



Washington Update

A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

JUNE 2023

The 118th Congress—A First Session Update

When the 118th Congress convened in January of this year, the first session began with several self-evident realities. First, that the split in control of Congress, with a Republican party majority in the House of Representatives, and a Democratic party majority in the Senate, would require bipartisan cooperation if Congress was to accomplish any legislative victories.¹ And second, that several important policy deadlines during the first session would require such cross-party cooperation, not only within the Congress itself, but also with the Administration as well if they were to be successfully addressed.

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Now that the first session is well underway, those realities are in clear focus as we assess where the legislative process stands. To date Congress has enacted just four separate measures into law. And, of these legislative initiatives, two are back-end responses to the COVID-19 pandemic. The remaining two legislative enactments include a resolution of disapproval of certain action by the District of Columbia Council,² and the recently enacted bipartisan debt ceiling agreement (discussed below). All four were passed with bipartisan majorities.

The dearth of legislative enactments this year is partially attributable to the fact that this is a new Congress, and it does take time for the process to work legislation through both the House and Senate to enactment. It also confirms the reality, however, that legislation that is not bipartisan in nature faces a difficult path forward to enactment in a Congress where there is a split in control.



Legislation

The Broad Agenda—What to Expect

One of the most important policy deadlines facing this Congress involved addressing the federal debt limit. With the debt limit having been reached in January, the Treasury Department notified Congress that it would begin exercising its authority to utilize “extraordinary measures” to avoid defaulting on our financial obligations but projected that it would exhaust those measures by June 1, or beyond that date by only a small number of weeks.³ From the time of that original letter from Secretary Yellen, through mid-May, little progress towards a resolution of the debt limit (via an increase in, or a suspension thereof) was achieved. In fact, with the Administration initially indicating it would only accept a “clean” debt limit increase, but with the House in April passing legislation to not only increase the debt limit but to also include therein proposals to somewhat limit future federal spending, among other things, the two sides remained far apart for most of this spring.⁴

By late May data available to Treasury allowed it to narrow the X-date to June 5, 2023.⁵ This update from Treasury not only provided a more precise date by which it would be unable to continue using extraordinary measures to avoid default, it also served to jumpstart what otherwise were essentially dormant negotiations between the White House and Congressional Leaders. With the X-date in clear view, negotiations between the White House and Congress accelerated, and ultimately led to an agreement, the

terms of which were embodied in H.R. 3746, the Fiscal Responsibility Act of 2023—legislation that, among other things, suspended the debt limit through January 1, 2025.⁶ H.R. 3746 was signed into law on June 3, 2023—after passing the House by a vote of 314-117 on May 31, 2023, and the Senate on June 1, 2023 by a vote of 65-36.

Beyond the debt ceiling, Congress has also begun to address the appropriations process, to ensure that federal programs and operations remain funded when the government’s new fiscal year begins on October 1, 2023. While the debt ceiling impasse has necessarily stalled the appropriations process, its resolution may now accelerate that process, as the Fiscal Responsibility Act imposes timeframes for completion of all 12 appropriations bills to avoid an automatic 1% cut in domestic spending that would apply until such time as the appropriations process successfully concluded.

While there are numerous other issues upon which Congress may focus attention this first session (e.g., reauthorization of several laws/programs that are set to expire this year, such for the Federal Aviation Administration and aviation programs, and separately the 2023 Farm Bill to establish national agriculture, nutrition, conservation, and forestry policy); the split in control likely limits other opportunities for legislative progress this year, including on pension related issues.

