

RETIREMENT & BENEFIT PLAN SERVICES

Legislative and Regulatory Brief

3Q 2019

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Legislative Activity

- Congressional hearings and other activity
- SECURE Act passes House
- Saving for the Future Act
- Retirement Security and Savings Act
- Retirement Parity for Student Loans Act



Congressional hearings and other activity

STATUS: Various congressional committees continue to hold hearings related to retirement savings, healthcare and other benefits issues. Heading into the 2020 election cycle, benefits remain an important policy issue with bi-partisan support.

Status in Washington

House Small Business Committee Hearing on Retirement Security “Unlocking Small Business Retirement Security”. Held in March, the hearing focused on the challenges facing small businesses that prevent them from offering work place retirement savings.

- Discussions were mostly bi-partisan supporting reducing the burden of cost and administration as well as fiduciary obligations, with strong bipartisan support for enactment of legislation expanding open multiple employer plans (open MEPs).

Government Accountability Office Issues Report on Early Withdrawals from Retirement Plans and IRAs – released in April, the report examines early withdrawals and plan loan offsets and how to reduce them.

- The report concludes that early access to retirement savings can encourage plan participation, but that plan loan offsets can be harmful to an individual’s long-term retirement security. The report recommends that the IRS and DOL consider having plan sponsors report loan offsets on the Form 5500.

Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First On June 24, 2019 the president issued an executive order. The order addresses several items related to healthcare transparency and directs changes to HSA and FSA as follows:

- **HSA** Within 120 days of Treasury will issue guidance to expand the high-deductible health plans that can be used with an HSA, and that cover low-cost preventive care, before the deductible, for medical care that helps maintain health status for individuals with chronic conditions.
- **FSA** Within 180 days of the order Treasury will issue guidance to increase the amount of funds that can carry over without penalty at the end of the year for flexible spending arrangement.

Our Point of View

- The fact the various committees in both the House and the Senate are focused on the issue of retirement savings and security is important as it is clearly an issue with bi-partisan support.
- In a Congress where little will advance without bi-partisan support, seeing this activity and interest from both parties is important.
- The GAO report was requested by the Senate Special Committee on Aging. It remains to be seen if the DOL and IRS will pick up the recommendation to expand 5500 reporting to include loan offsets, but we will continue to monitor for developments.
- The President’s executive order is in response to the inability of Congress to pass healthcare related legislation.
- Treasury is directed “...to the extent consistent with law...” issue the guidance in the executive order, so they must work within the existing statute.
- The HSA guidance may be a challenge as the various definitions around “preventative care” come from the Social Security Act and changes made would have implications beyond just HSAs.
- There is precedent to increase the FSA carry forward as Treasury issued the original carry forward option as a regulatory interpretation back in 2013. If issued, this guidance will provide employers with the option to increase FSA carry forwards if they so chose, reducing the “use it or lose it” aspect of FSAs.



SECURE Act passes House

STATUS: Passed with significant bi-partisan support in the House, the bill still has to pass the Senate

Status in Washington

The SECURE Act passed the House on May 24, 2019. The bill has broad impact across retirement savings and benefits. Elements of the bill include but are not limited to:

Employer Plans

- Increase safe harbor caps on auto enrollment and auto increase
- Provide for portability of lifetime income investments
- Require access to deferrals only for long-term, part-time employees without matching contributions (unless otherwise eligible under the plan)
- Require lifetime income disclosures on participant statements
- Establishes fiduciary safe harbor for plan sponsor selection of annuity providers
- Creates open Multiple Employer Plans with Pooled Plan Providers
- Provides relief for closed Defined Benefit plans on aggregation and testing

Employer Plans and IRA

- New withdrawal for birth or adoption of a child, maximum \$5,000 per child, not subject to withholding and eligible for rollover
- Reduction in “stretch” distribution payout periods for beneficiaries to 10 years, with exceptions for the following beneficiaries: spouse, minor child, chronically ill or disabled adult, or individual less than 10 years younger than account owner

IRA

- IRA contributions based on non-tuition fellowship and stipend payments
- Post 70 ½ contributions as long as you have earned income
- Increased required beginning date from 70 ½ to 72

529

- Permit withdrawals for repayment of student loans
- Permit withdrawals for payment of higher education expenses related to apprenticeship programs

Our Point of View

- The SECURE Act has passed in the House but still needs to be passed in the Senate.
- As of the writing of this Brief, the Senate is considering passing the Act by unanimous consent but all senators are not in agreement.
- If the Senate does not pass before they recess for the summer, they will likely take the bill up again in the fall when they increase the debt ceiling, or at year end in a spending bill.
- The bill cannot become law until the Senate passes and the President signs it.
- The provisions in this legislation have significant bi-partisan support in both the House and the Senate so we are watching this carefully while it is being considered by the Senate.
- Many of the provisions in the bill have been supported by the benefits community for years and will improve access to and expansion of workplace retirement savings.



