



Washington Update

A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

JULY/AUGUST 2022

The Mid-Term Elections Come into Clear View

As Members of Congress prepare to depart Washington for the traditional “August recess,” the extended break provides an opportunity to take stock of where various legislative initiatives stand in terms of progress towards enactment. Of course, during an election year, August is also the time when Members turn their focus to the mid-term elections. The result of this pivot is keenly felt in September, when Congress returns to a shortened legislative calendar in which to try to address remaining policy priorities, while simultaneously focusing their attention on the elections.

TABLE OF CONTENTS

3 Legislation

7 Outlook

8 Regulatory

11 Miscellaneous



When Congress gavels back into session in September, Leadership will likely divide the outstanding policy issues into two buckets - those items that they either must or want to address prior to the end of the federal government's fiscal year on September 30; and those that are unrealistic to consider, whether due to time constraints or politics, until the lame-duck session following the elections.

Of the policy issues that remain viable in the 117th Congress, only a handful will dominate the legislative calendar in September. Ultimately, the priority focus will be to ensure that funding for federal operations continues beyond the end of the federal government's current fiscal year on September 30. Because Congress will be unable to complete the Appropriations process prior to the end of the fiscal year, it will be forced to enact a Continuing Resolution ("CR"), when they return in September, to ensure that funding for federal operations remains ongoing into the new fiscal year. This CR will likely fund federal government operations at this year's spending levels to a date beyond the mid-term elections, most likely into December.

Beyond funding for federal operations, the likely remaining items on the short-list for consideration prior to the mid-term elections includes legislation to address American competitiveness (separate legislation has already passed both the Senate (S. 1260, the United States Innovation and Competition Act) and the House (H.R. 4521, the America Competes Act)), as well as the President's Build Back Better agenda (more likely a scaled-back version from what passed the House in November 2021). With regard to Build Back Better, it faces a hard September 30 deadline if enactment is to occur using the Reconciliation budget process, and we separately detail its status below.

Of course, retirement legislation remains a viable policy option for Congress this year, although consideration before the mid-term elections is highly unlikely. Rather, as in prior Congresses, the likely path forward for retirement legislation is via consideration, along with other unfinished policy priorities, in a single omnibus bill during the lame duck session in November and December.



Legislation

The Outlook for Build Back Better

In November 2021, when the House originally passed H.R. 5376, the **Build Back Better Act**, the legislation included \$1.7 trillion of spending on a variety of programs and initiatives, and roughly \$1.4 trillion in tax increases to help offset that spending.¹ While the hope at the time was quick passage by the Senate, it became clear in late December that the House-passed version of Build Back Better lacked the votes to pass in the upper Chamber.

Since then, the effort to reach consensus on the Build Back Better agenda has narrowed the legislation to the point where today the likely path forward will be a smaller bill focused primarily on discrete health care provisions (enhanced subsidies and prescription drug pricing) and possibly renewable energy incentives. Despite reduced spending, revenue offsets are still anticipated, not only to cover the cost of the proposals, but to also reduce the deficit. The unresolved question today centers on whether such revenue will come mostly from corporate tax increases, or if individual taxpayers will also face tax-law changes. For reference, the April 2022 edition of the Washington Update provides a summary of revenue provisions affecting both businesses and individuals, that could form the basis for offsets chosen for inclusion in the smaller Build Back Better agreement.²

Timing will be a key driver of when a smaller version of Build Back Better will be considered (if an agreement comes together). Not only is the legislative calendar leading to the August recess short on days, but when Members return

in September, they will be faced with the impending expiration of the Reconciliation instructions that allow for Build Back Better to move through the Senate via a 50-vote threshold (with the Vice President casting the tie-breaking vote). Upon expiration of the Reconciliation instructions, any version of Build Back Better that is considered in the Senate would face the higher 60-vote threshold, making passage all but impossible in the evenly divided Senate.³

Retirement Policy

In any given Congress, hundreds of bills are introduced that seek to address, in some manner, retirement savings policy. Yet, for a variety of reasons, very few of those measures ever move beyond the introduction stage, and even fewer are seriously considered in Committee or receive a vote by the full House or Senate. In fact, maybe a single retirement bill is enacted into law during a particular Congress, and in some Congresses no retirement legislation is considered.

