NATIONAL COUNCIL on TEACHER RETIREMENT
Supporting Retirement Security for America's Teachers

Snapshots of This Week's FYI

1. Although the 116th Congress approved the first comprehensive piece of retirement legislation in more than a decade at the end of last year, there are indications it may not take ten more years before another major retirement bill becomes law—with some believing it could happen as soon as this year.
2. Significant Federal activity of interest to pensions is also underway at the regulatory level. Additionally, the potential exists for several administrative items related to retirement security to be implemented this year.
3. Many seniors and retirees may be eligible to take advantage of free online tax services.

Retirement Issues in 2020: Legislation

Although the 116th Congress approved the first comprehensive piece of retirement legislation in more than a decade at the end of last year, by way of the SECURE Act. The SECURE Act acronym stands for: "Setting Every Community Up for Retirement Enhancement Act of 2019." There are indications it may not take ten more years before another major retirement bill becomes law. Some experts believe it could happen as soon as this year.

SECURE Act 2.0

"Improving Americans' retirement security remains a top priority of mine as Congress returns to Washington in 2020," Congressman Richard Neal (D-MA) recently told *Pensions & Investments*. Congressman Neal is the Chairman of the House Ways and Means Committee, which would be responsible for moving such a bill in the House. According to Neal's statement to *P&I*, he is working "bipartisanly on legislation that will essentially be the SECURE Act 2.0."

Specifically, Neal wants to pass his "Automatic Retirement Plan Act." He proposed this legislation in 2017 but has not reintroduced it in the current Congress. The bill, also known as the "Auto 401(k) Act," would require all employers to maintain a 401(k) or 403(b) plan—with the exception of governments, churches, employers of ten or fewer employees, and businesses less than three years old.

Because some Republicans have opposed the idea of a mandate, Neal is reportedly open to alternative approaches, such as increased incentives to give small employers with no more than 100 employees a $500 credit annually for three years to cover the cost of offering new hires the option of automatic enrollment in a retirement plan.

Chairman Neal also wants to advance another of his 2017 proposals, the "Retirement Plan Simplification and Enhancement Act." This bill would modify current rules for individual retirement arrangements (IRAs) and employer-sponsored retirement plans, including the exemption of retirement savings below $250,000 from the required minimum distribution (RMD) rules.

However, Neal wants to refrain from deciding which specific legislation will be included in a SECURE 2.0 package until he discusses the issue with Senator Chuck Grassley (R-IA), Chairman of the Senate Finance Committee. Neal explains he would "like to get some idea of what he [Grassley] is thinking."

Grassley's intentions may be shaped by what Senators Rob Portman (R-OH) and Ben Cardin (D-MD) want to do. The two introduced the "Retirement Security and Savings Act of 2019," S. 1431, in May of last year, which contains dozens of provisions intended to improve and enhance retirement savings coverage with small employers and among part-time workers. These include allowing employers to make matching contributions to retirement accounts of employees paying off qualified student loan debt, as well as increasing the age threshold to 75 for RMDs from an IRA.

Portman said the passage of the SECURE Act this past December "can help 'pave the way' for bolder reforms in legislation." He then went on to say he thought the Finance Committee "should hold hearings and a markup on [the Retirement Security and Saving Act], and I will work closely with Senator Cardin to move it forward."

The question then becomes whether or not a retirement-related measure can be advanced on its own. One hurdle that created problems with the Senate's consideration of the SECURE Act last year, and may reappear once again, is a proposal to allow Section 529 education savings accounts to cover home schooling and elementary and secondary school educational expenses.

The Section 529 language was dropped from the House version of the SECURE Act when it was originally approved earlier in 2019. Since then, Republicans in both the House and Senate have pushed to have it restored, and Senator Ted Cruz (R-TX) may once again block any new retirement legislation that does not include it as he did with some success last year.

The possible alternative would be to combine a new retirement savings package with H.R. 397, a $48.5 billion House-passed bill called the "Butch Lewis Act." This bill addresses the multiemployer pension plan crisis by establishing a trust fund to provide low-interest government-guaranteed loans. Multiemployer pension plans could then pay these back over the course of 30 years.

