be eligible to participate in a Health Savings Account (HSA), they must be enrolled in a High Deductible Health Plan (HDHP). For 2026, the limits for both HDHPs and HSAs are provided below:

- HSA contribution limit—self only:
  - **$4,400**
- HSA contribution limit—family:
  - **$8,750**
- HSA catch-up contribution limit (age 55+):
  - **$1,000**
- The minimum HDHP deductible—self only:
  - **$1,750**
- The minimum HDHP deductible—family:
  - **$3,400**
- Annual out-of-pocket expenses are capped at—self only:
  - **$8,500**
- Annual out-of-pocket expenses are capped at—family:
  - **$17,000**

View the 2026 HSA limits.

Estate and Gift Tax Exclusion Amounts

For calendar year 2026, the estate and gift tax exemption amounts are:

- **$15,000,000** per individual.
- **$30,000,000** per couple.

The per recipient gift amounts (tax-free and without counting towards the taxpayer's lifetime gift/estate tax exemption amount) are:

- **$19,000** per recipient.
- **$38,000** per recipient for married couples.

View the tax inflation adjustments for 2026.

*This update is as of December 10, 2025.

[1] A "clean" continuing resolution is a stopgap funding bill that continues government operations at existing spending levels, without including any new partisan policies.

[2] Text - H.R.5371 - 119th Congress (2025-2026): Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 | Congress.gov | Library of Congress.

[3] As of press time, Senate Democrats have stated they will offer a "clean" three-year extension of the expiring subsidies. It is unclear if Republicans will offer an alternative proposal, and what that might include.

[4] OBBBA refers to the $3.4 trillion tax reconciliation legislation commonly referred to as the One Big Beautiful Bill Act, signed into law H.R. 1 by President Trump on July 4, 2025.

[5] The role does not replace the position of IRS Commissioner, which is currently being held by Treasury Secretary Bessent. Questions remain regarding whether the Administration has the authority to create the role of IRS CEO, and how taxpayer data will be handled between the Social Security Administration and the IRS.

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