



Federal Legislative & Regulatory Report

January 2021

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Department of Labor leadership taking shape

On January 7, President-elect Biden announced plans to nominate Boston Mayor Marty Walsh to lead the Department of Labor (DOL). Walsh formerly led Boston’s Building and Construction Trades Council and has the backing of AFL-CIO President Richard Trumka. As head of the DOL, Walsh will oversee a number of important regulatory initiatives, including the anticipated revival of the Obama-era Fiduciary Rule.

On January 20, President Biden announced that Al Stewart will serve as the Acting Secretary of Labor while the Senate confirmation process takes place for Secretary-nominee Walsh. Stewart is currently the Deputy Assistant Secretary for Operations in the Office of the Assistant Secretary for Administration and Management (OASAM). Stewart began his service to the DOL in 1991.

While Biden has not announced his pick to lead the Employee Benefits Security Administration, the president has chosen Ali Khawar as the Deputy Assistant Secretary for EBSA, a role that does not need Senate confirmation. Given the pending nomination and confirmation of the Assistant Secretary for EBSA, Khawar is expected to take on the role as Acting Assistant Secretary. Khawar previously served as Counselor to then-Labor Secretary Tom Perez and played a major role in assisting Perez with the 2016 Fiduciary Rule.

Biden issues regulatory freeze, probably delaying DOL PTE

On January 20, Chief of Staff Ron Klain [sent a memo](#) to all government agencies directing them to pause rulemaking projects not effective as of January 20.

For rules that have been published in the Federal Register but have not taken effect, the memo asks agencies to consider postponing the rules' effective dates for 60 days from the date of the memo. The memo outlines steps to take to delay the rules further and/or to take further action, which could presumably include withdrawing such rules and/or modifying them.

Many recent DOL regulations on retirement savings (such as environmental, social and corporate governance; proxy voting; and e-delivery) are already final and unaffected by the freeze memo.

However, the freeze memo will almost certainly result in the delay of the DOL's recently finalized independent contractor rule and will probably lead to the delay and modification of the fiduciary prohibited transaction exemption (PTE). It is possible that the DOL's forthcoming delay guidance could affirm the PTE's problematic preamble discussion of the definition of a fiduciary.

IRS extends remote notary relief

On December 22, the IRS issued [Notice 2021-03](#) extending the temporary relief from the requirement that spousal consent to participant elections be witnessed in the "physical presence" of a notary or a plan representative.

As under the prior relief, spousal consent may be obtained either by remote notarization consistently with state law that applies to the notary, or through the use of audio-video technology in the case of a plan representative witness.

The new Notice extends this temporary relief for six additional months, through June 30, 2021. Additionally, the Notice requests input on making the relief permanent.

House tax committee releases policy framework

On January 11, the House Ways & Means Committee [released](#) a framework to outline how the Committee will address economic and health inequities. The framework is informed by a [report](#) released by the Committee that examines the history and intersection of federal policy and inequities in the U.S. Notably, the framework highlights retirement security policy priorities, including to:

- Strengthen and improve Social Security benefits
- Implement automatic IRAs and 401(k)s
- Make the Saver's Credit refundable
- Create child savings accounts

- Adjust the new provisions regarding part-time workers in 401(k) plans to require only two years of service
- Grant easier access for military spouses to save within their employer retirement plans
- Ensure that small businesses can take full advantage of the startup credit when participating in a multiple employer plan (MEP)

Ways & Means Chairman Richard Neal (D-MA) is a longtime champion of retirement issues, most recently introducing [H.R. 8696](#), the Securing a Strong Retirement Act, during the 116th Congress. Along with the Portman-Cardin retirement reform bill, the Securing a Strong Retirement Act is expected to form the basis of retirement policy discussions during the current 117th Congress.

DOL issues missing participant guidance

On January 13, the DOL issued new guidance relating to retirement plan missing participants. First, the DOL issued [Field Assistance Bulletin \(FAB\) 2021-01](#), which provides for a temporary non-enforcement policy with respect to transfers of the accounts of missing participants in defined contribution plans to the PBGC's missing participant program. The relief is available for fiduciaries of terminating defined contribution plans and for qualified termination administrators (QTAs) of abandoned plans.

The DOL released two other pieces of guidance related to missing and unresponsive participants:

1. A nonbinding "[best practices](#)" document for fiduciaries with respect to missing participants.
2. A "[compliance assistance release](#)" that describes the current process that the DOL's regional offices are using to audit plans for missing and unresponsive participants.

