



Washington Update

A Summary of Key Legislative and Regulatory Developments Affecting Retirement Savings

MARCH 2024

The Second Session and the 2024 Election Season

During the second session of every Congress, and particularly one occurring during a Presidential election year, the focus in Washington necessarily begins to center on politics, thus overshadowing policy. As we move into and through the second quarter of 2024, with the Presidential primary season well underway, the political focus will become even more pronounced, as going forward most policy initiatives in Congress will be pursued through the lens of the 2024 campaign.

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This shift to campaign politics likely will affect both legislative and regulatory activity in the coming months but with somewhat divergent outcomes. While the legislative process will slow considerably to the point where only “must pass” or truly bipartisan legislation (which in an election year are few and far between) receive serious attention, the regulatory agenda may accelerate into the summer and fall as the Administration seeks to fill the policy vacuum.¹ The result may be fewer legislative signing ceremonies at the White House and more Executive Branch and agency releases announcing regulatory achievements.

Below we detail the broad legislative agenda that we anticipate being pursued in the coming months on Capitol Hill, followed by a closer look at retirement policy, including both legislative and regulatory developments since the November Update.² We also provide a number of inflation-adjusted data points pertaining to certain benefits-related and tax limits (e.g., estate/gift tax exemption amounts) for calendar year 2024, to assist with client questions and discussions.



Legislation

The Broad Policy Agenda— What to Expect in Coming Months

While the legislative agenda in the coming months is expected to be light, there are several measures Congress will be forced to address. In particular, funding for federal programs and operations—the annual appropriations process—needs to reach a conclusion as we are already five months into the current fiscal year. The federal government is currently operating under a Continuing Resolution (“CR”) that is funding programs and operations on a temporary basis, while Congress seeks to complete work on the 12 appropriations measures, all of which remain unfinished.³ Completing all 12 appropriations measures would negate a 1% across-the-board reduction in defense and non-defense discretionary spending that would otherwise occur and be enforced if, on May 1, 2024, any part of the federal government is operating under a CR.⁴

Beyond government funding, there are a number of other high-priority issues that remain unaddressed this Congress that could be considered in the coming weeks. These include (a sampling—subject to substantive change):

- Issues related to the influx of immigrants at our borders.
- A national security supplemental measure that would include funding for Ukraine, Israel, key partners in the Indo-Pacific region (including Taiwan), and other measures.⁵
- Tax legislation (at a cost of ~\$77 billion, fully offset) that includes the following (sampling):

- Extension of 100% business expensing for qualified property placed in service—through 2025.
- Delay through 2025 the requirement that domestic research and experimentation costs be capitalized and amortized over five years.
- Extension of the use of EBITDA (earnings before interest, taxes, depreciation and amortization) through 2025 for determining the business interest limitation.
- Increasing the 1099-NEC and 1099-MISC reporting thresholds to \$1,000.
- Increasing the section 179 deduction for small businesses to \$1.29 million (up from \$1.16 million).
- Provide enhancements to the Child Tax Credit through 2025.
- Changes to the Employee Retention Tax Credit (the ~\$77 billion payfor).
- Reauthorization of the Federal Aviation Administration (FAA) that is set to expire on March 8, 2024 (legislation under consideration today would extend the authorization to May 10, 2024).⁶

With less than five months until the Republican National Convention (July 15 – 18), followed a month later by the Democratic National Convention (August 19 – 22), time is quickly running out on the 118th Congress. Should the above issues (outside of appropriations) not be addressed in the coming days, weeks or near months, their prospects will decrease significantly the closer we get to, and through, the national conventions.

Beyond the conventions, the legislative process likely grinds to a halt as the Presidential campaign takes center stage.

Retirement Policy

While retirement policy remains a focal point for policymakers in 2024, the emphasis is more likely to be on continued regulatory implementation of the SECURE 2.0 Act of 2022 (“SECURE 2.0”), and less so on legislative activity. Yes, members will continue to introduce retirement-focused bills during this second session, but with an implicit understanding that their particular bill is unlikely to be considered in the time remaining before Congress recesses for the election.

Of course, bipartisan leadership on retirement policy in both the Senate and the House remain interested in pursuing legislation to make technical corrections to SECURE 2.0.⁷ While SECURE 2.0 technical corrections legislation continues to enjoy bipartisan support, its overall prospects likely will depend upon it becoming attached to other legislation that will move through Congress this session. As of today, an appropriate legislative vehicle has yet to emerge, but confidence remains high that at some point this year (even in a lame-duck session following the election), technical corrections to SECURE 2.0 will move through Congress to enactment.

Below we provide an updated presentation of selected retirement legislation introduced this Congress to add thereto newer bills introduced more recently (sampling only):

H.R. 7293—The Automatic IRA Act of 2024 (Neal, D-MA)

- Would generally require employers with more than 10 employees that do not sponsor a retirement plan to automatically enroll their employees in IRAs or other automatic contribution



Legislation (cont.)

plans/arrangements such as 401(k) plans.

