

Washington Update

A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

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The 2020 Presidential Election Year: The Worldwide Coronavirus (“COVID-19”) Outbreak and its Implications for Policy in the Coming Months

When the second session of the 116th Congress convened, members faced the prospect of a legislative calendar that was to be dictated mostly by the upcoming presidential election. Yet, as we moved through the first quarter of 2020, the focus of not only Congress, but also the world at large, turned to the COVID-19 virus that was rapidly spreading around the globe.

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In the United States, the focus of policymakers was broad—seeking to keep Americans safe while ensuring that our health care system would have the resources to take care of those individuals affected by the virus, and equally as important, ensuring a proper response to the resulting severe and extended economic fallout the virus would cause.

On March 27, 2020, the President signed into law H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, legislation designed to respond to the health care and economic distress caused by COVID-19.¹ While the legislation broadly covers important issues including health care focused responses to the virus, unemployment benefits and other assistance to individuals, and financial and other assistance to employers (of all sizes), it also contains several important retirement provisions designed to address hardships faced by individuals saving for or in retirement. In the following section, we will address these retirement provisions.

Of course, Congress will still focus on and pass legislation this year that will move as part of the normal legislative process. It is just that the bills will be few in number, and most likely limited to those that provide funding for federal operations or for re-authorizing certain activities of federal agencies/programs that are expiring this year (e.g., federal highway and public transportation programs).

This year, and beyond H.R. 748, retirement-focused legislation not only faces the same diminished calendar affecting all other legislation, but is also further hampered by a reluctance to revisit retirement policy so soon after the enactment of the SECURE Act late in 2019 (the “Setting Every Community Up for Retirement Enhancement Act”).² Nonetheless, there may be a compelling reason for Congress to address retirement security issues this year, as we detail in the following pages.

Legislation

During the first session of the 116th Congress, policymakers focused not only on enacting the SECURE Act into law, but also sought to address separately the acute funding problems facing the multiemployer defined benefit plan system. While Congress was ultimately successful with regard to the SECURE Act, its attempt to address multiemployer funding faced a much more difficult path forward. In fact, while the House of Representatives was able to pass a multiemployer plan funding bill in July of 2019 (H.R. 397, the Rehabilitation for Multiemployer Pensions Act of 2019), it has yet to be considered in the Senate.

During this second session of the 116th Congress, while we again anticipate an attempt by policymakers to move legislation to address the multiemployer pension system's acute funding problems, we also anticipate continued efforts to mitigate the effects of COVID-19 on the country. Not only will multiemployer pension plans possibly be a part of any future COVID-19 virus response legislation, but also, single employer changes may be as well.

It is against this backdrop that we detail not only the retirement plan provisions that were included in the CARES Act, but also highlight several of the key legislative proposals that could receive attention this year either as a part of continued Congressional responses to the COVID-19 virus or, to the extent time permits (which is unlikely), as stand-alone legislative initiatives.³

H.R. 749—The CARES Act

A. Provides the following tax relief for qualifying coronavirus-related distributions:⁴

- Waives the 10% penalty tax on early distributions made from qualified retirement plans and individual retirement accounts (IRAs);
- Allows individuals to include the taxable portion of the distribution in his or her taxable income over a 3-year period;
- Allows such distributions to be recontributed to a qualified retirement plan or IRA as rollover contributions within three years after the date of distribution;
- Permits in-service distributions from qualified retirement plans, even if such amounts are not otherwise eligible for distribution under the federal tax rules; and
- Exempts the distribution from mandatory 20% federal income withholding applicable to eligible rollover distributions from qualified retirement plans (and exempts such distributions from the 402(f) notice requirement and direct rollover requirement).

B. Waives Required Minimum Distributions (RMDs) for IRAs and defined contribution plans (including 401(k), 403(b), and governmental 457(b) plans) for calendar year 2020, including RMDs for 2019 that must be taken on or before April 1, 2020, by individuals who turned age 70 ½ in 2019, but only to the extent such RMD was not distributed before January 1, 2020.

C. Provides the following coronavirus-related relief for loans from qualified retirement plans:

- Temporarily increases plan loan dollar limits for qualifying individuals to the lesser of (1) \$100,000 or (2) greater of \$10,000 or 100% of the present value of the participant's vested benefit. Only applies to loans taken within 180 days of the enactment; and
- Provides qualifying individuals a one-year delay for plan loan repayments that are due in 2020 (but due on or after the date of enactment).

A qualifying individual for purposes of this qualified retirement plan loan relief is an individual who would qualify for a coronavirus-related distribution (as described above).