However, this may well be too steep a political hill to climb. For example, Congressman Kevin Brady (R-TX), the ranking Republican on the Ways and Means Committee, has said he thinks a deal could be cut on retirement savings provisions,

which he calls “an easier lift, with more bipartisan support." But he has expressed doubts about using the multiemployer plan fix as a legislative vehicle.

Why? The reason is primarily due to the major divide between the House multiemployer pension bill’s loan approach and a plan outlined by Senator Grassley and Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN). This Senate “fix” would call for a number of alternative “reform” measures, including a higher flat-rate premium per plan participant to the Pension Benefit Guaranty Corporation, as well as a “co-payment” by retirees.

In any case, some lawmakers on both sides of the aisle believe there will be a strong desire to come up with another package of retirement savings incentives in 2020. However, Michael Barry, President of O3 Plan Advisory Services LLC, thinks a very-divided Congress and a potentially disruptive Presidential campaign means “progress on as modest and obscure an issue as retirement policy seems like a long shot.”

Barry, writing recently in *PlanSponsor*, has some interesting thoughts concerning some of the more important things that need, or at least “ought,” in the relatively near term, to be done in the retirement area. His comments on “Covering the Uncovered” and “Student Loan Repayment” are particularly thought provoking.

However, in order to advance retirement legislation in 2020, the best chance for trying to work out all of the differences may have to wait until a Lame-Duck session of Congress following the November elections.

- *Pensions & Investments*: “Retirement Industry Looks for Encore to SECURE Act”
- Law360: “Lawmakers Eyeing Sequel To Retirement Savings Tax Bill”
- Neal “Automatic Retirement Plan Act of 2017” Summary
- Neal: “Retirement Plan Simplification and Enhancement Act of 2017” Summary
- Portman-Cardin ““Retirement Security and Savings Act of 2019” Summary
- *PlanSponsor*: “Barry’s Pickings: The 2020 Retirement Policy Agenda”

Retirement Issues in 2020: Regulatory

Significant Federal activity of interest to pensions is also underway at the regulatory level. Additionally, several administrative items related to retirement security have the potential to be implemented this year.

Department of the Treasury

The Treasury Department and the Internal Revenue Service (IRS) will be busy in 2020 providing guidance in connection with the implementation of the SECURE Act, which became law in December 2019.

For example, the SECURE Act eliminates "stretch" required minimum distributions (RMDs) for many beneficiaries. Thus, under the change, when a defined contribution 401(a), 403(b) or governmental 457(b) plan participant or IRA owner

dies, the designated individual beneficiary is required to take distributions of the entire inherited account within ten years; this does not apply to defined benefit plans.

However, there is an exception to the 10-year rule for an inherited account payable to an "eligible designated beneficiary," including the surviving spouse, a child under the age of majority, someone disabled or chronically ill , or any other person who is not more than 10 years younger than the participant/IRA owner. For such eligible designated beneficiaries, distributions can be made over their life or life expectancy. Regulations will be necessary, including as to what is the "age of majority."

Another example is in connection with penalty-free plan withdrawals of up to $5,000 for a "qualified birth or adoption" made from a defined contribution 401(a), 401(k), 403(b) or governmental 457(b) plan or an IRA (but not from a DB plan).

As Rob Gauss and Audra Ferguson-Allen, partners with Ice Miller LLP, explained on a recent NCTR members-only webinar, there are a lot of questions and uncertainty about these distributions. Most plans are therefore waiting for the IRS to release guidance before amending their plans to allow for them. Ice Miller is an NCTR commercial associate member.

The IRS has, in fact, already begun releasing guidance in connection with the new law. For example, released January 27, IRS Notice 2020-6 provides relief for reports to IRA owners regarding the need to take 2020 required minimum distributions (RMDs).

The Notice also indicates the IRS and Treasury are considering what additional guidance should be provided. This guidance could include potential relief for 2020 payments that are mistakenly treated as RMD payments since these could pose withholding and rollover issues.

Department of Labor

A new proposed fiduciary standard is expected to be issued at any moment by the Department of Labor (DOL). The original rule was advanced during the Obama Administration, was aimed at mitigating conflicts of interests that may arise when financial advisers make investment recommendations on retirement accounts.