- Employers would contribute a default percentage of an employee's pay into the auto-IRA account.
 - Default minimum is set at 6% with 1% incremental increases each year thereafter up to 10%.
 - can be higher—with 10% the limit in the first year, and 15% in years thereafter.
 - Employees can raise/lower their contribution percentage or can opt out entirely from the program.
 - Employees have the option to contribute to a traditional IRA or a Roth IRA—with the default being the Roth IRA.
- The automatic IRA must offer employees a target date fund as the default investment option.
- Limits other investment options to the following:
 - A principal preservation fund.
 - A balanced fund.
 - Any other funds added by Treasury at a future date.
- For participants with balances over \$200,000—must be given the option to receive at least 50% of their vested account balance in the form of lifetime income.
- Creates a new \$500 tax credit (per year for three years) for employers of up to 100 employees to facilitate automatic IRAs (applies to tax years beginning after 2024).
- Legislation would apply to plan years beginning after 2026.

S. 3716—The 401Kids Savings Account Act of 2024 (Casey, D-PA)

- Would automatically create tax-advantaged children's savings accounts ("401Kids Accounts") for all newborns and children under the age of 18.
- Such accounts would be established using state 529 college savings platforms and managed by state Treasurers.
- Contributions of up to \$2,500 per year, per child (indexed for inflation)—would be allowed (combined from all sources—family, a non-profit, an employer, etc.).
- An automatic \$500 per year federal contribution is available for all children up to age 18.
 - Would apply to families with modified Adjusted Gross Income below \$75,000 (single) and \$150,000 (joint filers)—phased out above these amounts.
 - An additional \$250 per year would be available to households eligible for the Earned Income Tax Credit (EITC).
- A \$1 to \$1 savings match on individual contributions allowed up to \$250 per year for households eligible for the EITC.
- States may make additional contributions into 401Kids Accounts beyond the annual \$2,500 contribution limit (for children up to age 18).
- Withdrawals:
 - Not allowed prior to age 18.
 - At age 18—account balances may be:
 - Withdrawn and used for post-secondary education and training; a home purchase; and/or starting a small business and/or;
 - Rolled into a Roth IRA or an ABLE account;

- Maintained in the 401Kids Account until used for retirement starting at age 59½.

Similar legislation was introduced in the House via H.R. 7162 (Beyer, D-VA).

S. 3102—Retirement Savings for Americans Act of 2023 (Hickenlooper, D-CO and Tillis, R-NC)

- Would establish a new federal program to provide full- and part-time eligible workers not currently saving in an employer-sponsored retirement plan or state-run IRA with access to portable, tax-advantaged retirement savings accounts.
- Eligible workers would be auto-enrolled at 3% of earnings (with an option to increase/decrease the withholding percentage or to opt-out).
- Low- and moderate-income workers would be eligible for a 1% automatic contribution and up to a 4% matching contribution via a refundable tax credit (subject to phase-out at certain income levels) so long as they remain employed.
- Accounts would be portable and owned by the account holder.

Companion legislation was also introduced in the House via H.R. 6065 (Smucker, R-PA and Sewell, D-AL).

S. 3305—The Helping Young Americans Save for Retirement Act (Cassidy, R-LA and Kaine, D-VA)

- Would reduce the eligibility age to 18 (from age 21 today) for participation in an ERISA-covered defined contribution plan.



Legislation (cont.)

- Would be limited to employees between the ages of 18 and 21 in certain circumstances.
- Such employees may be excluded from nondiscrimination and top-heavy rules.
- Employers would not be required to make matching contributions on behalf of these employees.
- Employees under age 21 who are eligible to participate in the plan would not be counted for purposes of determining whether the plan is subject to an annual audit (would not be counted until five years after becoming a participant in the plan).
- Would not be effective until 2026.
- Would require a fiduciary to a plan, when selecting, monitoring and retaining any fiduciary, counsel, employee or service provider of the plan for:
 - The exclusive purpose of providing benefits to participants/beneficiaries and defraying reasonable expenses of administering the plan.
 - With the care, skill prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and;
 - Without regard to race, color, religion, sect or national origin.

H.R. 5337—The Retirement Proxy Protection Act (Houchin, R-IN)

- Would provide that decisions to exercise shareholder rights are subject to ERISA's fiduciary duty provisions, including the duty to act solely in the best interest of participants/beneficiaries.
- Would require a fiduciary to comply with its fiduciary duties and exercise prudence and diligence when selecting and monitoring a person who advises on the exercise of shareholder rights.
- Would require the plan fiduciary to monitor proxy voting activity of a third party to whom the exercise of shareholder rights has been delegated on behalf of the plan.

H.R. 5337 was favorably reported from the House Education and Workforce Committee on September 26, 2023, and awaits floor consideration.

H.R. 5338—The No Discrimination in My Benefits Act (Good, R-VA)

H.R. 5338 was favorably reported by the House Education and Workforce Committee on September 26, 2023, and awaits floor consideration.

