Q4 2023 Legislation Update

Retirement Savings for Americans Act Would Create a Government-run Plan

U.S. Senators John Hickenlooper (D-CO) and Thom Tillis (R-NC) and Representatives Lloyd Smucker (R-PA) and Terri Sewell (D-AL) recently introduced HR 6065, the Retirement Savings for Americans Act (RSAA) of 2023. If the bill were to be enacted, it would establish a new savings program, "The American Worker Retirement Plan" (AWRP), which would give eligible workers access to federally-sponsored, portable, tax-advantaged retirement savings accounts. Key features of the AWRP are described below.

- Available to full- and part-time workers without access to an employer-sponsored retirement plan.
- Automatic enrollment at 3% of income, with the ability to increase or decrease the deferral rate or opt out.
- Independent workers would also be eligible.
- Low- and moderate-income workers would be eligible for a federal 1% automatic matching contribution (as long as they remain employed) and up to a 4% federal matching contribution via a refundable federal tax credit, phased out for those with income above certain levels.
- Accounts would remain attached to workers throughout their lifetimes, and workers would be able to stop and start contributions at will.
- The accounts would be the property of the worker and the assets could be passed down to future generations to help them build wealth and financial security.
- Participants would be given a menu of simple, low-fee investment options to choose from, including lifecycle funds tied to a worker's estimated retirement date, or index funds made of stocks and bonds.

Q4 2023 Legislation Update

While the provisions in the bill have bipartisan support, there is some skepticism in the industry as to whether a government-run retirement savings plan would be in the best interest of retirement investors. This is even more reason for business owners who do not currently offer a retirement plan to consider sponsoring their own workplace retirement plans now before a federally-mandated plan takes form.

Bill Would Allow Employees to Participate in 401(k) plans as Early as Age 18

On November 17, Senator Bill Cassidy (R-LA), the Ranking Member of the Senate Health, Education, Labor and Pensions (HELP) Committee, and Senator Tim Kaine (D-VA), a member of that committee, introduced the Helping Young Americans Save for Retirement Act. If the bill is enacted, the changes would take effect in 2026. While this proposal is unlikely pass as a standalone bill, odds are that it will be considered in the next round of broad-based, bipartisan retirement policy legislation.

The bill would require 401(k) plan sponsors to allow employees as young as 18 to make contributions. The following conditions would also apply.

Q4 2023 Legislation Update

Not Applicable to Part-time Employees

The long-term part-time coverage rule that allows an employee to participate if he or she has two years of part-time service of at least 500 hours per year would not apply until age 21.

Nondiscrimination and Top-heavy Rules Would Not Apply

Plan sponsors could elect to exclude this group of young participants from nondiscrimination testing, including 401(k) actual deferral percentage (ADP) and actual contribution percentage (ACP) testing, and from consideration under the Top-Heavy rules.

Not Counted Towards the Audit Requirement for Forms 5500 Initially

Sponsors of plans with 100 or more participants must, in connection with filing the Form 5500 annual report, include an audit report of the plan's financials from an independent qualified public accountant. For purposes of this reporting rule, employees participating solely by reason of this bill would not be taken into account until five years after they first entered the plan.

Q4 2023 Regulatory Update

DOL Releases New Fiduciary Advice Proposal

On October 31, 2023, the Department of Labor (DOL) released its "Proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary," along with proposed revisions to Prohibited Transaction Exemptions (PTEs) 2020-02, as well as other fiduciary-advice-related PTEs (i.e., 84-24, 75-1, 77-4, 80-83, 83-1, and 86-128).

If finalized, a new definition of an "investment advice fiduciary" under the Employee Retirement Income Security Act of 1974 (ERISA) would apply, likely resulting in more individuals being classified as fiduciaries. Amendments to certain PTEs would provide pathways for fiduciaries to receive otherwise prohibited compensation and fees.

Q4 2023 Regulatory Update

At a high level, the proposed regulation would replace the current "Five-Part Test" for determining fiduciary status with the following. A person would be an ERISA investment advice fiduciary and, therefore, subject to ERISA's "best interest" standard of conduct, disclosure and reporting if

1. A person makes a recommendation of any securities transaction or other investment transaction or any investment strategy involving securities or other investment property … to [a] plan, plan fiduciary, plan participant or beneficiary, IRA, IRA owner or beneficiary or IRA fiduciary;
2. For a fee or other compensation, direct or indirect;
3. In one of the following contexts:
   - The person either directly or indirectly … has discretionary authority or control … with respect to purchasing or selling securities or other investment property for the retirement investor.
   - The person either directly or indirectly … makes investment recommendations to investors on a regular basis as part of their business and the recommendation is provided under circumstances indicating that the recommendation is based on the particular needs or individual circumstances of the retirement investor and may be relied upon by the retirement investor as a basis for investment decisions that are in the retirement investor's best interest.
   - The person making the recommendation represents or acknowledges that he/she is acting as a fiduciary when making investment recommendations.

Q4 2023 Regulatory Update

Recall that under the DOL's current Five-Part Test, a person is a fiduciary only if he or she satisfies all of the following requirements:

1. Renders advice as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing, or selling securities or other property
2. On a regular basis
3. Pursuant to a mutual agreement, arrangement, or understanding with the plan or a plan fiduciary where
4. The advice will serve as a primary basis for investment decisions with respect to plan assets, and where
5. The advice will be individualized based on the particular needs of the plan.