In recent years, the path forward for retirement savings legislation is to winnow a variety of separate retirement bills into a single measure that can receive floor consideration in both the Senate and House at the appropriate time. The 117th Congress appears poised to follow this legislative route as well, with the process already in motion to act when the timing is right. In that regard, below we highlight those measures that have received consideration by the full House, and by the two Senate Committees with jurisdiction over retirement savings – the Health, Education, Labor, and Pensions

(HELP) Committees, and the Finance Committee.

While we have, in prior Washington Updates highlighted a number of separate, retirement-focused legislative initiatives as examples of the retirement policy priorities of Members of Congress, at this point in the 117th Congress, the initiatives below likely will alone form the basis for what ultimately may be considered this Congress. We focus our attention in this Update only on these legislative proposals, while acknowledging that many of the provisions described below may have been included in other legislative initiatives that were introduced earlier this Congress.

House of Representatives

On March 29, 2022, the House passed H.R. 2954, the **Securing a Strong Retirement Act of 2021**, with a vote of 414-5. The floor vote in the House followed the merger of the provisions of H.R. 5891, the **Retirement Improvement and Savings Enhancement (RISE) Act** (as approved earlier by the House Education and Labor Committee) into H.R. 2954, with the full House voting on the single combined measure. Below, we provide a synopsis H.R. 2954 as passed by the House (sampling only of key provisions):

For Individuals:

- Increase the Required Minimum Distribution (“RMD”) beginning date in the following manner:
 - to age 73 starting on 1/1/2022
 - to age 74 starting on 1/1/2029
 - to age 75 starting on 1/1/2032
- Index IRA catch-up limit (for individuals who have attained age 50) beginning in 2023



Legislation (cont.)

- Increase the catch-up contribution limit to \$10,000 for 401(k) plans and \$5,000 for SIMPLE Plans for individuals who have attained age 62, 63, and 64 (but not age 65)
- Expand the ability to make charitable distributions from an IRA for individuals age 70 ½ or older – to allow a one-time distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts
- Expand IRA charitable distribution provisions to allow for a one-time \$50,000 distribution to charities through charitable gift annuities; charitable remainder trusts; and charitable remainder annuity trusts
- Would index, for inflation, the annual IRA charitable distribution limit of \$100,000 for inflation
- Reduce the excise tax penalty for failure to take an RMD – from 50% down to 25%; and if corrected in a timely manner – further reduce to 10%
- Enhance the Saver’s Credit

Employer Provisions:

- Require **new** 401(k), 403(b), and SIMPLE plans to automatically enroll participants upon becoming eligible (with opt out allowed) at a minimum of 3% of pay (and up to 10% of pay) and increasing in 1% increments until reaching 10% of pay
 - Plans in existence on the effective date of the legislation would be grandfathered
 - Employers with 10 or fewer employees would be exempt
 - Would not require plan sponsorship – but new plans going forward after

- date of enactment would be subject to the auto-enrollment and auto-escalation requirements unless exempt
- Enhance the small business tax credit for start-up costs (for employers with up to 50 employees) by increasing the credit to 100% of administrative costs (with a phase-down over five years)
- Allow employers to offer, as an incentive for employees to contribute to a 401(k) plan, small immediate de minimis financial incentives (e.g., gift cards)
- Make it easier for employees to find lost retirement accounts by creating a national, online, database of lost accounts
- Increase to \$7,000 the limit under which employers would be allowed to transfer former employees’ retirement accounts to an IRA
- Allow 403(b) plans to participate in multiple employer plans and pooled employer plans
- Allow 403(b) plans to invest in collective investment trusts
- Reduce the service requirement for part-time employees (who complete at least 500 hours of service) to two years for eligibility to participate in a 401(k) plan
 - Make the rule applicable to ERISA-covered 403(b) plans (in addition to 401(k) plans)

Revenue-Raising Provisions:

- Allow SIMPLE and SEPs to permit employees to elect Roth treatment of both employer and employee contributions
- Require catch-up contributions to 401(k), 403(b), and governmental 457(b) plans to be made on a Roth basis (would not apply to SIMPLEs and SEPs)

- Allow employers to permit employees to elect to treat as Roth contributions some or all their matching contributions to a 401(k), 403(b), or governmental 457(b) plan

Other:

- Require the Department of Labor to, within one year after enactment, modify its guidelines regarding benchmarking investments, such as target-date funds, that include a mix of assets

View the legislative text of H.R. 2954, as passed by the House, [here](#).