Retirement Policy in the 118th Congress

Over the past several sessions of Congress, there has been increasing interest by Members of both parties, and in both Chambers, in pursuing changes to retirement policy to enhance retirement savings opportunities. Thus, in the 116th Congress, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”) was included in the “Further Consolidated Appropriations Act, 2020” (P.L. 116-94), capping a multi-year effort to enact substantive changes to retirement policy. This was followed in the 117th Congress by enactment of the SECURE 2.0 Act of 2022 (“SECURE 2.0”), which was included in the “Consolidated Appropriations Act, 2023” (P.L. 117-328). While these retirement-focused bills were ultimately included in larger legislative packages, they nonetheless enjoyed strong bipartisan support when introduced and could ultimately have passed both Chambers as stand-alone measures.⁷

Considering the more traditional glacial pace of the legislative process in Washington, the enactment of retirement legislation in multiple successive Congresses was illustrative of not only the high priority Members place on retirement policy, but also the ability to achieve legislative success when Members work together. Ironically, the success retirement policy initiatives enjoyed during the prior two Congresses likely works to stall further legislation during this 118th Congress. In fact, with implementation of these two retirement laws now underway, the focus has shifted to the regulatory agencies and the plan sponsor communities,



Legislation (cont.)

as compliance with the many changes included in the bills becomes paramount. For Congress, it will primarily seek to address any technical issues, or corrections, to SECURE 2.0 (and to the extent still necessary, the SECURE Act as well), that require legislation to achieve.

Moreover, the pace of retirement legislation may temporarily slow because of a change in leadership on retirement policy issues in Congress. With several Members, who have been stalwart leaders in furthering retirement policy, having either retired at the end of the 117th Congress (Senator Portman (R-OH) and Rep. Kevin Brady (R-TX)), or who will retire at the end of the 118th Congress (Senator Cardin (D-MD)), a void in leadership on these issues has been created. While a number of senior leaders on retirement policy remain (e.g., Rep. Richard Neal (D-MA), who will continue focusing attention on important retirement policy issues), this Congress may see others begin to fill the void that has, and will, be left by these retirements. But, such a change in leadership can take some time, and consequently slow consideration of retirement legislation.

Legislative Proposals

Below we highlight legislation that has been introduced to date in the 118th Congress that primarily focus on retirement security, as well as retirement proposals (and more general tax proposals) included in The President's Budget Proposal for Fiscal Year 2024 (the "Budget Proposal"). As is evident from the list of legislation introduced to date, the 118th Congress has not produced a significant number of retirement proposals, although that is likely to change as the year progresses:

Congressional Retirement Proposals

H.R. 3063—The Retirement Fairness for Charities and Educational Institutions Act of 2023 (Lucas, R-OK)

- Would amend federal securities laws to authorize the use of collective investment trusts (CITs) and unregistered insurance company separate accounts within 403(b) retirement savings plans.
- The legislation was favorably reported by the House Financial Services Committee on May 24, 2023 and now awaits floor consideration by the full House.

S. 427—The Financial Freedom Act of 2023 (Tuberville, R-AL)

- Would prohibit the Department of Labor (DOL) from issuing formal regulation or guidance that would limit the types of investments permitted in certain participant directed accounts and self-directed brokerage accounts in a qualified retirement plan.
- Identical legislation has been introduced in the House via H.R. 1177 (Donalds, R-FL).

H.R. 2628—The Employee Profit-Sharing Encouragement Act of 2023 (Watson Coleman, D-NJ)

- Would require companies with more than \$25 million in gross receipts to establish a profit-sharing plan for employees.
- Would require the profit-sharing plan to provide at least 5% of the company's annual net income as a cash benefit to eligible employees.

- Full and part time employees with at least one year of service with the employer would be eligible.
- A company failing to meet the profit-sharing requirements would be denied a federal tax deduction for executive compensation expenses.

H.R. 1119 (Delbene, D-WA) and **S. 523** (Smith, D-MN)—**The Freedom to Invest in a Sustainable Future Act**

- Would allow fiduciaries to consider environmental, social and governance (ESG) factors in plan investment decisions and/or provide ESG investment options to plan participants in a manner consistent with their fiduciary duties under ERISA.
- Would allow plan fiduciaries to consider ESG, or similar factors as tiebreakers when deciding between otherwise comparable investment options.