MULTIEMPLOYER FUNDING

H.R. 397—The Rehabilitation for Multiemployer Pensions Act (Neal, D-MA):

- Known as the “Butch Lewis Act”
- Passed the House on 7/24/19 by a vote of 264-169
- Establishes the Pension Rehabilitation Administration with Treasury and a related trust fund to make loans to certain multiemployer defined benefit pension plans
- Treasury to issue bonds to fund the loan program
- Authorizes Treasury to make loans from the trust fund to plans in critical or declining status or insolvent, if the plan became insolvent after 12/16/2014 and has not been terminated
- Allows a multiemployer plan to also seek financial assistance from the Pension Benefit Guaranty Corporation (PBGC) if, after receiving such a loan, the plan will still become or remain insolvent within the 30-year period beginning on the date of the loan.

The text of H.R. 397 can be accessed via the link below:

<https://www.congress.gov/116/bills/hr397/BILLS-116hr397pcs.pdf>

S. 833—The Pension Accountability Act (Portman, R-OH):

- Would revise the rules for voting on the suspension of benefits under multiemployer plans in critical and declining status
- Would put a suspension of benefits into effect unless a majority of plan participants/beneficiaries who vote to reject that suspension
- Would eliminate the authority of the Treasury Department, with regard to systemically important plans, to override a vote by plan participants to reject a suspension of benefits.

The text of the Pension Accountability Act can be accessed via the link below:

<https://www.congress.gov/116/bills/s833/BILLS-116s833is.pdf>

MULTIEMPLOYER PENSION RECAPITALIZATION AND REFORM PLAN (GRASSLEY, R-IA AND ALEXANDER (R-TN):

On November 20, 2019, Senate Finance Committee Chair Charles Grassley (R-IA) and Senate HELP Committee Chair Lamar Alexander (R-TN), released a multiemployer pension reform White Paper entitled the “Multiemployer Pension Recapitalization and Reform Plan,” a proposal to help avert the insolvency of the multiemployer pension insurance system, creating new authority for the PBGC to “take on liabilities from financially troubled multiemployer pension plans to help the plans pay their financial obligations to retirees and current workers.”

Among the proposed changes would be the following:

- Establish a partition program to allow eligible plans to separate their liabilities into two plans (original and successor), subject to PBGC approval
- Change the guaranteed benefit amounts for participants in multiemployer plans (to 100% of first \$56 per month per year times the number of years of credited service, not to be less than \$250)
- Change the definition of an insurable event for a multiemployer plan
- Raise the multiemployer flat-rate premium to \$80 (currently set at \$29) and establish a variable rate premium equal to 1% of a plan’s unfunded current liability (capped)
- Regulate the assumed discount rate used by actuaries to project plan liabilities
- Limit benefit increases in certain circumstances
- Modify current withdrawal liability rules for employers exiting a multiemployer plan

Texts of the White Paper and the Technical Explanation of the Proposal can be accessed via the links below:

<https://www.finance.senate.gov/imo/media/doc/2019-11-20%20Multiemployer%20Pension%20Recapitalization%20and%20Reform%20Plan%20White%20Paper.pdf>

<https://www.finance.senate.gov/imo/media/doc/2019-11-20%20Multiemployer%20Pension%20Recapitalization%20and%20Reform%20Plan%20Technical%20Explanation.pdf>

RETIREMENT-SAVINGS ENHANCEMENT

S. 1431—The Retirement Security and Savings Act—Portman (R-OH) and Cardin (D-MD):

- Would increase the required minimum distribution beginning date from 70 ½ up to 72 in 2023, and then to 75 in 2030 (which will need to be amended to reflect the fact that the RMD age was increased to age 72 via enactment of the SECURE Act)
- Would exempt from the required minimum distribution rules individuals with \$100,000 or less in aggregate retirement savings
- Would reduce the penalty for missed required minimum distributions from 50% of the shortfall to 25%, and, if the person self corrects, down to 10%
- Would reduce the excise tax on excess IRA contributions
- Would encourage expanded use of Qualifying Longevity Annuity Contracts

- Would increase catch-up contribution limits in the following manner:
 - For defined contribution plans, from \$6,000 up to \$10,000 for individuals age 60 and older
 - For SIMPLE plans, from \$3,000 up to \$5,000 for individuals age 60 and older
 - For IRAs, index the \$1,000 limit for individuals age 50 and older
- Would allow employers to make a matching contribution to the employee's retirement account in the amount of his/her student loan payment
- Would encourage greater small business participation in retirement plan sponsorship by increasing current tax incentives and introducing new tax credits and by reducing certain regulatory burdens on employers