H.R. 5339—The Roll Back ESG to Increase Retirement Earnings (RETIRE) Act (Allen, R-VA)

- Would require ERISA fiduciaries to consider only pecuniary factors exercising their fiduciary responsibilities with regard to an investment or investment course of action.
- If a fiduciary is unable to distinguish between investment alternatives or courses of action based on pecuniary factors alone, the fiduciary would be allowed to consider non-pecuniary factors as the deciding factor provided the fiduciary complies with certain documentation requirements.

H.R. 5339 was favorably reported by the House Education and Workforce Committee on September 26, 2023, and awaits floor consideration.

H.R. 5340—The Providing Complete Information to Retirement Investors Act (Banks, R-IN)

- For plans with brokerage windows, would impose a new notice requirement to explain to participants the difference between having fiduciaries select the plan's investment options, and choosing investments through a brokerage window.

H.R. 5340 was reported favorably from the House Education and Workforce Committee on September 26, 2023 and awaits floor consideration.

S. 2512—A Bill to Amend the Internal Revenue Code of 1986 to Provide a Credit for Re-Enrollment Provisions in Retirement Plans of Small Employers (Cassidy, R-LA and Kaine, D-VA)

- Would amend the Internal Revenue Code of 1986, as amended (the "Code") to provide a three-year \$500 per year tax credit for small employers (100 or fewer employees) that include automatic re-enrollment provisions within their qualified retirement plans.
- Would require automatic re-enrollment at least every three years to be eligible for the credit.

S. 2517—The Auto Re-Enroll Act of 2023 (Kaine, D-VA and Cassidy, R-LA)

- Would amend the current Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Code safe harbors—pertaining to auto-enrollment—to allow, but not require, plan sponsors to re-enroll all eligible, non-participating employees at least once every three years (with an employee opt-out allowance).



Legislation (cont.)

- Provides that a plan that permits automatic re-enrollment every three years won't fail to qualify for the following:
 - Preemption of state law with respect to auto re-enroll arrangements.
 - The 401(k) plan automatic contribution nondiscrimination safe harbor, or;
 - The rules permitting plans to allow employees who are auto-enrolled to take distributions of the automatic contributions within 90 days of the first contribution.

Companion legislation was also introduced in the House via H.R. 4924 (Manning, D-NC).

S. 2627—The Women's Retirement Protection Act of 2023 (Baldwin, D-WI)

- Would require "financial providers" to provide a link to the Consumer Financial Protection Bureau ("CFPB") in any offering for the sale of a retirement financial product or service—that would include information/resources regarding retirement planning and/or retirement security.
- Provide grants through the Department of Labor ("DOL") to established community-based organizations to improve financial literacy of women of working or retirement age.
- Provide grants to community-based organizations to assist women in obtaining benefits via qualified domestic relations orders ("QDROs").
- Would amend ERISA and the Code to provide for greater spousal protections under defined contribution plans that are similar to those available for defined benefit plans.

- Would impose new spousal consent requirements under ERISA and the Code that generally require written consent from a participant's spouse prior to any distribution under a plan or a designation or change to beneficiaries, although certain distributions are exempt from this requirement.

Companion legislation was introduced in the House via H.R. 5060 (Underwood, D-IL).

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.

H.R. 3063, as amended, was reported favorably by the House Financial Services Committee on December 12, 2023, and awaits floor consideration.

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

- Would prohibit the 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.

Companion 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—The Freedom to Invest in a Sustainable Future Act (Delbene, D-WA)

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

Companion legislation was introduced in the Senate via S. 523 (Smith, D-MN).

S. 1563—The Maximize Americans' Retirement Security Act (Braun, R-IN)

- Would amend ERISA to provide that a fiduciary shall select/maintain investments based solely on pecuniary factors.
 - An exception would apply if the fiduciary is unable to distinguish investment alternatives on the basis of pecuniary factors alone.



Outlook

A Presidential election year always affects the legislative agenda on Capitol Hill, as a truncated legislative calendar, coupled with more overt partisanship leading up to election day, diminishes prospects for legislative initiatives to move via regular order. When combined, this Congress with slim majorities in both the House and Senate, and a split in control of those Chambers, it is not surprising that little will be accomplished during this election year.

Retirement policy will not be immune from the election-year slowdown and/or posturing on Capitol Hill. For example, while there are several retirement-focused bills in the House that have proceeded to the point where they are ready for floor consideration, passage in the House is likely to end their consideration this Congress (see, H.R. 5337, H.R. 5338, H.R. 5339, H.R. 5340, described herein). The lack of bipartisan support for these measures in the Republican-controlled House means they will enjoy little support when they reach the Democrat-controlled Senate.