Senate

In the Senate, both the Senate Health Education Labor and Pensions (HELP) Committee and the Senate Finance Committee have separately approved versions of retirement security legislation that fall within their committee jurisdictions.

HELP Committee:

On June 14, 2022, the Senate HELP Committee approved, by voice vote, S. 4353, the **Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg Act** (a/k/a the “Rise & Shine” Act). Among the provisions included in the “Rise & Shine” Act are the following (sampling only of key provisions):

- Reduce the years of service requirement for part-time worker eligibility for participation in the employer’s plan to two years of consecutive service (at 500+ hours per year of service)
- Permit plan assets to pay for incidental



Legislation (cont.)

- expenses solely for the benefit of participants and beneficiaries
 - Update the dollar limit – to \$7,000 for mandatory distributions from a former employee’s retirement accounts to an IRA
 - Create pension-linked emergency savings accounts:
 - Must be a part of a defined contribution plan
 - No minimum account balance requirement
 - Contributions are after-tax, and with limits on investment options
 - Account capped at \$2,500 (indexing allowed, but no contributions allowed that would cause the cap to be exceeded)
 - Any such contributions allowed to be transferred to associated defined contribution plan (with restrictions)
 - Auto-enrollment allowed – up to 3% of pay
 - Employers allowed to make after-tax contributions to the account
 - Any employer match must be at same rate that the plan matches elective deferrals – subject to annual cap of \$2,500
 - Withdrawals allowed at least once per calendar month – without penalty
 - Require auto-enrollment arrangements (after 2024) to provide for automatic re-enrollment at least every three years (to avoid issues with state laws prohibiting deductions from employee pay without consent)
 - Require the Department of Labor to update its rules to allow an investment that uses a mix of asset classes to be benchmarked against a blend of different broad-based securities market indices
 - Limit disclosure notices, for unenrolled employees, to the annual reminder of the employee’s eligibility to participate in the plan (employees allowed to request otherwise eligible documents as well)
 - Require the Department of Labor (DOL) to review fee disclosure rules to determine ways to improve/enhance participant understanding of fees and expenses
- View the legislative text of S. 4353 [here](#).
- Finance Committee:**
- On June 23, 2022, the Senate Finance Committee approved the **Enhancing Americans Retirement Now (EARN) Act** – by a vote of 28-0. While not yet in legislative text, the “conceptual markup” was based, in part, on S. 1770, the **Retirement Security and Savings Act** that we have detailed in prior Updates, and other retirement security initiatives. Below, we provide a synopsis of the provisions of the EARN Act, *as approved* by committee:
- For Individuals:*
- Raise the RMD age from 72 up to age 75 in 2032
 - Increase the 401(k) “catch-up” contribution limit to \$10,000 for individuals age 60 - 63 and older (for SIMPLE plans the limit would be \$5,000)
 - Eliminate the pre-death distribution requirement for Roth accounts in employer-sponsored plan
 - Index the annual IRA charitable distribution limit of \$100,000 beginning in 2024
 - Allow for a one-time, \$50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts
 - Allow a surviving spouse of a deceased plan participant to be treated as the employee for purposes of the RMD rules
 - Index the catch-up contribution limit for IRAs
 - Reduce the current penalty for failing to receive a required minimum distribution from a tax-preferred plan or IRA from 50% down to 25% (and as low as 10% if self-correct)
 - Modify the Saver’s Credit by:
 - Changing from a credit paid in cash as part of a tax refund, to a government matching contribution that must be deposited into an IRA or retirement plan
 - The credit would be 50% of the IRA or retirement plan contribution – up to \$2,000
 - Make the credit refundable – which would be contributed to a plan or IRA as a pre-tax contribution
 - The contribution made is not taxable income to the individual
 - Provide that distributions from tax-preferred retirement plans (e.g., 401(k) and IRAs) would not be subject to 10% early distribution tax (if under age 59 ½) if used for emergency services:
 - Limited to \$1,000 per year with limits on for further withdrawals during the three-year period in which the original withdrawal occurred



Legislation (cont.)