The Biden Administration's Budget Proposal

On March 9, 2023, the White House submitted to Congress the President's Budget Proposal for FY 2024, which begins on October 1, 2023. The Budget Proposal is a comprehensive document that sets forth the Administration's spending priorities for federal programs and operations for the coming fiscal year, as well as other policy priorities that may be pursued as well. In conjunction with submission of the Budget Proposal to Congress, the Treasury Department also released its explanation of the revenue provisions that the Administration has included in the Budget Proposal, along with its estimate of the revenue that would



Legislation (cont.)

be raised, or lost, should a particular proposal/provision ultimately become law.⁸

Below we provide a sampling of the revenue provisions included in the Budget Proposal that seek to make changes to retirement savings policy (sampling):

- Cap on Retirement Savings—for high-income taxpayers (\$400k single/\$450k joint) with aggregate vested account balances under their tax-favored retirement arrangements (defined contribution plans and IRAs) over \$10 million:
 - A minimum of 50% of the amount over \$10 million would be required to be distributed to the taxpayer.
 - For aggregate vested account balances in excess of \$20 million, additional rules would apply.
- Eliminate Roth Conversions for High-Income Taxpayers—would prohibit Roth conversions for high-income taxpayers (as defined above).
- Eliminate Backdoor Roth Contributions—would prohibit backdoor Roth contributions for high-income taxpayers (as defined above).
- Disqualified Persons—“clarifies” that an individual for whom an IRA is maintained is always a disqualified person for purposes of the prohibited transaction rules.
- IRA Purchase of an Interest in a Domestic International Sales Corporation (“DISC”) or Foreign Sales Corporation (“FSC”)—would prohibit an IRA from holding an interest in either a DISC or a FSC that receives a payment from an entity owned by the IRA owner.

- Statute of Limitations—for substantial errors in reporting the value of IRA assets on a tax return, or for imposition of the excise tax on prohibited transactions – the statute of limitations increases to 6 years (up from 3 years).

Biden Administration Individual-focused Tax Proposals

Beyond the retirement provisions above, the Budget Proposal would also seek the following tax-law changes (sampling):

- Deferral of gain from like-kind exchanges—would allow the deferral of gain up to an aggregate amount of \$500,000 for each taxpayer (\$1 million for joint filers) each year for real property exchanges that are like-kind. Any gains in excess of \$500,000 (\$1 million for joint filers) - recognized by the taxpayer in the year of transfer.
- Limit the use of Donor Advised Funds (DAF) to avoid a Private Foundation Payout Requirement—would “clarify” that distributions from private foundations to a DAF are not qualifying distributions unless the DAF expends those funds by the end of the following taxable year (and not to another DAF).
 - Would also exclude payments to disqualified persons from counting toward the private foundation payout requirement.
- Increase the top marginal rate—would increase the top marginal tax rate to 39.6%, and apply that rate to taxable income over \$450,000 (joint); \$400,000 (single); \$425,000 (head of household); and \$225,000 (married filing separate).

- Capital gains/dividends—would be taxed at ordinary income tax rates for taxpayers with taxable income over \$1 million.
- Transfers of Appreciated Property—a donor or deceased owner of an appreciated asset would realize a capital gain at the time of the transfer (unless to spouse or charity).
- Imposition of minimum tax—would impose a minimum tax of 25% on total income, generally to include unrealized capital gains, for taxpayers with wealth greater than \$100 million.
- Additional Medicare Tax—increase the current .9% additional Medicare tax by 1.2 percentage points for taxpayers with more than \$400,000 of earnings.
- Net-investment Income Tax—increase the current 3.8% net investment income tax by 1.2 percentage points for taxpayers with more than \$400,000 of income.
 - Also—apply to pass-through business income.

[View a copy of the General Explanations of the Administration’s Fiscal Year 2024 Revenue Proposals.](#)



Outlook

To date in the 118th Congress, Member focus has necessarily been on policy priorities beyond retirement. With retirement legislation having been enacted into law the prior two Congresses, and with only a handful of bills having been introduced to date, in this Congress, it is clear that retirement policy is not a top priority of policymakers so far this year.