This doesn't necessarily mean there will be no retirement-focused legislation this year. As we detail herein, the Leadership of the Senate and House Committees with jurisdiction over retirement policy remain focused on securing technical corrections to SECURE 2.0. These changes simply seek to address drafting errors that occurred during consideration of the law in 2022, to allow such provisions to function as Congress intended.⁸ Only a short legislative calendar, and the lack of an appropriate legislative vehicle, stand in the way of SECURE 2.0 technical corrections moving through to enactment.

While retirement policy may not receive heightened attention in this Congress, that doesn't mean it won't be on the table for discussion during the Presidential campaign. With Social Security and Medicare facing financial difficulties in the near term, the issue of retirement security could become a significant focal point of the 2024 campaign—and possibly in a manner that sheds light on how each candidate would address the totality of retirement policy in the coming four years—from Social Security to Medicare and, relatedly, to the voluntary retirement system.



Regulatory

Traditional Regulatory Agenda— Selected Retirement-Focused Rulemaking and Guidance

With regard to regulatory activity, both the DOL and the Treasury Department, and to a much lesser extent the Securities and Exchange Commission (“SEC”), continue to press forward with their retirement-focused regulatory agendas.

With regard to DOL, it has closed the comment period for the proposed rule entitled “Retirement Security Rule: Definition of an Investment Advice Fiduciary,” along with accompanying proposed amendments to related prohibited transaction exemptions (“PTEs”) (see below) and is working to finalize the rule and the related PTE amendments. It is anticipated that DOL will publish a final rule sometime in the late spring/early summer, and as discussed earlier herein, within a timeframe that likely allows for the rule to avoid consideration, and possible avoidance via the Congressional Review Act, in the 119th Congress.

For their part, Treasury/IRS continue efforts to implement recent changes brought about by the enactment of both SECURE 2.0 and the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (the SECURE Act), as well as the longer-horizon retirement projects identified in the 2023-2024 Priority Guidance Plan.

These various regulatory projects are highlighted below:

DEPARTMENT OF LABOR

Automatic Portability Transaction Regulations

On January 29, 2024, DOL published in the Federal Register a notice of proposed rulemaking that would implement the statutory PTE under Section 4975 of the Internal Revenue Code, as added by SECURE 2.0 and which provides for the receipt of fees and compensation by an automatic portability provider for services provided in connection with an automatic portability transaction. The proposed rule would incorporate SECURE 2.0’s statutory conditions for relief into the PTE, while adding thereto additional conditions DOL believes are necessary to grant exemptive relief.

Comments on the proposal are due to DOL by March 29, 2024.

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

Retirement Security Rule: Definition of an Investment Advice Fiduciary

On November 3, 2023, DOL published in the Federal Register a proposed new regulatory definition of an investment advice fiduciary under ERISA. Under the proposed rule, a person would be an investment advice fiduciary under ERISA:

- If the investment advice/recommendation is made to a retirement investor (a plan, plan fiduciary, plan participant or beneficiary, IRA, IRA owner or beneficiary, or IRA fiduciary);

- The advice/recommendation is provided “for a fee or other compensation, direct or indirect” (defined in the proposal);
- The person makes the recommendation in one of the following contexts:
 - The person either directly or indirectly has discretionary authority or control, whether or not per an agreement, arrangement or understanding, with respect to purchasing/selling securities or other investment property for the retirement investor;
 - The person either directly or indirectly makes investment recommendations on a regular basis as a part of his/her business and the recommendation is provided under circumstances indicating it is based on the particular needs/individual circumstances of the retirement investor and may be relied upon as a basis for investment decisions that are in the retirement investor’s best interest; or
 - The person making the recommendation represents/acknowledges that they are acting as a fiduciary when making investment recommendations.

Comments on the proposed new regulatory definition were due to DOL by January 2, 2024.

On December 12 and 13, 2023, DOL conducted a public hearing on the proposed rule, taking testimony from over 40 organizations and/or individuals.

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



Regulatory (cont.)

Proposed Amendment to Prohibited Transaction Exemption 2020-02

On November 3, 2023, and in conjunction with the publication of the proposed new regulatory definition of an investment advice fiduciary, DOL simultaneously published a notice of pendency before the agency of a proposed amendment to class prohibited transaction exemption (PTE) 2020-02, which currently provides relief for certain compensation received by investment advice fiduciaries.

According to DOL, the proposed amendment to PTE 2020-02 would seek to build upon the existing conditions included therein, by:

- Providing additional disclosures to ensure that retirement investors have sufficient information to make informed decisions about the costs of the investment advice transaction and services of the investment advice fiduciary and any material conflicts of interest;
- Comply with the Impartial Conduct Standards; and
- Establish, maintain and enforce policies and procedures to ensure compliance with the Impartial Conducts Standards.

The proposed amendment would also require financial institutions to:

- Report any non-exempt prohibited transactions in connection with fiduciary investment advice (via IRS form 5330);
- Correct those transactions; and
- Pay any resulting excise taxes flowing therefrom.

