



Washington Update

A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

NOVEMBER 2022

The 2022 Mid-Term Election Results

In each Congressional election cycle, all 435 seats in the House of Representatives are up for election, with approximately one-third of the Senate also having to face voters.¹ This mid-term election cycle also happened to fall during the halfway point of President Biden's first term in office, a milestone that historically provides a guide to voter sentiment on the President's performance for the first two years.

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Leading up to this year's 2022 mid-term elections, the Democratic Party enjoyed a majority in the House of 220-212 (with 3 vacancies); while the Senate was evenly split 50-50, but with the Vice President's tie-breaking vote providing the Democratic Party with effective control of that Chamber. These slim majorities were thought to put control of Congress in play, at least in the House, as the sitting President's party traditionally has lost seats, and in some years by significant margins, during a President's first mid-term election cycle.² The Senate always presents a less clear view of mid-term election outcomes, as these contests can turn more on the states that are in play during the cycle (this cycle there were 21 Republican Party seats, along with 14 Democratic Party seats, that were contested); the number of retirements that create open seat contests (this cycle there were 6 Republican Senators that retired versus 1 Democratic Party Senator); and the individual candidates running for those seats, among other variables.

While a pending runoff election still must occur in Georgia on December 9, 2022 to determine the winner of that state's Senate race, the overall results of this mid-term election contest point to a Congress wherein control will be divided. In the House, the Republican Party won control of the Chamber with a margin of at least 219-212 (4 races had yet to be called by publication), while the Senate ratio stands at 50-49 in favor of the Democratic Party pending the results in the Georgia runoff.³ As of today, the one seat margin in the Senate, even pending the outcome of the Georgia runoff election, ensures that the Democratic Party will remain in control of the Senate in the 118th Congress.⁴

Thus, when the 118th Congress gavels into session on January 3, 2023, not only will the Congress be divided, with the

Republican Party controlling the House and the Democratic Party controlling the Senate, but control in each chamber itself will be via very slim margins. The result is likely to be a legislative agenda that is long on rhetoric, but short on action. This will apply across the board, and likely will affect the prospects for the President's policy agenda (e.g., the remainder of the President's Build Back Better agenda) as well as those priorities that the Republican House majority may pursue.

This dynamic has the potential to impact legislation that is otherwise bipartisan in nature, including retirement security policy. To the extent the upcoming lame-duck session of this Congress is unable to address retirement security legislation (colloquially referred to as "Secure 2.0" – as described herein), the effort at enacting the legislation would have to begin anew in the 118th Congress. While it remains premature to assess its prospects over the course of the next Congress, considering the current 117th Congress remains in session, nonetheless anticipated gridlock in the 118th Congress will likely at least slow progress on retirement legislation.



Legislation

First, a recap: Build Back Better becomes the Inflation Reduction Act

Throughout most of 2021, Members of Congress sought to work in conjunction with the Biden Administration to pursue enactment of the Administration's Build Back Better agenda, a broad proposal to fund a variety of social spending and clean energy incentives, and partially offset via proposed tax increases targeted towards businesses and wealthy taxpayers. What began in August 2021 as a \$3.5 trillion spending proposal, ultimately passed the House (on November 19, 2021) as a ~\$1.7 trillion social spending package offset in part with ~\$1.4 trillion in revenue increases designed to help defray the proposal's spending costs.⁵ However, as the end of 2021 approached, it became clear that the House-passed version of Build Back Better lacked the votes to pass in the Senate, and thus did not receive floor consideration.

As the second session of the 117th Congress convened, and throughout the spring and early summer months, a clear pathway for consideration of the Build Back Better agenda did not appear to exist. Yet, just prior to the annual August recess, a deal was achieved in the Senate between Senator Schumer (D-NY) and Senator Manchin (D-WV) that allowed for the full Senate to consider what ultimately morphed from the Build Back Better Act, into the Inflation Reduction Act (a Senate-amended version of H.R. 5376). Shortly after Senators Schumer and Manchin announced their agreement, the full Senate voted to pass the measure by a vote of 51-50, followed by passage in the House

by a vote of 220-207. The President signed the Inflation Reduction Act into law on August 16, 2022.⁶

As enacted into law, the Inflation Reduction Act includes ~\$499 billion of spending and tax incentives, which is offset by ~\$738 billion in revenue provisions and savings that are generated in certain federal programs. Broken down into broad categories, the spending and tax incentives would include:

- \$391 billion in energy and climate provisions to, broadly, include (sampling):
 - \$161 billion in clean energy tax credits
 - \$37 billion in clean energy incentives for individuals
 - \$37 billion in clean energy tax credits for manufacturers
 - \$36 billion in energy tax credits for clean fuel and vehicles
- \$108 billion in health care, including (sampling):
 - Extension of the subsidies for Affordable Care Act premiums for 3 years
 - Changes to Medicare Part D (prescription drugs) including coverage for insulin and vaccines⁷

To offset the legislation's tax incentives and social spending provisions, the Inflation Reduction Act includes ~\$738 billion in new revenue as well as savings provisions that are broken out as follows:

- Approximately \$457 billion in new revenue via:

- The imposition of a 15% corporate minimum tax
- The imposition of a 1% excise tax on stock repurchases (effective after 12/31/2022)
- A two-year extension of the current-law limitation on excess business losses for non-corporate taxpayers (to 2029)
- Revenue generated via an increase in funding for the Internal Revenue Services (~\$101 billion new revenue - as estimated by the Congressional Budget Office "CBO")
- Approximately \$281 billion in savings via changes to the Medicare Prescription drug program. Below is a sampling of the enacted changes:
 - Allow the Department of Health and Human Services ("HHS") to negotiate directly with drug manufacturers over the cost of certain Medicare Part D and B prescriptions
 - Impose a temporary cap of 6% on annual increases in Part D base premiums (from 2024 – 2029)
 - Require inflation rebates (to Medicare) if certain Part D drug prices are increased above an allowable inflation rate
 - Reduce to \$2,000 (starting in 2025) the out-of-pocket spending required to reach the Medicare Part D catastrophic threshold

It is worth noting that not all the provisions of the Inflation Reduction Act have the same effective dates. It may be necessary to consult the legislation to determine whether and when a particular provision of interest may become effective.



Legislation (cont.)

The Lame Duck Session – Closing the 117th Congress

When Congress returns to Washington following the mid-term elections and the Thanksgiving Holiday recess, it will face a short calendar during which it must address funding for federal operations, as the current continuing resolution (“CR”) under which the federal government is operating will expire on December 16, 2022. This deadline will not only require Members to pass legislation to extend government funding beyond that date, but also present an opportunity to consider other matters that could move along with the funding extension.

Among the items that could be considered along with the anticipated CR (to fund federal operations into early 2023), or the preferred omnibus appropriations bill (that would fund federal operations through the end of the fiscal year next September), are legislative items such as (not all-inclusive): the National Defense Authorization Act (“NDAA”); the Electoral College Reform Act; the Respect for Marriage Act; additional aid to Ukraine; the extension of certain expired/expiring tax provisions; and retirement security legislation.⁸

Ultimately, the priority focus will be to ensure that funding for federal operations continues beyond the end of the current CR expiration date (December 16, 2022), and if possible, through the end of the federal government’s current fiscal year on September 30, 2023. For all other legislative items, while consideration is also a priority, the possibility exists that they do not get attached to the government funding vehicle that is ultimately considered and may have to await the 118th Congress before they can be addressed.

Retirement Policy

While it remains highly unlikely that retirement legislation is considered as a stand-alone measure during the short lame duck session, as mentioned above, it could become a part of the “must pass” government funding legislation that Congress will consider before adjournment. As such, retirement Leaders in both Chambers and in both Parties have engaged in ongoing bi-partisan negotiations to try to narrow differences between House and Senate versions of retirement legislation, so that a single bill can be offered for inclusion in the government funding legislation, should the opportunity arise. Below, we (again) provide a synopsis of both House and Senate versions of retirement legislation upon which a single bill will emerge in time for consideration during the lame duck session.

House of Representatives

H.R. 2954, the Securing a Strong Retirement Act of 2021

As passed by the House, on March 29, 2022 (by a vote of 414-5), the legislation includes the following provisions (sampling only of key provisions):

For Individuals:

- Increase the Required Minimum Distribution (“RMD”) beginning date in the following manner:
 - to age 73 starting on 1/1/2023
 - to age 74 starting on 1/1/2030
 - to age 75 starting on 1/1/2033
- Index IRA catch-up limit (for individuals who have attained age 50) beginning in 2024

- 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
- Index for inflation the annual IRA charitable distribution limit of \$100,000
- 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



Legislation (cont.)

- 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
- Create a national, online, database of lost accounts that can be accessed
- 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.](#)

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. The key provisions (sampling only) approved by the HELP Committee and by the Finance Committee, are outlined below.

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 expenses solely for the benefit of participants and beneficiaries

- Update the dollar limit – to \$7,000 for mandatory distributions from a former employees' 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



Legislation (cont.)

- 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
- 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)

[View the legislative text of S. 4353.](#)

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
- 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 59½) 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

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



Legislation (cont.)

- Provide an exception from the 10% early distribution tax (if under age 59½) for individuals with a terminal illness
- Permit employers of domestic employees (e.g., childcare providers) 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](#).



Outlook

With the lame duck session of Congress likely to last only several legislative weeks, there is a very narrow window during which legislation can be considered in the remainder of the 117th Congress. In fact, the short legislative calendar creates few realistic paths forward for any legislation that can otherwise await the next Congress.

Yet, despite the limited calendar, Congress must address funding for federal operations by December 16, 2022, to avoid a shutdown of federal operations after that date. With an almost certainty that Congress will address government funding prior to December 16, 2022, the question becomes whether Congress simply extends the current CR into 2023, or whether it will complete the appropriations this year by passing an omnibus appropriations bill to fund federal operations through the end of its fiscal year next September. Both of these funding options present an opportunity to address other issues as well, including retirement-focused legislation that could become attached thereto.