The DOL has expressed particular concern about requirements 2, 3 and 4. According to the DOL, these elements "… too often work to defeat legitimate retirement investor expectations of impartial advice and allow some advice relationships to occur where there is no best interest standard."

Q4 2023 Regulatory Update

Under the proposal, these concerns are addressed in the following ways. First, the "regular basis" rule under the current fiduciary scheme would change to simply require the advice fiduciary to be in the business of providing advice on a regular basis. Thus, someone in the "advice business" would satisfy this requirement even if the advice in question was a one-time occurrence (e.g., a recommendation to take a rollover). Second, the proposed rule would remove the "mutual agreement or understanding" requirement and instead focus on the advisee's reliance on an advisor's recommendation as financial advice, and provide that disclaimers by the advisor, "… will not control to the extent they are inconsistent with the person's oral communications, marketing materials, applicable State or Federal law, or other interactions with the retirement investor." Finally, the " primary basis" requirement would be replaced with, "… a basis for investment decisions that are in the retirement investor's best interest."

Q4 2023 Regulatory Update

What you need to know:

- These are proposed changes at this time. They are not in effect and retirement investors, plan sponsors and financial professionals are not required to rely on them.
- There is a 60-day comment period for each piece of the fiduciary package. Many comments from industry players are expected, and an extension to the comment period has been requested.
- A public hearing on the proposal was held on December 12, 2023.
- Advisors operate under the direction of their affiliated firms. For those that are providing fiduciary investment advice for a fee as defined under current guidance (the Five-Part Test), they are (or should be) following a current statutory exemption [e.g., ERISA Sec. 408(g) fiduciary adviser] or a PTE (e.g., PTE 2020-02, PTE 84-24, etc.) as instructed by their firms. The proposals do not affect current advice activity.

Q4 2023 Regulatory Update

IRS releases 2024 plan and IRA limits

Via IRS Notice 2023-75, the IRS released the applicable qualified plan and IRA limits for 2024. The cost of living adjustments (COLAs) to retirement plan figures are tied to the Social Security Administration's 3.2% COLA for 2024. The below charts summarize the changes.

2024 Retirement Plan Limits

Employer Plan Limits	2024	2023	2022
Elective Deferral Limit (401(k), 403(b), Roth 401(k), SARSEP)	$23,000	$22,500	$20,500
Catch-Up Contribution Limit	$7,500	$7,500	$6,500
Annual Defined Benefit Limit	$275,000	$265,000	$245,000
Annual Defined Contribution Limit	$69,000	$66,000	$61,000
Annual Compensation Limit	$345,000	$330,000	$305,000
457 Deferral Limit	$23,000	$22,500	$20,500
Highly Compensated Employee Dollar Threshold	$155,000	$150,000	$135,000
SIMPLE Contribution Limit	$16,000	$15,500	$14,000
SIMPLE Catch-Up Contributions	$3,500	$3,500	$3,000
SEP Coverage Minimum Comp.	$750	$750	$650
SEP Compensation Limit	$345,000	$330,000	$305,000
Top-Heavy Key Employee Comp.	$220,000	$215,000	$200,000
Social Security Taxable Wage Base	$168,600	$160,200	$147,000
ESOP maximum amount subject to a 5-year distribution period	$1,380,000	$1,330,000	$1,230,000
ESOP maximum amount for lengthening of the 5-year period	$275,000	$265,000	$245,000

Q4 2023 Regulatory Update

2024 IRA Limits

IRA Limits	2024	2023	2022
IRA Contribution Limit	$7,000	$6,500	$6,000
IRA Catch-Up Contributions	$1,000	$1,000	$1,000
Traditional IRA Deductibility Phase-Out Ranges			
Joint Return covered by workplace retirement plan	$123,000-$143,000	$116,000-$136,000	$109,000-$129,000
Single or Head of Household by workplace retirement plan	$77,000-$87,000	$73,000-$83,000	$68,000-$78,000
Joint Return spouse not covered by workplace plan	$230,000-$240,000	$218,000-$228,000	$204,000-$214,000
Married filing separately covered by workplace plan	$0-$10,000	$0-$10,000	$0-$10,000
Roth IRA Eligibility Phase-Out Ranges			
Roth IRA Joint Return	$230,000-$240,000	$218,000-$228,000	$204,000-$214,000
Roth IRA Single or Head of Household	$146,000-$161,000	$138,000-$153,000	$129,000-$144,000
Roth IRA Married filing separately	$0-$10,000	$0-$10,000	$0-$10,000

Q4 2023 Regulatory Update

PBGC Announces 2024 Maximum Benefit Limits

The Pension Benefit Guaranty Corporation (PBGC) has updated its maximum monthly benefit guarantees for 2024 in a table published on its website. For example, a 65-year old whose pension benefit is payable from the PBGC in the form of a straight-life annuity for 2024 would receive a monthly maximum of $7,107.95. The PBGC maximum guarantee is determined using a formula in federal law tied to the Social Security index. The formula provides lower amounts for younger ages because younger people are expected to receive more monthly pension checks over their lifetime. Conversely, amounts are higher for older ages. In addition, amounts are lower for retirees who choose an annuity with survivor benefits.