



Federal Legislative & Regulatory Report

December 2020

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Senate holds retirement security hearing

On December 9, the Senate Finance Subcommittee on Social Security, Pensions, and Family Policy held a hearing titled “Investigating Challenges to American Retirement Security.” Eric Stevenson (President, Nationwide Retirement Plans) testified on behalf of Nationwide and in support of [S. 1431](#), the Retirement Security and Savings Act of 2019 (or Portman-Cardin bill).

Together with the recently introduced [H.R. 8696](#), the Securing a Strong Retirement Act of 2020 (SECURE 2.0), the Portman-Cardin bill will serve as the basis for bipartisan retirement legislation in 2021 in the 117th Congress. Led by Chairman Rob Portman (R-OH) and ranking member Sherrod Brown (D-OH), the hearing was well attended, including by Finance Committee Chairman Chuck Grassley (R-IA).

Overall the hearing was bipartisan in tone, with members expressing support for more retirement legislation. Additionally, the full hearing and witness testimony can be viewed [here](#).

The other witnesses were:

- Scott Barr (Financial Advisor, Edward Jones)
- Michael P. Kreps (Principal, Groom Law Group)
- Joshua Luskin (President, National Association of Government Defined Contribution Administrators)

Later, on December 16, Senate Finance Committee ranking member Ron Wyden (D-OR) introduced [S. 5035](#), the [Encouraging Americans to Save Act](#). The bill would:

- Restructure the existing, nonrefundable Saver's Credit into a refundable, government matching contribution of up to \$500 a year for middle-class workers who save through 401(k)-type plans or IRAs
- Enhance the Saver's Credit by making the full 50 percent credit rate available to taxpayers making up to \$32,500 a year and require that credit be directly contributed into the saver's retirement plan or IRA
- Reinstate the *myRA* program

Treasury releases QPLO regs

On December 7, the Treasury Department and the IRS released [final regulations](#) addressing the extended rollover period for a qualified plan loan offset (QPLO), as permitted by the Tax Cuts and Jobs Act (TCJA) of 2017. The TCJA extended the normal 60-day rollover period in the case of a QPLO amount to the due date (including extensions) for filing the federal income tax return for the year in which the offset occurs.

The final regulations are almost identical to the proposed regulations. The only change relates to the applicability date, and even that change is very slight.

DOL releases final investment advice rule

On December 15, the Department of Labor [released its new final exemption](#) for investment advice fiduciaries. Originally proposed in July as part of the DOL's "Improving Investment Advice for Workers & Retirees" rule, the new exemption is a replacement for the now-invalidated Obama-era Fiduciary Rule. "The exemption allows investment advice fiduciaries to offer a wide array of investment advice services in compliance with Impartial Conduct Standards. Impartial Conduct Standards are a best interest standard, a reasonable compensation standard and a requirement to make no materially misleading statements."

The final rule clarifies the DOL's views on when rollover advice could be considered fiduciary advice under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code.

The rule is effective 60 days after publication in the [Federal Register](#), meaning the effective date will be after President-elect Biden is sworn into office January 20, 2021. The Biden administration is expected to delay the effective date of all regulations, including this one, that have not gone into effect before his first day in office.

DOL releases final proxy voting rule

On December 11, the Department of Labor released a [final rule](#) amending its "Investment Duties" regulation to address the application of ERISA's fiduciary duties with respect to the exercise of shareholder rights, including proxy voting. The rule establishes a regulatory framework for private

employee benefit plans' fiduciaries to follow when they exercise shareholder rights, including proxy voting, and select and monitor proxy advisory firms.

A DOL news release on the final rule is available [here](#), and DOL's Fact Sheet is available [here](#). The Proxy Voting Rule will be effective 30 days after its publication in the Federal Register.

New bills promote ESG in retirement plans

On December 14, Reps. Andy Levin (D-MI), Brendan Boyle (D-PA), and Cindy Axne (D-IA) introduced [H.R. 8960](#), the Sustainable Investment Policies Act, and [H.R. 8959](#), the Retirees Sustainable Investment Policies Act.

Together the bills would promote the use of ESG by requiring plan investors and fiduciaries to take into account and explain to beneficiaries how they consider environmental, social and corporate governance (ESG) factors when making investment decisions.

The purpose is to encourage large investment advisers and retirement plans to adopt and implement policies that consider ESG factors when making investment decisions because considering ESG factors is relevant to the fiduciary duty of prudence, as such factors help ensure investments' long-term sustainability.

ESG is expected to be a priority during the Biden administration, and Rep. Andy Levin (one of the bill sponsors) is on the shortlist of potential DOL leaders.

IRS issues more SECURE Act guidance

On December 9, the Treasury Department and Internal Revenue Service (IRS) issued guidance on the SECURE Act's provisions affecting plans that use a nondiscrimination safe harbor, [Notice 2020-86](#).

The SECURE Act included two provisions that improve safe harbor plans:

1. One provision increased the maximum deferral limit for qualified automatic contribution arrangements (QACAs) from 10% to 15% for years after the first plan year in which an employee is automatically enrolled.
2. The other provision eliminated certain safe harbor notice requirements for plans that provide for safe harbor nonelective contributions, and added new provisions for the retroactive adoption of safe harbor status for those plans.

The Notice invites comments on the issues addressed in Notice 2020-86 and any other aspects of SECURE Act nondiscrimination safe harbor. Comments are requested by February 8, 2021.

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References and source material used in this publication

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S. 1431, Retirement Security and Savings Act of 2019

<https://www.congress.gov/bill/116th-congress/senate-bill/1431>

H.R. 8696, Securing a Strong Retirement Act of 2020

https://republicans-waysandmeansforms.house.gov/uploadedfiles/ssra_section_by_section.pdf?utm_campaign=203496-211

Senate Subcommittee on Social Security, Pensions, and Family Policy Hearing Video: Investigating Challenges to American Retirement Security

<https://www.finance.senate.gov/hearings/investigating-challenges-to-american-retirement-security>

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S. 5035, Encouraging Americans to Save Act

<https://www.congress.gov/bill/116th-congress/senate-bill/5035/text>

Wyden, Senate Democrats Introduce Bill to Help Working Families Save for Retirement

<https://www.finance.senate.gov/ranking-members-news/wyden-senate-democrats-introduce-bill-to-help-working-families-save-for-retirement>

Final regulation: Rollover Rules for Qualified Plan Loan Offset Amounts

<https://www.irs.gov/pub/irs-drop/td-9937.pdf>

Department of Labor Announces Exemption to Improve Investment Advice and Enhance Financial Choices for Workers and Retirees

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20201215>

Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

<https://www.dol.gov/sites/dolgov/files/EBSA/temporary-postings/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights-final-rule.pdf>

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Department of Labor Issues Final Rule on Proxy Voting and Shareholder Rights by Employee Benefit Plans

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20201211-1>

Fact Sheet: Fiduciary duties regarding proxy voting and shareholder rights final rule

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights-final-rule>

H.R. 8960, the Sustainable Investment Policies Act of 2020

<https://andylevin.house.gov/sites/andylevin.house.gov/files/Sustainable%20Investment%20Policies%20Act%202020.pdf>

H.R. 8959, Retirees Sustainable Investment Policies Act of 2020

<https://andylevin.house.gov/sites/andylevin.house.gov/files/Sustainable%20Investment%20Policies%20Act%202020.pdf>

IRS Notice 2020-86, Guidance on Sections 102 and 103 of the SECURE Act With Respect to Safe Harbor Plans
<https://www.irs.gov/pub/irs-drop/n-20-86.pdf>

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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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