Employer Provisions:

- Establish an alternative way to satisfy current law automatic enrollment safe harbor – via a minimum default level of 6% in year one and increasing each year by a single percentage point until reaching 10%
 - Would require employer matching contributions on behalf of all eligible non-highly compensated employees
 - Would provide a tax credit to small employers (100 or fewer employees) that adopt the new safe harbor
- Enhance small business start-up credit for employers with fewer than 25 employees
- Allow employers with SIMPLE plans to make additional contributions to each employee of the plan in a uniform manner – not to exceed the lesser of 10% of compensation or \$5,000 – beginning in 2024
- Allow penalty-free withdrawals from retirement plans for individuals in cases of domestic abuse
- Treat student loan payments as elective deferrals for purposes of employer matching contributions
- Sole proprietors would have until the due date for their tax return, in the first year of adoption of a plan, of their elective contribution amount
- Allow 403(b) plans to participate in multiple employer defined contribution plans
- Allow 403(b) plans to invest in collective trusts
- Allow retirement plans to distribute up to \$2,500 per year for payment of long-term care insurance contract premiums
- Provide an exception from the 10% early distribution tax (if under age 59 ½) for individuals with a terminal illness
- Permit employers of domestic employees (e.g., nannies) to provide a Simplified Employee Pension (“SEP”) for such employees
- Extend to S corporations the ability to defer tax on gain from the sale of employer securities to an Employee Stock Ownership Plan (“ESOP”) with limitations
- Allow SEPs and SIMPLE IRAs to be designated as Roth IRAs
- Require catch-up contributions to 401(k), 403(b), and governmental 457(b) plans to be made on a Roth basis (would not apply to SIMPLEs and SEPs)
- Would allow participants in 401(k), 403(b), or governmental 457(b) plans to designate matching contributions and nonelective contributions as designated Roth contributions

View the [description of the Chairman’s Mark](#) of the EARN Act, along with a [summary thereto](#).



Outlook

Retirement security legislation is well positioned for consideration this Congress, albeit not in the manner or timeframe that most would anticipate. While the House has already passed H.R. 2954, it will not receive a separate vote in the Senate. Moreover, while both the Senate HELP Committee (S. 4353 – the “Rise & Shine Act”) and the Senate Finance Committee (the “Earn Act”) have approved their respective versions of retirement security legislation, not only will these measures not be considered separately on the Senate floor, a combined version of those two measures is also not anticipated to receive a floor vote in the Senate.

Rather, the likely path forward will be for the key sponsors, and Leadership, of the House and Senate Committees with jurisdiction over retirement issues (i.e., the House Ways and Means, and Education and Labor Committees; and the Senate HELP and Finance Committees) to engage in negotiations over the coming months to seek a compromise measure that could, on its own, pass the Senate and the House. Thereafter, the combined House/Senate retirement bill will await the lame duck session of Congress, following the mid-term elections, when Congress *likely* considers a single omnibus “wrap-up” bill that contains legislative items that, for a variety of reasons, were not considered prior to the mid-term elections. While the option of an end-of-year omnibus bill itself isn’t guaranteed at this point in time, it nonetheless represents the most viable path forward for enacting retirement legislation into law this year.



Regulatory

Traditional Regulatory Agenda

PENSION BENEFIT GUARANTY CORPORATION

Special Financial Assistance by PBGC

On July 12, 2021, the Pension Benefit Guaranty Corporation (“PBGC”) published in the Federal Register an interim final rule (with a request for comments) that set forth the requirements for financially troubled multiemployer defined benefit pension plans to apply for and receive special financial assistance in amounts necessary/required to pay all benefits due through the plan year ending in 2051.

On July 9, 2022, the PBGC published in the Federal Register a final rule with request for comment (on a discrete issue concerning phased recognition of special financial assistance in a plan’s determination of withdrawal liability, which is due August 8, 2022). The Final Rule is effective on August 8, 2022.