Saving for the Future Act

STATUS: Introduced in Senate by Senator Amy Klobuchar (D-MN) and Senator Chris Coons (D-DE)

Status in Washington

- The proposal would also establish *UP Accounts* for employers that do not otherwise offer a retirement savings vehicle for employees. UP Accounts would include an optional short-term emergency savings account (UP Savings Account) and a portable, defined contribution pension plan (UP Retirement Account).
- The proposal would generally require all but the smallest of employers to make a minimum contribution to a retirement account on behalf of their employees.
- Most employers would be required to establish a 401(k), 403(b), SEP or SIMPLE IRA.
- Very small employers could meet the requirement by offering an automatic IRA program.
- Distribution options from UP Retirement Accounts -must include: (1) monthly income for the life of the participant (or surviving spouse, if applicable); (2) monthly income until the normal or maximum Social Security retirement age; and (3) automatic, regular withdrawals under which a set percentage of initial capital is withdrawn each year, on a monthly basis.
- Employers that comply with the minimum employer contribution requirement would be eligible for a tax credit of 50% of the employer's required contributions with respect to the first 15 employees, and 25% of the employer's required contributions with respect to the next 15 employees. An individual tax credit would also be available for workers who make retirement contributions but do not receive an employer contribution.
- Increase tax rates. To pay for the proposal, the bill would increase the corporate income tax rate from 21% to 23% and the highest individual income tax rate from 37% to 39.6%.

Our Point of View

- Senator Klobuchar is one of 20 potential candidates for the Democratic nomination for the 2020 presidential election.
- This bill as proposed has no Republican co-sponsors.
- Any legislation that has a possibility of passing in the current Congress needs to have bi-partisan buy-in.
- Expanded retirement savings in the workplace is needed but mandated requirements have not been successfully passed to date related to retirement saving plans.



Retirement Security and Savings Act

STATUS: Introduced in Senate by Senators Rob Portman (R-OH) and Ben Cardin (D-MD)

Status in Washington

- On May 14, 2019, Senators Rob Portman (R-OH) and Ben Cardin (D-MD) reintroduced their *Retirement Security and Savings Act*.
- The bill contains more than 50 proposals to improve the retirement savings system.
- Proposals include but are not limited to:
 - 403(b) Investment expansion into collective investment trusts.
 - Permit employer “matching contributions” based on student loan repayments.
 - Would increase Required Beginning Date age from 70 ½ to 72 and then to 75 over seven years.
 - Index catch up contribution limits for COLA from the base of \$1,000 and increase catch up contribution limits in plans from \$6,000 to \$10,000.
 - A series of provisions to simplify plan administration.
 - Harmonization of required distribution and rollover rules for IRAs and 401(k)s.

Our Point of View

- Senators Portman and Cardin have a history of working together on bipartisan legislation and their bill is expected to be a key part of the retirement policy discussions that will take place if the core provisions of the SECURE Act are signed into law.
- The continued focus on retirement and savings in Washington is positive and it is good to see that many policy makers do not assume they are done with improvements to retirement policy if the SECURE Act becomes law.
- Senators Portman and Cardin are planning ahead for subsequent additional retirement legislation that would build on what the SECURE Act proposes to do.
- Improving access to and savings in retirement plans continues to be an important policy issue for Congress.



Retirement Parity for Student Loans Act

STATUS: Reintroduced in the Senate by Sen. Ron Wyden (D-OR)

Status in Washington

- The bill would allow employers that offer 401(k), 403(b), or SIMPLE plans to voluntarily elect to make matching contributions to a plan for employees on account of a “qualified student loan payment.” Generally, a “qualified student loan payment” would mean a payment made by an employee in repayment of a qualified education loan incurred by the employee to pay for his or her qualified higher education expenses (i.e., the cost of attendance at eligible educational institutions).
- An employee would only be eligible if they submit “evidence” of loans and loan payments to the employer.
- Nondiscrimination Rules: matching contributions made on account of qualified student loan payments would not violate various nondiscrimination rules. Additionally, the bill would permit 401(k) safe harbor plans to make matching contributions on account of qualified student loan payments.
- Matching would have to be made at the same rate as matching contributions for elective deferrals.
- Plans would only be permitted to provide matching contributions for employees who are otherwise eligible to make elective deferrals.

Our Point of View

- The IRS released a Private Letter Ruling (PLR) in 2018 that permitted the plan that submitted the request to make student loan “matching” contributions under certain, specific circumstances. But a PLR can only be used by the applicant and not broadly applied.
- If passed, this new type of matching contribution would be available to all plan sponsors, where the PLR could only be used by the plan that requested it.
- The legislation addresses various non-discrimination testing issues that the PLR did not, so it would provide more comprehensive and broadly applicable guidance for plan sponsors who are interested.
- A match like this would enable participants who cannot afford to both pay their student debt and make a plan contribution to avoid losing out on an employer matching contribution.
- There is interest in seeing this match expanded to also be tied to 529 or ABLE account contributions.