The text of the Retirement Security and Savings Act can be accessed via the link below:

<https://www.congress.gov/116/bills/s1431/BILLS-116s1431is.pdf>



Outlook

While the presidential campaign, and the attention of policymakers to addressing Covid-19, will likely dampen the ability of Congress to move retirement-focused legislation through to enactment prior to the November 3rd election, nonetheless, congressional leaders are signaling an interest in addressing the funding problems facing multiemployer retirement plans this year. Not only has the House already acted, but the Senate is also taking steps that indicate its interest in and willingness to act. In fact, Leadership in the House has already indicated an interest in including additional retirement changes in future Covid-19 response legislation.

The prospects for multiemployer plan changes should become clearer in the coming weeks as Congress hopefully returns to Washington, and continues its focus on providing policy responses to Covid-19. Opportunities will likely exist to include pension-focused reforms in any negotiated response to the economic upheaval flowing from Covid-19.

As for single-employer plan changes, with the CARES Act having provided initial relief to those affected by the pandemic, further changes could also be considered as part of a broader Covid-19 response.

Regulatory

DEPARTMENT OF LABOR

FIDUCIARY RULE

In the Trump Administration's fall 2019 Regulatory Agenda, the Department of Labor (DOL) indicated that it was considering regulatory options in light of the 5th Circuit Court of Appeals having vacated, in toto, the agency's earlier promulgated rule defining who is a "fiduciary" for purposes of ERISA. In the fall 2019 Unified Agenda and Regulatory Plan for federal agencies, the DOL indicated it anticipated publishing a Notice of Proposed Rulemaking in December 2019 under the title "Fiduciary Rule and Prohibited Transaction Exemptions," but with no indication as to the content of the Proposed Rule. While the DOL has yet to publish such a proposed rule, nonetheless, a link to EBSA's regulatory agenda pertaining to that anticipated rule can be found via the link below:

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=1210-AB82>

OPEN MEPS

On July 31, 2019, the DOL published in the Federal Register a Request for Information ("RFI") seeking comments on whether to amend current regulations to expressly permit financial institutions or other persons to maintain a single defined contribution plan on behalf of multiple unrelated employers ("open MEPs" or "pooled employer plans"). The DOL's RFI sought answers to a series of questions designed to aid in the agency's decision-making regarding whether (or not) to engage in substantive rulemaking. Comments were due to DOL by 10/29/2019. The DOL has not yet published a proposed rule for

consideration. With the enactment of the SECURE Act, which amended ERISA and the Internal Revenue Code to allow for the adoption of open MEPs by unrelated employers, the need for DOL to amend its regulations to expressly permit open MEPs may be refocused to promulgating regulations to implement the SECURE Act's MEPs provisions.

A copy of the RFI can be accessed via the link below:



<https://www.govinfo.gov/content/pkg/FR-2019-07-31/pdf/2019-16072.pdf>

ELECTRONIC DELIVERY

On October 23, 2019, DOL published in the Federal Register a proposed rule to "provide an additional safe harbor for the use of electronic media by employee benefit plans to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 (ERISA)." The proposed rule would allow plan administrators, so long as they satisfy the conditions set forth in the rule, to provide participants and beneficiaries with a notice that certain disclosures will be made available via a website (with the option for the participant/beneficiary to choose to receive paper disclosures instead).

The comment period for the proposed rule ended on November 22, 2019. A final rule has not yet been published by the DOL.

A copy of the proposed rule can be accessed via the link below:



<https://www.govinfo.gov/content/pkg/FR-2019-10-23/pdf/2019-22901.pdf>

PROXY VOTING

In the Trump Administration's fall 2019 Regulatory Agenda, the DOL indicated that it was considering "deregulatory action to modernize fiduciary practices related to the voting rights associated with ERISA plan investments and harmonize those regulations with the requirements of other regulators."⁵ DOL would seek through the proposal to: address practices that could present conflicts of interests associated with proxy advisory firm recommendations; ensure proxy voting decisions are based on best information; and ensure such voting decisions are solely in the interest of, and for exclusive purpose of, providing plan benefits to participants and beneficiaries. DOL indicated in the fall 2019 Regulatory Agenda its intention to publish a Notice of Proposed Rulemaking in December 2019. While the DOL has yet to publish such a proposed rule, nonetheless, a link to EBSA's regulatory agenda pertaining to that anticipated rule can be found via the link below:

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1210-AB91>



Securities and Exchange Commission

REGULATION BEST INTEREST:

On June 5, 2019, the SEC approved a series of proposals relating to the standards of conduct for brokers and advisers, including Regulation Best Interest, the key component of the rulemaking process. The proposals by the SEC are broken into the following.