Among the changes in the Final Rule (from the earlier published Interim Final Rule) are the following:

- Allows plans to invest up to 33% of their Special Financial Assistance (“SFA”) Funds in return-seeking investments, with the remaining 67% restricted to high-quality fixed income investments
- Modifies the SFA calculation method to allow use of separate interest rates for a plan’s SFA and non-SFA assets (and aligns the interest rates used to calculate SFA with reasonable expectations of investment returns on a plan’s SFA assets)

- Require plans to phase-in recognition of SFA funds for computing employer withdrawal liability
- Changes the restrictions that apply to benefit plan increases and reallocation of contributions to other plans
- Provides for changes to the application process itself for SFA

View a copy of the [Press Release from PBGC](#), a [Fact Sheet](#) to accompany the Release, and the [Final Rule](#).

DEPARTMENT OF LABOR

Compliance Assistance Release No. 2022-01 – 401(k) Plan Investments in “Cryptocurrencies”

On March 10, 2022, DOL published **Compliance Assistance Release (2022-01)** to “caution[s] plan fiduciaries to exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan’s investment menu.” The Release announces DOL’s intention to “conduct an investigative program aimed at plans that offer participant investments in cryptocurrencies and related products” and that, as a part of this investigative program, “plan fiduciaries responsible for overseeing such investment options or allowing such investments through brokerage windows should expect to be questioned about how they can square their actions with their duties of prudence and loyalty” in light of the risks that DOL sets forth in the Release.

[View a copy of the Release.](#)

Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk

On February 14, 2022, DOL published in the Federal Register, a Request for Information (“RFI”) to seek public input on possible actions DOL can take under the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Federal Employees’ Retirement System Act of 1986 (FERSA) to “protect the life savings and pension of U.S. workers and families from the threats of climate-related financial risk.” The RFI was published to further the goals set forth in Executive Order 14030 on Climate-Related Financial Risks, signed by President Biden on May 20, 2021 and in the Report released by the Biden Administration on October 15, 2021, entitled “A Roadmap to Build a Climate-Resilient Economy” (“Roadmap”).

Comments in response to the RFI were due to DOL by May 16, 2022.

[View a copy of the RFI.](#)

View copies of [Executive Order 14030](#) and the subsequent [“Roadmap.”](#)

Procedures Governing the Filing and Processing of Prohibited Transaction Exemptions

On March 15, 2022, DOL published in the Federal Register a notice of proposed rulemaking to update the procedure governing the filing and processing of applications for administrative exemptions from ERISA’s prohibited transaction provisions.



Regulatory (cont.)

Comments on the proposed changes were due to DOL by May 29, 2022 (extended from the original due date of April 14, 2022). The applicability date for the proposed rules would be for taxable years beginning on or after 1/1/2022 (for earlier taxable years, the rules of 26 CFR 54.4974-2 (revised as of 4/1/21) would apply).

[View a copy of the proposed rule.](#)

Investment Advice – Class Exemption and Temporary Enforcement Policy

On December 18, 2020, DOL published in the Federal Register Prohibited Transaction Exemption 2020-02 (PTE 2020-02, Improving Investment Advice for Workers and Retirees (the “Exemption”)), to allow investment advice fiduciaries under both ERISA and the Internal Revenue Code to “receive compensation, including as a result of advice to roll over assets from a Plan to an IRA, and to engage in principal transactions, that would otherwise violate the prohibited transaction provisions of Title I and the Code.” The Exemption applies to registered investment advisers (SEC and state-registered), broker-dealers, banks, insurance companies, and their employees, agents, and representatives that are investment advice fiduciaries.

PTE 2020-02 became effective on February 16, 2021, with DOL providing transition relief through December 20, 2021, including the continuation of the agency’s temporary enforcement policy that it announced via Field Assistance Bulletin 2018-02.