The proposed changes to PTE 2020-02

would also add, to the list of behaviors that could make a financial institution ineligible to rely on the exemption—for ten years—the failure to correct prohibited transactions, report the transactions on Form 5330 and pay the resulting excise tax (under IRC §4975).

Comments on the proposed amendment to PTE 2020-02 were due to DOL by January 2, 2024.

[View a copy of the proposed changes to PTE 2020-02.](#)

Proposed Amendment to Prohibited Transaction Exemption 84-24

On November 3, 2023, and in conjunction with the publication of the proposed new regulatory definition of an investment advice fiduciary (see above), DOL simultaneously published a notice of pendency before the agency of a proposed amendment to PTE 84-24, to limit the universe of investment advice fiduciaries eligible for exemptive relief to only those entities or persons defined as Independent Producers under the proposal (persons/entities licensed to sell, solicit or negotiate insurance contracts of multiple unaffiliated insurance companies and who are not insurance company employees or statutory employees under Section 3121 of the Code) selling only non-securities annuities or other insurance products (not regulated by the SEC) to Retirement Investors.

To rely upon the relief provided in PTE 84-24, the Independent Producers would have to sell annuities of two or more unrelated insurers. Also, such relief would be provided only for the fully disclosed eligible forms of compensation, defined as “Insurance Sales Commissions,” received in connection with recommendations for

non-security annuity or other insurance products (not regulated by the SEC).

For Independent Producers that sell or recommend investment products other than non-security annuity contracts or other insurance products not regulated by the SEC (e.g., mutual funds, stocks, bonds and CDs), they must rely on PTE 2020-02 or another available exemption when receiving fees or other compensation connected with investment recommendations related to those products.

Comments on the proposed amendments to PTE 84-24 were due to DOL by January 2, 2024.

[View a copy of the proposed changes to PTE 84-24.](#)

Proposed Amendments to Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128

On November 3, 2023, and in conjunction with the publication of the proposed new regulatory definition of an investment advice fiduciary, DOL simultaneously published a notice of pendency before the agency of proposed amendments to the above listed Prohibited Transaction Exemptions (“PTE”), that currently “provide relief for investment advice fiduciaries to receive compensation when plans and IRAs enter into certain transactions recommended by the fiduciaries as well as certain related transactions.” DOL has proposed amending these existing PTEs to eliminate the ability of investment advice fiduciaries to obtain exemptive relief under these PTEs with respect to the covered transactions in each exemption



Regulatory (cont.)

(as well as make other administrative changes thereto). Instead, and to ensure a universal standard of care for the provision of investment advice, exemptive relief for investment advice fiduciaries with respect to such transactions would be provided going forward under one exemption—PTE 2020-02 (as amended).

Comments on the proposed amendments to these PTEs were due to DOL by January 2, 2024.

[View a copy of the proposed changes to these PTEs.](#)

Legislative Response to the DOL Fiduciary Rulemaking

On November 14, 2023, during House floor consideration of H.R. 5894—the “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2024,” the House approved three amendments thereto that would:

1. Restrict any funds made available by this Act (H.R. 5894) to be used to finalize, implement, or enforce the proposed rule entitled “Retirement Security Rule: Definition of an Investment Advice Fiduciary” or any substantially similar rule (Amendment 82—Allen, R-GA).
2. Prohibit the Department of Labor from using funds to finalize, implement or enforce proposed amendments to class prohibited transactions (PTEs) available to investment advice fiduciaries (Amendment 83—Wagner, R-MO).
3. Prohibit funding to carry out the actions described in the fact sheet released by the White House related to cracking down on “junk fees” in retirement investment advice (Amendment 84—Norman, R-SC).^{9, 10}

On November 15, 2023, prior to a final vote on H.R. 5894, the Speaker announced that further proceedings on the measure would be postponed. The legislation has yet to be considered during the second session. Should H.R. 5894 ultimately be passed by the full House, and should these amendments remain included therein upon passage, they nonetheless are not expected to survive in the Senate.

Request for Information—SECURE 2.0 Reporting and Disclosure

On August 11, 2023, DOL published in the Federal Register a Request for Information (“RFI”) to solicit public feedback so as to develop a public record for provisions of the SECURE 2.0 that impact the reporting and disclosure framework of ERISA. Among the broad issue areas in which DOL is seeking comments are specific questions focused toward those provisions of SECURE 2.0 as set forth below:

- Section 127—Emergency Savings Accounts Linked to Individual Account Plans.
- Section 318—Performance Benchmarks for Asset Allocation Funds.
- Section 320—Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants.
- Section 334—Pooled Employer Plans.
- Section 338—Requirement to Provide Paper Statements in Certain Cases.
- Section 340—Defined Contribution Plan Fee Disclosure Improvements.
- Section 341—Consolidation of Defined Contribution Plan Notices.
- Section 342—Information Needed for Financial Options Risk Mitigation.

- Section 343—Defined Benefit Annual Funding Notices.