However, the rule's implementation was delayed at the outset of the Trump Administration. The 5th U.S. Circuit Court of Appeals in New Orleans ultimately vacated it in 2018, and the Trump administration did not appeal.

Therefore, currently, broker-dealers and registered representatives are required to use the DOL's best interest contract (BIC) exemption in order to work with retirement plans and participants on a commission basis. It allows otherwise prohibited "conflicted compensation" to be paid on transactions (including insurance or annuity sales), if advisors use an extensive contract that spells out their duty of loyalty to clients.

Some hope the new DOL proposal will make compliance with the Securities and Exchange Commission (SEC) new "Regulation Best Interest," or Reg BI, a more simplified process. (Reg BI requires brokers to act in the best interest of their retail customer at the time of a recommendation, without placing the broker's financial or other interest ahead of the interests of the customer. The new standard is met if the broker satisfies specified disclosure, care, conflicts, and compliance obligations.)

The Employee Retirement Income Security Act (ERISA), administered by the DOL, does not permit satisfying any conflicts of interest through disclosure. Instead, ERISA prohibits all conflicts of interest, and requires an exemption to get around them. Ultimately, the new fiduciary rule is highly unlikely to expand the fiduciary definition to the extent of the Obama-era rule, according to legal experts.

On another front, Hazel Bradford with *Pensions & Investments* reports a proposed rule on proxy voting is expected in 2020. The goal is to ensure proxy-voting decisions tied to investments governed by ERISA are "solely in the interest of, and for the exclusive purpose of providing plan benefits to, participants and beneficiaries." It follows a White House executive order in April of 2018 requiring DOL to "complete a review of existing Department of Labor guidance on the fiduciary responsibilities for proxy voting to determine whether any such guidance should be rescinded, replaced or modified. The goal is to ensure consistency with current law and policies that promote long-term growth and maximize return on ERISA plan assets."

Although ERISA does not apply to governmental plans, and therefore DOL's fiduciary guidance does not apply either, the language concerning fiduciary duties in many state statutes is very similar to that of ERISA. Therefore, DOL guidance is in this area is often of interest.

Securities and Exchange Commission

The SEC proposal to impose new requirements on proxy advisory firms related to proxy advice and shareholder proposals—in the process making it more difficult for investors to submit shareholder proposals—is on a fast track. The Council of Institutional Investors (CII) says the new regulations "would result in the most significant changes to the voting rights of shareowners in decades" and strongly opposes the Commission's proposed rules. CII says If adopted, the SEC recommendations would introduce complexity and micromanagement in proxy voting, as well as in shareholder-company engagement processes that have worked well for decades. They have urged the SEC to withdraw the proposals.

P&I's Bradford also reports SEC Chairman Jay Clayton is expected to continue addressing the 2-to-1 imbalance of private fundraising vs. public offerings, "including how to make it easier for retirement savers and other investors to get into private markets." She notes a concept release proposal issued in June 2019 asked for market participants' input on how this could be accomplished. The process being used is not a formal rule-making proposal, but is instead a concept release, titled "Harmonization of Securities Offering Exemptions," and is viewed as more of a "conversation starter" at this point.

Fee transparency is also on the agenda in 2020. For example, last October, the SEC voted to make future fee changes for core data first subject to a public comment period. This change was welcomed by CII, which has been frustrated by exchanges' monopoly over market data and access.

A judicial opinion is also expected in early 2020 in connection with the SEC's efforts to proceed with a transaction fee pilot program to examine how exchanges charge customers. CII filed a joint amicus brief with the Investment Company Institute (ICI) supporting the SEC's position, calling the pilot program "urgently needed."

The SEC also sent out a series of examination letters to firms in 2019, indicating it will be watching how asset managers of environmental, social and governance (ESG) funds apply sustainable criteria when making investments, and when marketing their services. This is seen as a clear sign the SEC intends to closely scrutinize firms offering products in this area.

Bradford quotes Vadim Avdeychik, of counsel with law firm Paul Hastings LLP's Impact and Sustainability and Investment Management Practices in New York, as noting since there are no uniform standards, "it will be tricky to reconcile the different methodologies being used by asset management firms." He therefore thinks it also "makes complete sense that they would be looking at how asset managers are voting proxies with respect to ESG proposals."