On October 15, 2021, DOL issued Field Assistance Bulletin 2021-02, announcing

a temporary enforcement policy related to Prohibited Transaction Exemption 2020-02, to provide additional transitional relief to investment advice fiduciaries, including:

- Non-pursuit of prohibited transaction claims against investment advice fiduciaries – who are working diligently and in good faith to comply with the Impartial Conduct Standards for transactions exempted in PTE 2020-02; and
- Non-enforcement of the specific documentation/disclosure requirements for rollovers in PTE 2020-02 – through June 30, 2022
- All other requirements of PTE 2020-02 will be subject to full enforcement as of February 1, 2022

[View a copy of PTE 2020-02.](#)

[View a copy of Field Assistance Bulletin 2021-02.](#)

Financial Factors in Selecting Plan Investments

On October 14, 2021, DOL published in the federal register a Notice of Proposed Rulemaking pertaining to “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.” The proposed rule would amend Title I of the Employee Retirement Income Security Act (“ERISA”) to “clarify the application of ERISA’s fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines.”

Comments on the proposed rule were due to DOL by December 13, 2021.

[View a copy of the proposed rule.](#)

Proposed Revision of Annual Information Returns/Reports

On September 15, 2021, DOL, the Treasury Department, and the Pension Benefit Guaranty Corporation, jointly published in the Federal Register proposed changes to the Form 5500 Annual Return/Report forms that are filed for pension and welfare plans under ERISA and the Internal Revenue Code. Simultaneous with the publication of the proposed revisions to Form 5500, DOL also separately published a Proposed Rule to amend its regulations relating to annual reporting requirements under Title I of ERISA to conform those reporting regulations to the proposed Form 5500 revisions.

View a copy of [the proposed changes](#) and the [Proposed Revision of Annual Information Return/Reports](#).

On May 23, 2022, DOL, the Treasury Department, and the Pension Benefit Guaranty Corporation, published final forms/instructions for Form 5500 and Form 5500-Short Form – to primarily implement annual reporting changes for defined benefit plans, as well as provide for a limited number of instruction changes focused on reporting for multiple-employer pension plans (including pooled employer plans). Additional proposed changes to the year 2022 Form 5500, as set forth in the September 15, 2021 release, are anticipated to be published in the coming months.

[View a copy of the final forms and instructions.](#)



Regulatory (cont.)

DEPARTMENT OF TREASURY

On June 1, 2022, the Treasury Department released its third quarter update to the 2021-2022 Priority Guidance Plan, setting forth the projects on which the Treasury Department intends to work, as priorities, during the plan year ending June 30, 2022. Included in this most recent Guidance Plan are several priorities pertaining to retirement benefits, including the following (a sampling):

- Updating IRA regulations under Sections 219, 408, 408A, and 4973
- SECURE Act modifications pertaining to 401(a)(9), and to certain rules governing 401(k) plans (see below)
- Guidance on missing participants including guidance on uncashed checks
- Regulations regarding employer-provided meals
- Guidance on contributions to and benefits from paid family and medical leave programs

[View a copy of the third quarter 2021-2022 Priority Guidance Plan.](#)

Internal Revenue Service – Multiple Employer Plans

On March 28, 2022, the Department of the Treasury/Internal Revenue Service published in the Federal Register proposed regulations to provide relief from the application of the “unified plan rule” for Multiple Employer Plans (“MEPs”) in the event of a failure by one or more employers

participating in the plan to satisfy the Internal Revenue Code requirements applicable to such plans. The publication also withdraws an earlier proposed regulation that was published on July 3, 2019.

Comments on the proposed rule were due to the IRS by May 27, 2022.

[View a copy of the proposed rule.](#)

Internal Revenue Service – Required Minimum Distributions

On February 24, 2022, the Internal Revenue Service (“IRS”) published in the Federal Register a notice of proposed rulemaking related to -required minimum distributions (“RMD”) under 401(a)(9) of the Internal Revenue Code (“Code”) from qualified plans; Section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under Section 457. The proposed rules address RMD requirements for qualified plans since the last published update of the rules, and further are being updated to reflect the amendments made to the RMD rules via enactment of the Setting Every Community Up for Retirement Enhancement Act of 2019 (P.L. 116-94) on December 20, 2019.

Comments on the proposed rule were due to the IRS by May 25, 2022.

[View a copy of the proposed rule.](#)

Internal Revenue Service – Remote Notarization/Witnessing of Spousal Consent

On May 13, 2022, the IRS issued Notice 2022-27, to extend through the end of 2022 – the relief from the physical presence requirement for participant elections required to be witnessed by a plan representative or notary public, subject to the conditions set forth originally in Notice 2020-42 (issued 6/3/2020).