However, it does remain a strong possibility that later this year Congress considers a pension-related technical corrections bill, to address drafting and other issues with SECURE 2.0 (as well as with any residual issues with provisions included in the SECURE Act). The likely path forward for a pension technical corrections bill is to have something ready for inclusion in an end-of-the-year package that is considered as “must pass” legislation. With the earlier discussion herein regarding reauthorization of FAA programs that are set to expire this year, and/or for consideration of the 2023 Farm Bill, opportunities will present themselves for consideration of retirement technical corrections legislation. However, such legislation likely will not begin to emerge for consideration until later this summer/fall.

As for the revenue items included in the Administration’s Budget Proposal, the split in control of Congress will significantly diminish the prospects for any of the retirement, or more generally focused tax provisions, to be considered this year.



Regulatory

Traditional Regulatory Agenda— Selected Retirement-Focused Rulemaking and Guidance

DEPARTMENT OF LABOR

Field Assistance Bulletin 2023-01, Annual Funding Notice Requirements for Multiemployer Pension Plans that Received Special Financial Assistance

On April 25, 2023, the Department of Labor (“DOL”) issued Field Assistance Bulletin 2023-01, to provide answers to frequently asked questions regarding the annual funding notice requirements under ERISA for those multiemployer pension plans that received special financial assistance under the American Rescue Plan Act of 2021 (P.L. 117-2). Under the American Rescue Plan Act, plans that have received financial assistance must include certain disclosures in their annual funding notices regarding the special financial assistance they have received (as well as related restrictions, limitations and conditions) in a manner that complies with ERISA section 101(f). Compliance with the Field Assistance Bulletin’s guidance will be treated by DOL (pending further guidance) as “constituting a reasonable, good faith interpretation of the annual funding notice requirements” under Section 101(f) of ERISA and the corresponding provisions of the DOL regulations.⁹

[View a copy of the Field Assistance Bulletin.](#)

Voluntary Fiduciary Correction Program

On November 21, 2022, DOL published in the federal register an amended and restated Voluntary Fiduciary Correction

Program (VFC Program) that includes proposed program amendments that add thereto a new self-correction feature, a clarification of existing transactions that are eligible for correction under the VFC Program, and simplification of administrative or procedural requirements for participation in, and correction of, certain transactions under the VFC Program.

Comments on the amended and restated VFC Program were due to the DOL by January 20, 2023. A subsequent Federal Register Notice will notify the public of the availability of the amended and restated VFC Program.

[View a copy of the VFC Program changes.](#)

Prohibited Transaction Exemption (PTE) 2002-51 To Permit Certain Transactions Identified in the VFC Program

In conjunction with the publication of the amended and restated VFC Program (see above), DOL also published a notice of a proposed amendment to PTE 2002-51, the prohibited transaction exemption for certain transactions identified in DOL’s VFC Program. The proposed amendment to PTE 2002-51 would provide for self-correction in the VFC Program for certain delinquent participant contributions and loan repayments to pension plans (the SC Component). This would allow “self-correctors” to make whole the plan without having to notify participants or any other interested persons of such correction. Under the amendment, self-correctors would provide an electronic notice to DOL and would receive an email acknowledgment in return.

- Limited to corrections where the amount of lost earnings is \$1 million or less
- Would clarify that excise tax relief is available for such self-correction actions

[View a copy of the Proposed Amendment to PTE 2002-51.](#)

On February 14, 2023, DOL re-opened the comment period, for 60 days (with respect to the amendments to the VFC Program and to the proposed amendment to PTE 2002-51) to seek comments as to what revisions, if any, should be made to the VFC Program to reflect the treatment of corrections of loans to participants that were included in section 305 of SECURE 2.0, and to the question whether any changes are needed to PTE 2002-51 to implement section 305(b). Comments on the amended and restated VFC Program and the proposed amendment to PTE 2002-51 were due to the DOL by April 17, 2023.

[View a copy of the Notice Reopening the Comment Period on the restated VFC Program.](#)

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

On March 10, 2022, DOL published Compliance Assistance Release (2022-02) to “plan fiduciaries to exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan’s investment menu.” The Release announced 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



Regulatory (cont.)