IRS proposes automatic disaster relief

On January 12, the IRS released [proposed regulations](#) that would automatically postpone certain time-sensitive, tax-related deadlines for 60 days in the case of a federally declared disaster. The IRC allows the IRS to announce individual postponements for a duration of up to 120 days or less.

The newly proposed regulations would do away with that lengthy process and create an automatic 60-day postponement in cases of federally declared disasters, ensuring that there would be at least 60 days to complete the tax-related acts covered by the guidance.

In addition to extending certain tax filing and tax payment deadlines, the postponements would include filing Form 5500 for retirement plans, completing rollovers, making retirement plan loan payments and other time-sensitive acts.

Several retirement bills introduced to end the 116th Congress

In December, before the end of the 116th Congress, several retirement bills were introduced ahead of what could be an active year for retirement policy in 2021.

On December 16, now-Senate Finance Committee Chair Ron Wyden (D-OR), with Sens. Ben Cardin (D-MD), Bob Casey (D-PA), Amy Klobuchar (D-MN) and Michael Bennet (D-CO), introduced [S. 5035](#), the [Encouraging Americans to Save Act](#). The bill would restructure the Saver's Credit and reinstate the myRA program.

Also on December 16, Rep. Donald Norcross (D-NJ) and Tim Walberg (R-MI) introduced [H.R. 8990](#), the Lifetime Income for Employees Act, to expand QDIA regulations. Under the bill, the current qualified default investment alternatives (QDIA) safe harbor regulations would be amended to allow (but not require) a QDIA, as a part of its mix of asset classes, to include a limited investment in a nonliquid annuity component which provides a guaranteed return on investment. The bill limits the default annuity component to no more than 50 percent of the periodic contributions, and no more than 50 percent of the total account value after a rebalancing.

On December 18, then-Senate Finance Committee Chairman Chuck Grassley (R-IA) and Sens. Maggie Hassan (D-N.H.) and James Lankford (R-OK) introduced the Improving Access to Retirement Savings Act, [S. 5064](#). The bill will build off the successful improvements of the SECURE Act so that more organizations and small businesses can participate in multiple employer plans (MEPs).

All three of the bill's provisions are also in [H.R. 8696](#), the Securing a Strong Retirement Act (116th Congress), also known as the House's SECURE 2.0 package, which was introduced in October. Along with the introduction of SECURE 2.0 and the Senate Finance hearing on retirement in December, this bill is another encouraging sign of momentum for retirement security legislation in 2021.

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References and source material used in this publication

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White House Memo: Regulatory Freeze Pending Review

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>

Extension of Temporary Relief from the Physical Presence Requirement for Spousal Consents Under Qualified Retirement Plans

<https://www.irs.gov/pub/irs-drop/n-21-03.pdf>

Committee demonstrates unprecedented commitment to tackling issues of inequity in Congress

<https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-democrats-release-framework-achieve-health-and-economic>

Something Must Change: Inequities in U.S. Policy and Society

https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/WMD%20Health%20and%20Economic%20Equity%20Vision_REPORT.pdf

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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Text of H.R. 8696, the Securing a Strong Retirement Act (116th)

<https://www.congress.gov/bill/116th-congress/house-bill/8696/text?r=5&s=1>

Field Assistance Bulletin (FAB) 2021-01

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-01>

EBSA: Missing Participants – Best Practices for Pension Plans

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans>

Compliance Assistance Release No. 2021-01

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/compliance-assistance-release-2021-01>

Mandatory 60-Day Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster

<https://public-inspection.federalregister.gov/2021-00185.pdf>

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Text of S. 5035, Encouraging Americans to Save Act (116th)

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

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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>

Text of H.R. 8990, Lifetime Income For Employees Act (116th)

<https://www.congress.gov/bill/116th-congress/house-bill/8990/text?r=6&s=1>

Text of H.R. 5064, Improving Access to Retirement Savings Act (116th)

<https://www.congress.gov/bill/116th-congress/senate-bill/5064/text?r=16&s=1>

Text of H.R. 8696, the Securing a Strong Retirement Act (116th)

<https://www.congress.gov/bill/116th-congress/house-bill/8696/text?r=5&s=1>

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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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NRM-19356AO (02/21)