Regulatory Updates

- DOL Updates Semiannual Regulatory Agenda
- IRS Reverses Position on Defined Benefit Lump Sum Windows
- IRS Expands Self Correction Procedures Under EPCRS
- IRS Expands Determination Letter Program
- Treasury “One Bad Apple” Regulation Under Review at OMB



DOL Updates Semiannual Regulatory Agenda

STATUS: Most recent agenda released on May 22, 2019, indicating DOL focus for remainder of the year

Status in Washington

- Twice a year, the Department of Labor (DOL) release their semiannual regulatory agendas.
- The agenda provides a list of on-going and anticipated regulatory actions.
- The list is broken into two categories of items they want to accomplish this year and “long-term” actions.
- **2019 projects include:**
 - Association Retirement Plans: pending regulation that would expand the kinds of associations that could sponsor an Multiple Employer Plan. This is in response to an executive order issued in 2018 by the President. No status date provided.
 - Notice and disclosure: the DOL is reviewing the notices and disclosures required under ERISA and the Internal Revenue Code to make them more useful to participants and beneficiaries and less costly and burdensome for employers. Proposed regulation release scheduled for December 2019.
 - Fiduciary rule: the DOL still needs to issue guidance to clarify ERISA fiduciary after their final rule was overturned in court. Proposed regulation scheduled for December 2019.
- **Long term projects include:**
 - Proxy voting: modernize fiduciary practices related to the voting rights associated with ERISA plan investments. No timeframe provided.
 - Other Long-Term Projects: guidance related to pension benefit statements (including a lifetime income disclosure), revision of the Form 5500, lifetime income products in default investments, the annuity provider selection safe harbor, and fee disclosures for welfare plans.

Our Point of View

- It is important to note that the DOL plan and the targeted dates are not set in stone. They are more to provide a sense of the prioritization of the projects and their proximity to completion. These projects and their projected timeline can change at any time.
- The Association Retirement Plans project could be impacted by the fact that the similar Association Health Plans guidance issued by the DOL in 2018 was recently overturned by a Federal Court. Additionally, if the SECURE Act becomes law, the open MEP provision in it may make Association Retirement Plan guidance unnecessary as it would change the law and make a regulation redundant.
- Simplifying notices and disclosures for participants, beneficiaries and employers is always a good thing.
- The fiduciary rule project continues on and the DOL has indicated they will be looking at the SEC Regulation Best Interest final regulation, released in June 2019, as they develop their guidance to try to be consistent across agencies.



IRS and Treasury Activity

Status in Washington

IRS Reverses Position on Defined Benefit Lump Sum Windows. Issued on May 6, 2019, IRS Notice 2019-18 reverses the IRS position on the permissibility of offering retirees in a defined benefit (DB) plan a lump sum window. Notice 2019-18 supersedes guidance the IRS released four years ago in Notice 2015-49. Plans can offer a lump sum window (allowing participants already in payout status to opt for a lump sum distribution instead) to plan participants without violating the Internal Revenue Code.

IRS Expands Self Correction Procedures Under EPCRS. On April 19, 2019, the Internal Revenue Service (IRS) released Rev. Proc. 2019-19, with revised EPCRS procedures to expand the existing correction program by:

- describing new self-correction methods for certain loan failures
- newly permitting self-correction for certain plan document failures
- newly permitting retroactive plan amendments to self-correct certain operational failures

IRS Expands Determination Letter Program. Revenue Procedure 2019-20, (effective September 1, 2019) indicate two additional circumstances under which the IRS will accept Determination Letter Applications:

- Individually designed statutory hybrid plans may apply for a determination letter during the 12-month period beginning on September 1, 2019.
- Certain individually designed merged plans will be permitted to apply for a determination letter on an ongoing basis.

Treasury “One Bad Apple” Regulation Under Review at OMB. On May 19, 2019 the Treasury and IRS sent a proposed rule to the OMB for review. The proposed regulation is expected to provide limited relief to a defined contribution MEP in the event of a failure by one employer.

Our Point of View

- Each of these guidance projects are positive developments which are helpful to plan sponsors and participants.
- The IRS reversal on lump sum distribution windows is useful to DB plans that are trying to de-risk and offers participants in payout status the option to switch to a lump sum.
- Expanded self correction procedures save plans time and money.
- The IRS had previously all but shut down the Determination Letter program, which left some individually designed plans with no option but to file for a Private Letter Ruling (PLR), which is cumbersome. Opening up the process in this limited capacity will be a welcome change for these plans.
- The “One Bad Apple” Rule is one of the challenges to considering an open MEP. It will be interesting to see how the IRS and Treasury address this when the rule is sent back from OMB and made available to the public. We will report back status in a future Brief once the regulation is publicly available.