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 set 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, and 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 a copy of the [Executive Order](#) 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 amend and update the existing procedure governing the filing and processing of applications for exemptions from the prohibited transaction provisions of ERISA, the Internal Revenue Code, and the Federal Employees’ Retirement System Act of 1986. According to the release announcing the proposed amendments, DOL was undertaking the rulemaking to “create more clarity, certainty and transparency around the exemption application process.”¹⁰

Following an initial comment period, a virtual hearing on the proposed rule was held on September 15, 2022, and shortly thereafter the DOL extended the comment period until October 28, 2022.

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

Financial Factors in Selecting Plan Investments

On December 1, 2022, DOL published in the federal register a Final Rule - “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights” 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.” Specifically, the final rule permits, but does not obligate, plan fiduciaries to utilize ESG and other non-economic factors in their investment decisions where appropriate, provided that a fiduciary’s duty of prudence in evaluating

an investment is focused on factors (both economic and non-economic) that the fiduciary reasonably determines are relevant to a risk and return analysis.

The rule became effective on January 30, 2023. The applicability date for most all provisions is also January 30, 2023, but with the applicability date for several discrete subsections pertaining to proxy voting and exercise of shareholder rights set instead for December 1, 2023.

[View a copy of the Final Rule.](#)

On February 7, 2023, joint resolutions of disapproval of DOL’s ESG Rule were introduced both in the House (H.J.Res.30) and the Senate (S.J.Res.8) that sought to nullify the rule. On February 28, 2023, the House passed H.J.Res.30, which was thereafter taken up and passed by the Senate on March 1. On March 20, 2023, the President vetoed H.J.Res. 30, and the House subsequently failed to override that Presidential veto – allowing the regulation to remain in effect.

Revision of Annual Information Returns/Reports

On September 15, 2021, DOL, the Treasury Department and the Pension Benefit Guaranty Corporation (“PBGC”) 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 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. In May 2022, the agencies published a second round of final



Regulatory (cont.)

forms/instructions to 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) effective for plan years beginning on/after January 1, 2022.

While the DOL released the final revisions to Form 5500 as required under the SECURE Act, the DOL will likely issue additional revisions to Form 5500 and Schedule H thereto during summer of fall of 2023 (subject to the DOL's completion of those initiatives required under SECURE 2.0).

On February 24, 2023, DOL, the Treasury Department, and the PBGC, published in the Federal Register final forms and instructions revisions to Form 5500 and Form 5500-Short Form. The forms and instructions revisions relate to statutory amendments to ERISA and the Code enacted as part of the SECURE Act for multiple-employer plans and groups of plans, and changes to improve reporting of plan financial information regarding audits and plan expenses as well as to enhance certain reporting information by retirement plans.

The final forms/instructions revisions are effective for plan years beginning on/after January 1, 2023.

[View a copy of the February 24, 2023 Final Forms Revisions.](#)

DOL Final Rule to conform its Annual Reporting regulations/requirements to the jointly promulgated revisions to Forms 5500 and 5500 Short-form.

Separately on February 24, 2023, DOL published in the Federal Register a final rule to conform its annual reporting

regulations/requirements under Title I of ERISA to the jointly promulgated revisions to Form 5500 and Form 5500-Short Form. DOL's final rule was effective April 25, 2023, with the applicability date for plan years beginning on/after January 1, 2023 for the Form 5500 Annual Return/Report.

[View a copy of the Final Rule.](#)

DEPARTMENT OF TREASURY

On May 5, 2023, the Treasury Department released the third quarter update to the 2022-2023 Priority Guidance Plan, setting forth the projects on which the Treasury Department intends to prioritize during the plan year ending June 30, 2023. Included in the Guidance Plan are retirement benefit priorities, some of which are addressed elsewhere in this Update, and include the following (a sampling):

- Regulations under Section 72(t) relating to the 10% additional tax on early distributions.
- Regulations relating to the timing of the use or allocation of forfeitures in qualified retirement plans (see below).
- Updating IRA regulations under Sections 219, 408, 408A, and 4973 for statutory changes and additional issues (see below).
- Final Regulations relating to SECURE Act modifications to 401(a)(9) and other issues under 401(a)(9) (see below).
- Regulations updating electronic delivery rules (see below).
- Guidance on student loan payments and qualified retirement plans and 403(b) plans.