Finally, legislation addressing disclosure of private equity fees and expenses, the “Investment Adviser Alignment Act,” was among the subjects discussed at a November hearing before the House Financial Services Committee on private equity practices. The legislation would require SEC reporting on private equity fees and expenses; impose a fiduciary duty on private equity funds; and allow communication among limited partners. It is supported by the Institutional Limited Partners Association (ILPA).

However, as *P&I* points out, the House hearing “made it clear” private equity is a partisan issue, especially in an election year, and final Congressional action in this area seems unlikely.

Stay tuned. Watch for regulatory notices and other guidance. There will be a lot of action on the administrative front in 2020.

- Internal Revenue Service: “IRS Provides Relief to Financial Institutions Affected by Tax Law Change Raising the Age for Required Minimum Distributions”
- *InvestmentNews*: “What the New DOL Fiduciary Rule will Probably Look Like”
- *Pensions & Investments*: “Retirement Industry Looks for Encore to SECURE Act”
- Council of Institutional Investors: “Comment Letter to the SEC on Proposed Rules for Proxy Voting Advice”
- Institutional Limited Partners Association: Comment Letter in conjunction with November 19, 2019 House financial Services Committee Hearing on “America for Sale, An Examination of the Practices of Private Funds”

Free Help for Retirees in Filing Their Taxes

Many seniors and retirees may be eligible to take advantage of free online tax services. Released on February 10, IRS Tax Tip 2020-16 explains how the IRS Free File program provides free services for taxpayers whose 2019 adjusted gross income was $69,000 or less.

The Free File program—a partnership between the IRS and the Free File Alliance, a group of industry-leading private-sector tax preparation companies that have agreed to provide free commercial online tax preparation and electronic filing—has served 57 million taxpayers and saved them an estimated $1.7 billion since the program first became available in 2003.

[Taxpayers' information is protected from any unauthorized access while it is sent to the IRS. Also, the companies may not disclose or use tax return information for purposes other than tax return preparation without a taxpayer's informed and voluntary consent.]

Here are some key facts about the Free File program:

- IRS Free File features 10 brand-name tax software providers. Each one sets its own eligibility standards, generally based on income, age and state residency. While not all seniors will qualify for each one, the IRS says all taxpayers whose adjusted gross income was $69,000 or less will find at least one free product to use.
- Two Free File products are available in Spanish.
- Free File supports all the major forms that can be filed electronically. This means that even if someone's tax return is a bit more complex, they can still use a free service.
- Free File offers the new Form 1040-SR option for seniors over the age of 65, which features large print to make it easier to read.
- Free File providers also offer state tax return preparation. Some are also free, but others may charge a fee.
- All Free File products are enabled for mobile devices.

Some retirees may not be comfortable with the use of online services. For these filers, there are programs where people can go to have their taxes prepared for free. The IRS helps support the Volunteer Income Tax Assistance (VITA) program and AARP supports the Tax Counseling for the Elderly (TCE) program. They have locations, generally at community and neighborhood centers, libraries, schools, and shopping malls where volunteers will prepare a senior's tax return free of charge. The IRS Free File website has a VITA locator tool to help locate a VITA/TCE location nearby.

The Free File program is available now through October to accommodate extension filers.

Finally, whether online or at a physical location, seniors and retirees will need all their necessary income and deduction records and other key information. This includes:

- A copy of last year's tax return in order to access their Adjusted Gross Income (AGI).
- Valid Social Security numbers for themselves and their spouse, where applicable.
- Valid Social Security numbers for dependents, if any.
- Receipts for Social Security benefits and any unemployment compensation.
- All receipts pertaining to any small business they may have.
- Income receipts from rental, real estate, royalties, partnerships, S corporation, and trusts.

- W-2s, showing any annual wages from all of their employers, if any.
- Forms 1099-INT, showing interest paid to them throughout the year.
- Form 1099-G, showing any refund, credit or offset of state and local taxes.
- Forms 1099-DIV and Forms 1099-R, showing dividends and distributions from retirement and other plans paid to them during the year.

Filing tax returns is never fun. But however, if it can be free, that can perhaps help make it a little easier on many seniors and retirees.

- IRS Tax Tips: "Here's How Seniors and Retirees Can File Their Taxes for Free"

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