Notably, the RFI excludes the following provisions of SECURE 2.0 that also affect the reporting and disclosure framework of ERISA:

- Section 319—Review and Report to Congress Relating to Reporting/Disclosure Requirements.
- Section 345—Annual Audits for Group of Plans.
- Section 305—Expansion of Employee Plans Compliance Resolution System (EPCRS).

Comments to the RFI were due to DOL on October 10, 2023.

[View a copy of the Request for Information.](#)

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.

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



Regulatory (cont.)

Proposed Amendment to 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 PTE 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. 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(b) of SECURE 2.0, and to the question of 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 DOL by April 17, 2023.

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

A subsequent Federal Register Notice will notify the public of the availability of the amended and restated VFC Program.

RFI 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 RFI to seek public input on possible actions DOL can take under 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 a copy of the [Executive Order](#) and the subsequent ["Roadmap."](#)

Final Rule Updating the Procedures Governing the Filing and Processing of PTEs

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 Code and FERSA. 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."¹¹

Following a notice/comment period (which was ultimately extended) and a virtual public hearing with interested parties, DOL published a final rule on January 24, 2024. The amendments adopted by DOL in the final rule update and supersede DOL's existing prohibited transaction exemption procedures.

The amendments made in the final rule are effective April 8, 2024.

[View a copy of the Final 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



Regulatory (cont.)

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.](#)

DEPARTMENT OF TREASURY

On September 29, 2023, the Treasury Department released the 2023-2024 Priority Guidance Plan, setting forth the projects on which the Treasury Department intends to prioritize during the plan year ending June 30, 2024. Included in the Guidance Plan are retirement and/or other related 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 and SECURE 2.0 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 programs.
- Guidance on SECURE 2.0 changes relating to 529 college savings plans.

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

Beyond the regulatory guidance plan, Treasury/IRS have published the following guidance and/or proposed rules, many of which implement provisions of both SECURE 2.0 and the earlier enacted SECURE Act:

IRS Notice 2024-22—Guidance on Anti-Abuse Rules Under Section 127 of the SECURE 2.0 Act of 2022—Initial Guidance

On January 12, 2024, the IRS released Notice 2024-22, providing initial guidance to employers setting up “pension-linked emergency savings accounts” (“PLESAs”) for their employees. PLESA’s were authorized by SECURE 2.0 as “short-term savings accounts established and maintained in connection with a defined contribution plan—and are treated as a type of designated Roth account.”

Should an employer offer a PLESA as a part of a defined contribution plan,

the plan may either offer to enroll eligible employees into the PLESA or automatically enroll such eligible participants via an automatic contribution arrangement.

A defined contribution plan that includes a PLESA must separately account for contributions to the PLESA (and any earnings thereon); maintain separate recordkeeping with respect to each PLESA; and allow withdrawals from the PLESA, in whole or in part, at least once per month. An employer that makes matching contributions to a plan that includes a PLESA option is generally required to make matching contributions to an employee’s PLESA contributions at the same rate as with the plan. Such matching contributions would be deposited into the participant’s plan account (not into the PLESA). The IRS guidance also provides guidance on the reasonable measures employers are permitted to take to discourage potential abuses of the PLESA matching contribution rules.

[View a copy of Notice 2024-22.](#)

Separately, on January 17, 2024, DOL issued a series of Frequently Asked Questions (“FAQs”) to provide “general compliance information” under ERISA pertaining to PLESAs. The FAQs seek to address questions pertaining to: eligibility and participation in a plan’s PLESA; contribution requirements for PLESAs; distributions and withdrawals from PLESAs; and administrative and investment requirements for PLESAs. DOL anticipates releasing additional guidance in the coming months.

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



Regulatory (cont.)

IRS/DOL/PBGC—Joint RFI SECURE 2.0 Section 319 Effectiveness of Reporting and Disclosure Requirements

On January 23, 2024, the IRS, DOL and the PBGC jointly published in the Federal Register a RFI to develop a public record to assist the agencies in addressing the requirement, outlined in section 319 of SECURE 2.0, that they review existing reporting and disclosure requirements for certain retirement plans under ERISA and the Code to assess their effectiveness, and thereafter to make recommendations to Congress regarding such requirements.

The RFI seeks public input, via a series of questions, regarding the effectiveness of required notices and disclosures to plan participants; and separately questions regarding the effectiveness of plan reporting requirements under the Code and ERISA.

Per section 319, the agencies must report their findings and recommendations to Congress by December 29, 2025.

Comments on the RFI are due to the agencies by April 22, 2024.

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

IRS—Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k)

On November 27, 2023, the IRS published in the Federal Register a notice of proposed rulemaking to amend the rules applicable to cash or deferred arrangements under Section 401(k) plans, to provide guidance regarding long-term, part-time employees. The proposed rules provide guidance on the special eligibility

and vesting rules for longer-term part-time employees as originally enacted as a part of the SECURE Act, and as later modified by SECURE 2.0.

Comments were due to IRS by January 26, 2024, and a public hearing on the proposed regulation has been set for March 15, 2024.