- Regulations relating to SECURE Act modifications to certain rules governing 401(k) plans.
- 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 program

[View a copy of the Priority Guidance Plan.](#)

Use of Forfeitures in Qualified Retirement Plans

On February 27, 2023, the IRS published in the Federal Register proposed regulations to provide rules relating to the use of forfeitures in qualified retirement plans, including a deadline for the use of forfeitures in defined contribution plans (no later than 12 months after the close of the plan year in which the forfeiture was incurred). The proposed regulation also clarifies that forfeitures arising in any defined contribution plan may be used to (i) pay plan administrative expenses, (ii) reduce employer contributions under the plan (including the restoration of inadvertent benefit overpayments and conditionally forfeited participant accounts that may otherwise require employer contributions), or (iii) increase benefits in other participants' accounts. If finalized, the proposed regulation would apply for plan years beginning after January 1, 2024. However, plan administrators may rely on the proposed regulations prior to the applicability date.

Comments on the proposed rules were due to the IRS by May 30, 2023.

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



Regulatory (cont.)

Internal Revenue Service—Multiple Employer Plans

On March 28, 2022, the Department of the Treasury/Internal Revenue Service (“IRS”) 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 withdrew 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.](#)

Treatment of Certain Nonfungible Tokens as Collectibles

On April 10, 2023, the Department of the Treasury/IRS released Notice 2023-27, announcing their intention to issue guidance related to the treatment of certain nonfungible tokens (NFTs) as collectibles under section 408(m) of the Code. Section 408(m) provides that the acquisition by an IRA of a collectible is treated as a distribution from the IRA equal to the cost to the IRA of the collectible. The Notice provides a description of the criteria that IRS will utilize to make its determination whether a NFT constitutes a collectible.

The IRS is seeking comments generally on the treatment of NFTs as a section 408(m) collectible and factors that should be considered when making such a determination.

Comments on the Notice are due to the IRS by June 19, 2023.

[View a copy of Notice 2023-27.](#)

Internal Revenue Service—Required Minimum Distributions

On February 24, 2022, the 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 required minimum distribution 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 SECURE Act.

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

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

Internal Revenue Service—Use of an Electronic Medium to Make Participant Elections and Spousal Consents

On December 30, 2022, the IRS published in the Federal Register a proposed rule relating to the use of an electronic medium for participant elections and spousal consents – providing an alternative to in-person witnessing of spousal consents required to be witnessed by a notary public or plan representative.

The proposed rule would clarify that certain special rules for the use of an electronic medium for participant elections also apply to spousal consents.

Comments on the proposed rule were due to the IRS by March 30, 2023, and a public hearing on the proposal was held on April 11, 2023.

Prior to the effective date of the final rules, taxpayers may rely on the rules as they are set forth in the rulemaking notice.

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

SECURITIES AND EXCHANGE COMMISSION

Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers—Care Obligations

On April 20, 2023, the Securities and Exchange Commission (“SEC”) released an SEC staff generated bulletin entitled “Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers” to address the care obligations of broker-dealers and investment advisers under Regulation Best Interest.¹¹ The staff bulletin reiterates, in a question and answer format, the standards of conduct for broker-dealers and investment advisers in addressing their care obligations when providing investment advice and recommendations to retail investors.¹²

[View a copy of the SEC staff guidance.](#)



Miscellaneous

Simply for reference, below we provide inflation adjusted amounts, applicable for calendar year 2023, that pertain to social security benefits, retirement benefits; health savings accounts; and the estate and gift tax exclusion amounts:

Social Security Benefits for 2023:

- Social Security and Supplemental Security Income beneficiaries:
 - 8.7% Cost of Living Adjustment for 2023.
- Taxable Wage Base:
 - \$160,200.
- Retirement Earnings Test Exempt Amounts:
 - Pre-full retirement age: \$21,240/year or \$1,770 per month.
 - \$1 in benefits withheld for every \$2 in earnings above the limit.
 - The year an individual reaches full retirement age: \$56,520/year or \$4,710 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 2023 Social Security fact sheet.](#)