[View a copy of Notice 2022-22.](#)

[View a copy of Notice 2020-42.](#)



Miscellaneous

Simply for reference, below we provide inflation adjusted amounts, applicable for calendar year 2022, that pertain to social security benefits, retirement benefits; health savings accounts; and the estate and gift tax exclusion amounts:

Social Security Benefits for 2022:

- Social Security and Supplemental Security Income beneficiaries:
 - 5.9% Cost of Living Adjustment for 2021
- Taxable Wage Base:
 - \$147,000
- Retirement Earnings Test Exempt Amounts:
 - Pre-full retirement age: \$19,560/year or \$1,630 per month
 - \$1 in benefits withheld for every \$2 in earnings above the limit
 - The year an individual reaches full retirement age: \$51,960/year or \$4,330 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
 - Beginning the month an individual reaches full retirement age:
 - No earnings limit

[View the 2022 Social Security Changes fact sheet.](#)

Retirement Plan Limits

For quick reference, selected 2022 plan limits are as follows:

- Elective deferral (contribution limit) for 401(k), 403(b), 457 plans – **\$20,500**
- Catch-up contribution limit for 401(k), 403(b), 457 plans – **\$6,500**

- Annual contribution to traditional and Roth IRAs – **\$6,000**
- Catch-up contribution limit for IRAs – **\$1,000 (is not indexed)**
- SIMPLE employee deferrals – **\$14,000**
- SIMPLE catch-up limit – **\$3,000**
- Simplified Employee Pensions (SEPs) minimum compensation threshold – **\$650**
- SEP maximum compensation limit – **\$305,000**
- Annual Defined Contribution limit – **\$61,000**
- Annual Defined Contribution limit (age 50 and older) including catch-up contributions – **\$67,500**
- Annual Compensation limit for calculating contributions – **\$305,000**
- Limit on annual benefit provided through a defined benefit plan – **\$245,000**
- Employee Stock Ownership Plan (“ESOP”) maximum account balance – **\$1,230,000**

[View Notice 2021-61.](#)

Health Savings Accounts (Inflation Adjusted Amounts for 2022-2023)

For employees to be eligible to participate in a Health Savings Account, they must be enrolled in a High Deductible Health Plan (“HDHP”). For 2022 and 2023, the limits for both HDHP’s and HSAs are provided below:

- HSA contribution limit – self only:
 - **2022 – \$3,650**
 - **2023 – \$3,850**

- HSA contribution limit – family:
 - **2022 – \$7,300**
 - **2023 – \$7,750**
- HSA catch-up contribution limit (age 55+)
 - **2022 – \$1,000 (not inflation adjusted)**
 - **2023 – \$1,000 (not inflation adjusted)**
- The minimum HDHP deductible – self only:
 - **2022 – \$1,400**
 - **2023 – \$1,500**
- The minimum HDHP deductible – family:
 - **2022 – \$2,800**
 - **2023 – \$3,000**
- Annual out-of-pocket expenses are capped at – self only:
 - **2022 – \$7,050**
 - **2023 – \$7,500**
- Annual out-of-pocket expenses are capped at – family:
 - **2022 – \$14,100**
 - **2023 – \$15,000**

[View Rev. Proc. 2022-24.](#)

Estate and Gift Tax Exclusion Amounts

For an estate of any decedent dying in calendar year 2022, the basic exclusion amount is **\$12,060,000** (inflation adjusted).

For calendar year 2022, the first **\$16,000** of gifts to any person is not included in the total amount of taxable gifts made during the year.

[View the inflation-adjusted amounts for 2022.](#)

¹ The version of the Build Back Better Act (H.R. 5376) that passed the House was [Rules Committee Print 117-18](#), including a [managers Amendment thereto](#).

² See [April 2022 Edition of the Washington Update](#) for a listing of possible revenue items associated with the Build Back Better agenda.

³ It is not anticipated that Congress will pass a FY 2023 Budget Resolution this fall such that it could include Reconciliation instructions, meaning after September 30, 2022, reconciliation would no longer be available as a legislative/procedural option.

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