At this point it boils down to whether Leadership in the Senate and House will seek an expanded government funding bill that would include other legislative priorities. Should an expanded funding bill emerge, retirement legislation should be well positioned for inclusion therein as it enjoys broad bi-partisan support in both Chambers of Congress. While decisions on the scope of the government funding legislation have yet to be made, by early December it should be clear the direction that Leadership is taking in closing out the 117th Congress.



Regulatory

Traditional Regulatory Agenda – Selected Retirement-Focused Rulemaking

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)

- Requires 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
- Provide 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 (2022-02)** 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, the 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



Regulatory (cont.)

1986. According to the release announcing the proposed amendments, the DOL was undertaking the rulemaking to “create more clarity, certainty and transparency around the exemption application process.”⁹

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.](#)

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 revisions of the annual information return/reports.](#)

[View a copy of the proposed revisions of the annual reporting and disclosure.](#)

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



Regulatory (cont.)

September 15, 2021 release, are anticipated to be published in the coming months.

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

DEPARTMENT OF TREASURY

On August 17, 2022, the Treasury Department released its fourth 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 for statutory changes and additional issues
- SECURE Act modifications pertaining to 401(a)(9), and to certain rules governing 401(k) plans (see below)
- Guidance on student loan payments and qualified retirement plans and 403(b) 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 programs

[View a copy of the fourth 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 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 Setting Every Community Up for Retirement Enhancement Act of 2019 a/k/a “The Secure Act” (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 – Certain Required Minimum Distributions for 2021 and 2022

On October 7, 2022, the IRS published Notice 2022-53 to provide temporary relief to certain defined contribution plans and taxpayers that may have either refrained from paying a required minimum distribution (in the case of a plan) or from taking such a distribution (in case of a taxpayer) in 2021 or 2022 and flowing from a change in the RMD rules enacted as a part of the SECURE Act. In particular, the IRS has indicated that for calendar years 2021 and 2022, taxpayers (and retirement plans) will not be treated as failing to satisfy section 401(a)(9) simply because they did not take a required minimum distribution those years, nor will the agency impose the 50% excise tax that would otherwise apply in such a situation.

[View a copy of Notice 2022-53.](#)

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 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
 - Beginning the month an individual reaches full retirement age:
 - No earnings limit

[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 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 Defined Contribution limit – **\$66,000**
- Annual Defined 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 2023 inflation adjusted amounts for Health Savings Accounts \(HSAs\).](#)

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

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

- \$17,000 per recipient
- \$34,000 per recipient for married couples

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

¹ In the 2022 mid-term elections, there were 34 Senate seats up for election from the Senate's Class III Membership (who last ran in 2016) plus an additional two seats where special elections were held to fill seats in California (the final weeks of Vice President Harris' seat) and Oklahoma (the final four years of retired Sen. Inhofe's seat). The California special election also served as the regular election contest to serve for a full 6-year term.

² Going back to President Reagan's first mid-term election cycle in 1982, in each of the similar (i.e., first Presidential term) mid-term election cycles that have been contested since then, the President's party has lost seats in all but one comparable mid-term election. It was only during the 2002 mid-term election cycle of President George W. Bush's first term that the Republican party gained seats in the House (a net gain of 6 seats). In each of the remaining mid-term elections since 1982, the President's Party has lost anywhere from 8 (George H.W. Bush Presidency in 1990 mid-term election) to a high of 63 during President Barack Obama's Presidency (2010 mid-term election cycle).

³ In Georgia, the contest between Senator Raphael Warnock and challenger Herschel Walker failed to produce a victor on election day, as neither candidate achieved the 50%+ threshold necessary to avoid a runoff.

⁴ A win by Senator Warnock would result in a ratio of 51 – 49 in favor of the Democratic Party, giving the party outright control of the Senate. Should Mr. Walker win, the Senate would remain deadlocked at 50-50, but with Vice President Harris available to cast tie-breaking vote, this would nonetheless place control effectively with the Democratic Party. A 50-50 Senate would continue to operate under a power-sharing agreement between the Parties, but would allow the Democrats to remain in control of the Committee Chairmanships and thus Committee agendas.

⁵ H.R. 5376, The Build Back Better Act, passed the House by a vote of 220-213. [View a copy of H.R. 5376, as passed by the House.](#)

⁶ [View a copy of H.R. 5376 as enacted into law.](#) While colloquially referred to as the "Inflation Reduction Act" the version of the legislation that ultimately became Public Law 117-169 is referenced simply as: An Act "[t]o provide for reconciliation pursuant to title II of S. Con. Res. 14."

⁷ [View further information on the Prescription Drug provisions and timelines thereunder.](#)

⁸ There is also a slight chance that Congress seeks to address the debt ceiling during the lame duck session, even though the current anticipation is that the debt ceiling will not be reached until well into calendar year 2023.

⁹ <https://www.dol.gov/newsroom/releases/ebsa/ebsa20220308>

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