Retirement Plan Limits

For quick reference, selected 2023 plan limits are as follows:

- Elective deferral (contribution limit) for 401(k), 403(b), 457 plans: **\$22,500.**
- Catch-up contribution limit for 401(k), 403(b), 457 plans: **\$7,500.**
- Annual contribution to traditional and Roth IRAs: **\$6,500.**
- Catch-up contribution limit for traditional and ROTH IRAs: **\$1,000 (is not indexed).**
- SIMPLE employee deferrals: **\$15,500.**
- SIMPLE catch-up limit: **\$3,500.**
- Simplified Employee Pensions (SEPs) minimum compensation threshold: **\$750.**
- SEP maximum compensation limit: **\$330,000.**
- Annual contribution limit: **\$66,000.**
- Annual contribution limit (age 50 and older) including catch-up contributions: **\$73,500.**
- Annual Compensation limit for calculating contributions: **\$330,000.**
- Limit on annual benefit provided through a defined benefit plan: **\$265,000.**
- Employee Stock Ownership Plan (“ESOP”) maximum account balance: **\$1,330,000.**

[View a copy of the Cost of Living Adjustments for 2023.](#)

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 HDHPs 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 the HSA inflation-adjusted amounts for 2023.](#)



Miscellaneous (cont.)

Estate and Gift Tax Exclusion Amounts

For calendar year 2023, the estate and gift tax exemption amounts are:

- **\$12,920,000** per individual.
- **\$25,840,000** per couple.
- **\$17,000** per recipient.
- **\$34,000** per recipient for married couples.

[View the inflation-adjusted amounts for 2023.](#)

¹ The Republican Party majority in the House is 222-213; while Democratic Party majority in the Senate is 51-49 (inclusive of the three Senators who identify as Independents but who caucus with the Democratic Party).

² This legislation was H.J.Res.26, a resolution disapproving the action of the District of Columbia Council in approving the District's Revised Criminal Code Act of 2022.

³ <https://home.treasury.gov/system/files/136/Debt-Limit-Letter-to-Congress-McCarthy-20230113.pdf>.

⁴ H.R. 2811, the Limit, Save, Grow Act of 2023, passed the House on April 26, 2023, by a vote of 217 – 215. The legislation can be accessed here: <https://www.congress.gov/118/bills/hr2811/BILLS-118hr2811pcs.pdf>.

⁵ <https://home.treasury.gov/system/files/136/Debt-Limit-Letter-to-Congress-Members-20230522-McCarthy.pdf>.

⁶ A copy of the Fiscal Responsibility Act can be found at the following link: <https://www.congress.gov/118/bills/hr3746/BILLS-118hr3746ih.pdf>.

⁷ Additionally, the 117th Congress also saw the enactment of legislation to create and fund a special financial assistance program for financially troubled multiemployer pension plans – via the American Rescue Plan (P.L. 117-2). This legislation did not enjoy the same bipartisan support as the SECURE Act and SECURE 2.0.

⁸ On March 9, 2023, The Department of the Treasury released its “General Explanation of the Administration’s Fiscal Year 2024 Revenue Proposals”, to coincide with the submission to Congress of the Administration’s FY 2024 Budget Proposal.

⁹ <https://www.dol.gov/newsroom/releases/ebsa/ebsa20230425>.

¹⁰ [US Department of Labor Announces Proposed Amendments to Prohibited Transaction Exemption Filing, Processing Procedures.](#)

¹¹ A staff bulletin represents the views of the SEC staff is not a rule, regulation, or statement of the Commission, nor does it have any legal force or effect or create any new or additional obligations for any person.

¹² The Staff Bulletin provides that the “Care Obligation” under Reg BI “requires broker-dealers and their financial professionals to have a reasonable basis to believe that a recommendation of a securities transaction or investment strategy could be in the best interest of at least some retail investors” (see footnote 5 of the Staff Bulletin).

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