One thing to note; the proposed regulations would apply to most plan years beginning on/after January 1, 2024; and may be relied upon prior to publication of the rule as final.

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

IRS—Miscellaneous Changes Under SECURE 2.0

On December 20, 2023, the IRS released Notice 2024-2, to provide guidance, in question and answer format, with regard to a number of provisions in SECURE 2.0, including the following:

- Section 101—Expanding automatic enrollment.
- Section 102—Modification of credit for small employer pension plan startup costs.
- Section 112—Military spouse retirement plan eligibility credit for small employers.
- Section 113—Small immediate financial incentives for contributing to a plan.
- Section 117—Contribution limit for SIMPLE Plans.
- Section 326—Exception to additional tax on early distributions from qualified plans for individuals with a terminal illness.

- Section 332—Replacement of SIMPLE retirement accounts with safe harbor 401(k) plans during a year.
- Section 348—Cash balance plans.
- Section 350—Safe harbor for correction of employee elective deferral failures.
- Section 501—Provisions related to plan amendments.
- Section 601—SIMPLE and SEP Roth IRAs.
- Section 604—Optional treatment of employer contributions or nonelective contributions as Roth contributions.

According to the IRS, the Notice is not intended to provide comprehensive guidance as to specific provisions of SECURE 2.0, but rather to assist with the implementation of these provisions as the IRS continues its analysis of changes made under SECURE 2.0, with further guidance (including regulations) possible as appropriate.

Comments on the guidance were due to the IRS by February 20, 2024.

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

IRS Notice 2023-62—Guidance on Section 603 of SECURE 2.0 With Respect to Catch-Up Contributions

On August 25, 2023, the Department of the Treasury/IRS released Notice 2023-62, to provide guidance with respect to section 603 of SECURE 2.0 that requires all catch-up contributions made to a 401(a) qualified, 403(b) or 457(b) plan be designated as Roth contributions for those individuals whose prior year's wages exceeded \$145,000. The IRS Notice importantly provides for



Regulatory (cont.)

an “administrative transition period”—through 2025—during which:

- The Roth catch-up contribution requirement would not apply to otherwise applicable individuals (i.e., catch-up eligible individuals with FICA wages of over \$145,000 in the preceding year), and;
- Plans will not be required to offer Roth elective catch-up contributions until 2026.

Also, the Notice further addresses the technical error in Section 603 of SECURE 2.0 that would have eliminated all catch-up contributions beginning in 2024 by clarifying that Congress did not intend to eliminate all catch-up contributions.

In the Notice, the IRS also indicated that further guidance would be forthcoming to:

- Clarify who would be subject to the Roth catch-up contribution requirement based upon FICA wages (or lack thereof).
- To permit employers to treat an election by a participant, who is subject to the Roth catch-up contribution requirement, as a Roth catch-up election, even if the participant otherwise elected to make catch-up contributions on a pre-tax basis.
- Address situations whereby an eligible participant may receive wages from different participating employers.

Comments on the issues raised in Notice 2023-62, including in anticipation of forthcoming guidance, were due to the IRS by October 24, 2023.

[View a copy of Notice 2023-62.](#)

IRS–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 Section 401(a)(9) of the Code from qualified plans; Section 403(b) annuity contracts, custodial accounts and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under Section 457. The proposed rules address RMD requirements for qualified plans since the last published update of the rules and further are being updated to reflect the amendments made to the RMD rules via enactment of the SECURE Act, which was subsequently updated by SECURE 2.0.

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

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

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 regulations would apply for plan years beginning after January 1, 2024. However, taxpayers and 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.](#)

IRS–Multiple Employer Plans

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

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



Regulatory (cont.)

the collectible. The Notice provides a description of the criteria that IRS will utilize to make its determination whether an NFT constitutes a collectible.

The IRS sought 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 were due to the IRS by June 19, 2023.

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

IRS—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 applicability 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

Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

On August 9, 2023, the SEC published in the Federal Register proposed rules under the Securities and Exchange Act of 1934 and the Investment Advisers Act of 1940, to “eliminate, or neutralize the effect of, certain conflicts of interest associated with broker-dealers’ or investment advisers’ interactions with investors through...the use of technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes.” A recordkeeping requirement is also being proposed as a part of these conflicts’ rules. The proposed rules seek to address the accelerating adoption and use by broker-dealers and investment advisers of “predictive data analytics” and similar technology to the extent that such use places a firm’s interest ahead of an investor’s.

Comments on the proposed rule were due to the SEC by October 10, 2023.