- **REGULATION BEST INTEREST –**

A final rule to establish a standard of conduct for broker-dealers when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities.

- The compliance date for Regulation Best Interest is June 30, 2020

- **FORM CRS RELATIONSHIP**

SUMMARY—A final rule to adopt new rules and forms as well as amendments to both the Investment Advisers Act of 1940 (“Advisers Act”), and the Securities Exchange Act of 1934, to require registered investment advisers and registered broker-dealers to provide a brief relationship summary to retail investors. A relationship summary is to be provided to retail investors at the beginning of the relationship with the firm; following a material change to the relationship summary; and upon the occurrence of certain events.

- For firms that are already registered or investment advisers who have an application for registration pending

with the SEC prior to June 30, 2020—they will have a period of time beginning on May 1, 2020 and until June 30, 2020, to file their initial relationship summaries with the SEC. On and after June 30, 2020, newly registered broker-dealers will be required to file their relationship summary by the date on which their registration with the SEC becomes effective.

- **COMMISSION INTERPRETATION OF THE STANDARD OF CONDUCT FOR INVESTMENT ADVISERS –**

An interpretation to clarify and reaffirm the fiduciary duty that an investment adviser owes to its clients under the Advisers Act.

- The Commission Interpretation was effective on July 12, 2019

- **COMMISSION INTERPRETATION REGARDING THE SOLELY INCIDENTAL PRONG OF THE BROKER-DEALER EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER –**

Under the Advisers Act, a broker or dealer who performs advisory services that are solely incidental to the conduct of his or her business as a broker or dealer, and who receives no special compensation for those services, is excluded from the definition of investment adviser, and thus the application of the act. The Commission Interpretation confirms and clarifies the “solely incidental” prong of the broker-dealer exclusion from the Advisers Act.

- The Commission Interpretation was effective on July 12, 2019

The above final rules/interpretations can be accessed via the following links:

<https://www.sec.gov/rules/final/2019/34-86031.pdf>

<https://www.sec.gov/rules/final/2019/34-86032.pdf>

<https://www.sec.gov/rules/interp/2019/ia-5249.pdf>

<https://www.sec.gov/rules/interp/2019/ia-5248.pdf>



DEPARTMENT OF TREASURY

On March 6, 2020, the Treasury Department released its second quarter update to its 2019-2020 Priority Guidance Plan, setting forth guidance projects the Treasury Department and IRS hope to complete during the 12-month period from July 1, 2019 through June 30, 2020. With regard to retirement-focused issues, the Treasury identified 17 work stream items for the current year (several of which have already been completed or put into process). In addition, the Treasury further identified 12 items pertaining to “executive compensation, health care and other benefits...” (several of which have also been completed or put into process). Below is a sampling of the items that are the focus of the Treasury/IRS Plan, along with a link where you can find all of the proposed work items for the coming year:

- Regulations under 401(a)(9) updating life expectancy and distribution period tables for purposes of the required minimum distribution rules
 - A Proposed Rule was published in the Federal Register on 11/8/2019, with comments due to Treasury/IRS by 1/7/2020
- Regulations under sections 219, 408, 408A and 4973 regarding IRAs
- Guidance on student loan payments and qualified retirement plans and 403(b) plans
- Regulations updating rules for service credit and vesting under section 411
- Regulations relating to church plans
- Regulations under sections 119 and 132 regarding employer-provided meals
- Final Rules on 409A (non-qualified deferred compensation plans)
- Proposed Rule to address the “One Bad Apple” rule for Multiemployer Plans (MEPs)
 - A Proposed Rule was published in the Federal Register on 7/3/2019, with comments due to Treasury/IRS by 10/1/2019
- Guidance under section 125 regarding Flexible Spending Arrangements (FSAs)

The following link provides access to the March 6, 2020 Priority Guidance Plan, and includes the above items (and the initial SECURE Act guidance included below) as well as others not enumerated herein:

https://www.irs.gov/pub/irs-utl/2019-2020_pgp_2nd_quarter_update.pdf 

SECURE ACT GUIDANCE:

The IRS has provided some initial guidance following the enactment of the SECURE Act into law late last year:

Notice 2020-6—provides that if a Required Minimum Distribution (RMD) statement is provided in 2020 to an IRA owner who turns 70 ½ in 2020—the IRS won’t consider the statement to be incorrect, provided it notifies the IRA owner no later than 4/15/2020 that no RMD is due for 2020.

