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Federal Legislative & Regulatory Report

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Inside this issue

House passes SECURE 2.0

On March 29, the U.S. House of Representatives voted 414 to 5 to approve H.R. 2954, the Securing a Strong Retirement Act of 2022, commonly referred to as SECURE 2.0. The bill is a combination of two bills which had passed the Ways and Means and the Education and Labor committees — the Securing a Strong Retirement Act of 2021 and the RISE Act, respectively.

SECURE 2.0 includes dozens of retirement security improvements to every phase of the process from participation, accumulation and living in retirement. Notable provisions that may be found in the section-by-section summary published by the House Ways and Means Committee include:

- Expansion of automatic plan features
- New startup credits for small employers
- Raising the age to begin required minimum distributions (RMDs) to 75
- Student loan matching
- Expansion of the Saver's Credit

Concurrently, the Senate is working to finalize its version of SECURE 2.0. The differences between the House and Senate bills will then need to be reconciled before the package can become law, which is expected to happen in the fourth quarter of this year.

Emergency savings bill introduced in the House

On March 18, Reps. Brad Wenstrup (R-OH) and Tom Suozzi (D-NY) introduced H.R. 7146, the Enhancing Emergency and Retirement Savings Act of 2022, to help more Americans save for retirement by providing some flexibility to cover unexpected financial emergencies. This bill would allow penalty-free “emergency” distributions up to $1,000 from tax-exempt retirement plans for emergency expenses, limited to one distribution in a calendar year.

H.R. 7146 is the House companion to S. 1870, introduced by Sens. James Lankford (R-OK) and Michael Bennet (D-CO) in May 2021. The Senate bill is likely to be considered as part of the Senate Finance Committee’s work on SECURE 2.0.

IRS releases proposed one bad apple rule

On March 28, Treasury and the IRS published proposed regulations implementing the SECURE Act’s amendments providing relief from the “unified plan rule” (i.e., the one-bad-apple rule).

The proposed regulations provide an exception, if certain requirements are met, to the application of the “unified plan rule” for MEPs in the event of a failure by one or more employers participating in the plan to take actions required of them to satisfy the applicable requirements of the Code.

These proposed regulations would affect certain MEPs, participants in those MEPs (and their beneficiaries), employers participating in those MEPs and plan administrators of those MEPs.

The current proposal officially withdraws the 2019 proposal that was issued prior to the SECURE Act’s enactment. The unified plan rule has been an impediment to the formation of MEPs.

House members seek to codify Trump-era ESG rule

On March 18, Rep. Andy Barr (R-KY) and U.S. Congressman Rick Allen (R-GA) introduced H.R. 7151, the Ensuring Sound Guidance (ESG) Act, to codify parts of the U.S. Department of Labor (DOL) rule under the Trump Administration that required investment advisors to consider only monetary factors when making investment decisions.

The DOL is in the process of revising the Trump-era ESG/Proxy voting rules that restricted the consideration of ESG factors when making investment decisions.

H.R. 7151 is not expected to become law.

Congresswoman introduces LTC insurance proposal

On March 16, Rep. Ann Wagner (R-MO) introduced H.R. 7107, the Long-Term Care Affordability Act, that would allow individuals to use retirement account assets to pay premiums for long-term care (LTC) insurance.

Specifically, the bill would exclude the withdrawal from income tax to the extent it is used to pay for LTC insurance, up to $2,500 annually and exclude the withdrawal from the 10% early withdrawal penalty tax. Sen. Pat Toomey (R-PA) previously introduced a Senate companion to this bill.

The bill's lack of bipartisan support limits its chances of becoming law.

President signs government funding bill

On March 15, the President signed into law the Consolidated Appropriations Act, 2022 to fund the government through the end of the fiscal year (Sept. 30, 2022). In addition to funding the government and providing aid to Ukraine, the legislation also enacts a number of other congressional priorities, including:

- **Adjustable Interest Rate (LIBOR) Act —** Provides guidance and a consistent federal standard for contracts with interest rates based on the London-Inter-Bank Offered Rate (LIBOR) benchmark, which is set to expire in mid-2023. The Act would direct the Federal Reserve to determine replacement rates that can be used for contracts lacking fallback language, by providing a safe harbor should the contract not specify a non-LIBOR replacement rate following the end of LIBOR.
- **Cyber-Incident Reporting** — Requires critical infrastructure owners and operators to report a covered cyber incidents and ransomware payments to the Cybersecurity and Infrastructure Security Agency (CISA) within 72 and 24 hours, respectively. The provisions delegate significant regulatory authority to CISA, including defining key terms, so the exact scope and requirements will be shaped by the rule-making process which is expected to take some time.

DOL cautions against crypto in 401(k) plans, Biden issues executive order

On March 10, the Department of Labor published Compliance Assistance Release No. 2022-01 cautioning plan fiduciaries to exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan's investment menu for plan participants.

The Employee Benefits Security Administration (EBSA) is expected to begin investigations, also noting interest in the availability of crypto assets through brokerage windows. The release says in part, "At this early stage in the history of cryptocurrencies, the Department has serious concerns about the prudence of a fiduciary's decision to expose a 401(k) plan's participants to direct investments in cryptocurrencies, or other products whose value is tied to cryptocurrencies. These investments present significant risks and challenges to participants' retirement accounts, including significant risks of fraud, theft, and loss."

Relatedly, on March 9, President Biden issued an Executive Order outlining a whole-of-government approach to addressing the risks and harnessing the potential benefits of digital assets and their underlying technology.

(Back to the Table of Contents)

References and source material used in this publication

Page 1

Text of H.R. 2954, the Securing a Strong Retirement Act of 2022
https://docs.house.gov/billsthisweek/20220328/BILLS-117hr2954-SUSv1.pdf

Section by section summary of H.R. 2954
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Page 2

Text of IRS proposed "one bad apple" rule
https://public-inspection.federalregister.gov/2022-06005.pdf

Wenstrump, Suozzi Introduce the Enhancing Emergency and Retirement Savings Act of 2022 (press release)
https://wenstrup.house.gov/updates/documentsingle.aspx?DocumentID=405431

Barr and Allen Introduce ESG Act to Protect Investors and Preserve Access to Capital for Energy Producers (press release)
https://barr.house.gov/press-releases?ID=8AD8DE60-12F7-449D-96F7-52928A589508

Wagner Introduces Long-Term Care Affordability Act (press release)
https://wagner.house.gov/media-center/press-releases/wagner-introduces-long-term-care-affordability-act

Page 3

Compliance Assistance Release No. 2022-01 401(k) Plan Investments in "Cryptocurrencies"
https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01

FACT SHEET: President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets
https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/09/fact-sheet-president-biden-to-sign-executive-order-on-ensuring-responsible-innovation-in-digital-assets/

(Back to the Table of Contents)

Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants on the Employer page of our plan website, NRSforu.com/plansponsor.

About this report

Bob Beasley, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *Governmental 457(b) Guidebook,* edits countless newsletters and plan sponsor communications, and in 2001 authored "What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001." He often voices Nationwide's online presentations.

Beasley has served on the Education and Communication Committee for the Plan Sponsor Council of America and as a member of the National Association of Government Defined Contribution Administrators.

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