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



Miscellaneous

Simply for reference, below we provide inflation adjusted amounts, applicable for calendar year 2024, that pertain to social security benefits, retirement benefits; health savings accounts; and the estate and gift tax exclusion amounts:

Social Security Benefits for 2024:

- Social Security and Supplemental Security Income beneficiaries:
 - 3.2% Cost of Living Adjustment for 2024.
- Taxable Wage Base:
 - \$168,600.
- Retirement Earnings Test Exempt Amounts:
 - Under full retirement age: \$22,320/year or \$1,860 per month.
 - \$1 in benefits withheld for every \$2 in earnings above the limit.
 - The year an individual reaches full retirement age: \$59,520/year or \$4,960 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 2024 Social Security Fact Sheet.](#)

Retirement Plan Limits

For quick reference, selected 2024 plan limits are as follows:

- Elective deferral (contribution limit) for 401(k), 403(b), 457 plans: **\$23,000.**
- Catch-up contribution limit for 401(k), 403(b), 457 plans: **\$7,500.**
- Annual contribution to traditional and Roth IRAs: **\$7,000.**
- Catch-up contribution limit for traditional and ROTH IRAs: **\$1,000 (is not indexed).**
- SIMPLE employee deferrals: **\$16,000.**
- SIMPLE catch-up limit: **\$3,500.**
- Simplified Employee Pensions (SEPs) minimum compensation threshold: **\$750.**
- SEP maximum compensation limit: **\$345,000.**
- Annual contribution limit: **\$69,000.**
- Annual total defined contribution plan contribution limit: **\$69,000**, (with individuals age 50 and older further allowed an additional **\$7,500** in catch-up contributions).
- Annual Compensation limit for calculating contributions (401(k), 403(b), profit-sharing plans, etc): **\$345,000.**
- Limit on annual benefit provided through a defined benefit plan: **\$275,000.**
- Employee Stock Ownership Plan (“ESOP”) maximum account balance: **\$1,380,000.**

[View a copy of the Cost of Living Adjustments for 2024.](#)

Health Savings Accounts (Inflation Adjusted Amounts for 2024)

For employees to be eligible to participate in a Health Savings Account, they must be enrolled in a High Deductible Health Plan (“HDHP”). For 2023 and 2024, the limits for both HDHPs and HSAs are provided below:

- HSA contribution limit—self only: **\$4,150.**
- HSA contribution limit—family: **\$8,300.**
- HSA catch-up contribution limit (age 55+): **\$1,000 (not inflation adjusted).**
- The minimum HDHP deductible—self only: **\$1,600.**
- The minimum HDHP deductible—family: **\$3,200.**
- Annual out-of-pocket expenses are capped at—self only: **\$8,050.**
- Annual out-of-pocket expenses are capped at—family: **\$16,100.**

[View the HSA inflation-adjusted amounts for 2024.](#)

Estate and Gift Tax Exclusion Amounts

For calendar year 2024, the estate and gift tax exemption amounts are:

- **\$13,610,000** per individual.
- **\$27,220,000** per couple.

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

- **\$18,000** per recipient.
- **\$36,000** per recipient for married couples.

[View the inflation-adjusted amounts for 2024.](#)



Miscellaneous (cont.)

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- ¹ One reason regulatory activity increases during a Presidential election year (up to a certain point during the year), is to lessen the possibility of the next Congress invalidating such rules via the Congressional Review Act.
 - ² For reference, view a copy of the November update here: [November 2023 Washington Update](#).
 - ³ While a single CR, it includes laddered expiration dates for funding the 12 unfinished appropriations measures. Thus, on March 8, 2024, funding for the following agencies/programs will expire: Agriculture; Energy-Water; Military Construction/Veterans Affairs; and Transportation-HUD. On March 22, 2024, funding for the following agencies/programs will expire: Commerce/Justice; Defense; Financial Services; Homeland Security; Interior; Labor-HHS; Legislative Branch; and State/Foreign Operations. It is anticipated that by the first expiration date on March 8, a number of appropriations bills, including some subject to the March 22nd expiration date—will be enacted into law.
 - ⁴ When Congress enacted into law the Fiscal Responsibility Act of 2023 (P.L. 118-5), it included therein language that imposes a 1% across-the-board cut in all discretionary domestic spending programs (both defense and non-defense) in the event a CR is in effect on January 1, 2024. With a CR in place since the beginning of 2024, the 1% spending cut is to be imposed but with delayed enforcement until May 1 to allow for the appropriations process to be completed. However, should Congress be unable to complete the appropriations process, opting instead for a CR for the remainder of the current fiscal year, the 1% spending reduction would be imposed and enforced, absent language in the CR, or in separate legislation, to negate those cuts.
 - ⁵ [View a copy of the Senate National Security Supplemental Appropriations Act.](#)
 - ⁶ [View a copy of the Airport and Airway Extension Act of 2024.](#)
 - ⁷ [View a copy of the SECURE 2.0 Technical Corrections draft.](#)
 - ⁸ See footnote 5 for a copy of the legislative discussion draft containing the technical corrections to SECURE 2.0.
 - ⁹ These amendments are included in [H. Rept. 119-272](#) to accompany House Resolution 864, that provides for consideration of H.R. 5894, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2024.
 - ¹⁰ [View a copy of the President's Fact Sheet on Junk Fees here.](#)
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