A link to the Notice can be accessed below:

<https://www.irs.gov/pub/irs-irbs/irb20-07.pdf>

¹ P.L. 116-136 <https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>

² The SECURE Act was enacted as a part of H.R. 1865, the Further Consolidated Appropriations Act, 2020, and became P.L. 116- 94.

³ We also note that House Ways and Means Committee Chair Neal (D-MA) has also publicly stated his intention to re-introduce, likely with modifications, comprehensive legislation to enhance retirement savings opportunities that would build off of proposals he introduced in the 115th Congress (H.R. 4523, the Automatic Retirement Plan Act of 2017, and H.R. 4524, the Retirement Plan Simplification and Enhancement Act of 2017). Updated versions of these bills have not yet been introduced, and will be included in future Updates when available.

⁴ Qualifying coronavirus-related distributions are distributions of up to \$100,000 in the aggregate that are made from qualified retirement plans and IRAs on or after January 1 2020, and before December 31, 2020, to an individual (1) who is diagnosed with the virus SARS-CoV-2 or with the coronavirus disease 2019 (COVID-19), (2) whose spouse or qualifying dependent is diagnosed with such virus or disease, or (3) who as a result of such virus or disease experiences adverse financial consequences due to quarantine, furlough, layoff, reduced work hours, inability to work as a result of childcare issues, business closure or reduced business hours of business owned or operated by the individual (and any other as determined by Treasury).

⁵ On December 4, 2019, the Securities and Exchange Commission published in the Federal proposed amendments to the agency’s rules governing proxy solicitations to ensure that investors using proxy voting advice receive information that is more accurate, transparent, and complete. Comments on that rule were due to the SEC by February 3, 2020.

Miscellaneous

RETIREMENT PLAN LIMITS

For quick reference, the 2020 retirement plan limits are as follows:

- Elective deferral (contribution limit) for 401(k), 403(b), 457 plans—\$19,500
- Catch-up contribution limit for 401(k), 403(b), 457 plans—\$6,500
- Annual contribution to an IRA—\$6,000
- Catch-up contribution limit for IRAs—\$1,000 (is not indexed)
- SIMPLE employee deferrals—\$13,500
- SIMPLE catch-up limit—\$3,000
- Annual Defined Contribution limit—\$57,000
- Annual Compensation limit—\$285,000
- Limit on annual benefit under a defined benefit plan—\$230,000

<https://www.irs.gov/pub/irs-drop/n-19-59.pdf>



ESTATE AND GIFT TAX EXCLUSION AMOUNTS

For an estate of any decedent dying in calendar year 2020, the basic exclusion amount is \$11,580,000 (inflation adjusted).

For calendar year 2020, the first \$15,000 of gifts to any person is not included in the total amount of taxable gifts made

during the year.

A copy of the inflation-adjusted amounts for 2020 can be accessed via the link below:

<https://www.irs.gov/pub/irs-drop/rp-19-44.pdf>

HEALTH SAVINGS ACCOUNTS

For employees to be eligible to participate in a Health Savings Account, they must be enrolled in a high deductible health plan (HDHP). For 2020, the limits for both HDHPs and HSAs are provided below:

- HSA contribution limit—
Self only: 2020—\$3,550
- HSA contribution limit—
Family: 2020—\$7,100
- HSA catch-up contribution limit: 2020—\$1,000
- The minimum HDHP deductible—
Self only: 2020—\$1,400
- The minimum HDHP deductible—
Family: 2020—\$2,800
- Annual out-of-pocket expenses are capped at—Self only: 2020—\$6,900
- Annual out-of-pocket expenses are capped at—Family: 2020—\$13,800

https://www.irs.gov/irb/2019-22_IRB#REV-PROC-2019-25

SOCIAL SECURITY BENEFITS FOR 2020:

- Social Security and Supplemental Security Income beneficiaries:
 - 1.6% Cost of Living Adjustment for 2020
- Taxable Wage Base:
 - \$137,700 (up from \$132,900 in 2019)
- Retirement Earnings Test Exempt Amounts:
 - Pre-full retirement age: \$18,240/year
 - \$1 in benefits withheld for every \$2 in earnings above the limit
 - The year an individual reaches full retirement age: \$48,600/year
 - 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

<https://www.ssa.gov/news/press/factsheets/colafacts2020.pdf>

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