



# 2020 legislative and regulatory outlook for retirement plans

*By Mercer's Geoff Manville, Margaret Berger, Brian Kearney and Ellen Stone  
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Retirement plan sponsors have much to consider in the wake of reforms enacted last December by the Setting Every Community Up for Retirement Enhancement (SECURE) Act (PL 116-94). Bipartisan congressional interest in passing a new round of "next generation" retirement reforms remains high, although the challenges of a divided government, limited legislative vehicles and a short election-year legislative calendar make the outlook uncertain. Efforts to find agreement on how to help severely underfunded multiemployer plans will continue, though a deal is not expected this year.

With many SECURE Act reforms effective already, the Department of Labor (DOL) and IRS will likely focus on providing quick guidance and implementing regulations in 2020. Those efforts could further delay some other items that have been on the agencies' regulatory agendas for years.

This article examines legislative and regulatory trends so plan sponsors can anticipate changes.

## **Focus shifts to 'next generation' legislation**

The next crop of retirement reforms is contained in familiar and wide-ranging bipartisan bills previously offered in Congress. On the Senate side, Sens. Rob Portman, R-OH, and Ben Cardin, D-MD, continue to push their bill to overhaul many provisions affecting defined contribution (DC) and defined benefit (DB) plans. In the House, the Ways and Means Committee chairman is expected to introduce a broad measure with some provisions similar to the Portman-Cardin bill. Other House bills are pending that call for more targeted retirement reforms.

## Spotlight on Portman-Cardin bill

The leading Senate bill is the Retirement Security and Savings Act of 2019 ([S 1431](#)), introduced last May by Portman and Cardin. The two senators, both members of the Finance Committee, have ranked among the most prominent retirement legislators for years. The bill contains nearly 60 provisions for DC and DB plans, including proposals to:

- Simplify and consolidate DC plan participant notices
- Expand the IRS self-correction program
- Establish a new automatic-enrollment safe harbor with higher minimum default contributions
- Treat student loan payments as elective deferrals for purposes of matching contributions
- Increase catch-up contribution limits for participants age 60 or older
- Allow 403(b) plans to invest in collective investment trusts
- Ease rules governing the merger of 401(a) and 403(b) plans
- Harmonize hardship distribution rules for 401(k) and 403(b) plans
- Eliminate indexation of the Pension Benefit Guaranty Corp. (PBGC)'s variable-rate premiums
- Allow hybrid DB plans to project a variable interest-crediting rate for various compliance purposes
- Extend employers' ability to fund retiree health and life insurance benefits with surplus DB assets through 2029

In a Dec. 19 [statement](#) praising enactment of the SECURE Act, Portman said "the Senate Finance Committee should hold hearings and a markup on (the Retirement Security and Saving Act), and I will work closely with Sen. Cardin to move it forward." However, the panel has not indicated when it might take up the bill.

## Retirement a top issue for House Ways and Means Committee

In the House, Ways and Means Committee Chairman Richard Neal, D-MA, is expected to soon introduce a new version of the Retirement Plan Simplification and Enhancement Act of 2017 ([HR 4524](#)), a wide-ranging bill that bears some similarities to the Portman-Cardin measure. Among other provisions, the updated bill will likely retain proposals to:

- Make it easier for cash balance plans to grade pay credits by age and service

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- Extend by a month the DB plan contribution grace period to align it with the corporate tax return due date
- Exempt small balances in qualified DB and DC plans from required minimum distributions
- Allow plan fiduciaries to take economic, social and governance factors into account as part of the prudent determination of appropriate plan investments

Neal also plans to reintroduce the Automatic Retirement Plan Act (ARPA) of 2017 ([HR 4523](#)), which would require nearly all employers to maintain a 401(k) or 403(b) plan, although they wouldn't have to make contributions. The bill would also preempt future state and local auto-IRA requirements for private-sector workers. Existing state-run programs could continue to operate.

Neal wants to advance the two bills together, perhaps packaged with other legislation. ARPA's employer mandate will face opposition from Republicans and some in the retirement industry. However, a number of trade groups and individual businesses support the bill, arguing that a mandate is the only way to close the coverage gap.

**Other House bills.** Other stand-alone retirement bills — many with bipartisan support — are candidates for a larger retirement package, including language similar to a 2017 proposal ([HR 4610](#)) to facilitate electronic delivery of plan communications. New legislation has yet to be introduced, but supporters are confident a bill is coming that would put expanded e-delivery options into law, even though DOL is now finalizing [regulations](#) to the same end.

A variety of other bills embrace the goals in Neal's Retirement Plan Simplification and Enhancement Act and the Portman-Cardin proposal to increase retirement savings, expand plan coverage and ease plan administration. For example, bipartisan legislation ([HR 5676](#)) would increase the amount that plans can cash out to terminating employees from the current \$5,000 limit to \$8,000, subject to annual indexing. Other proposals under discussion — but not yet introduced — would address the challenges faced by plan sponsors in satisfying the fiduciary requirements to track down missing and unresponsive participants.

### No breakthrough expected on multiemployer plan issues

Lawmakers will continue to grapple with the increasingly urgent issue of how to shore up some large, severely underfunded multiemployer plans and the looming insolvency of the PBGC's multiemployer insurance program.

### Divergent approaches

A rescue plan from Neal, the Rehabilitation for Multiemployer Pensions Act ([HR 397](#)), and a companion Senate bill, the Butch Lewis Act ([S 2254](#)), would let endangered plans take out low-interest loans and grants from the Treasury. Neal's measure passed the House in July, with 29 Republicans joining all

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Democrats in supporting the bill. However, the Senate won't take up the legislation, since most Republicans object to its cost and are troubled by estimates that some plans will face insolvency in the coming decades, despite the aid.

Senate Republicans offered their own [white paper](#) in November, outlining an alternative. Their proposal would raise PBGC premiums, in part by requiring new stakeholder copayments from employers, unions and plan participants. The measure also would expand PBGC's authority to take responsibility for the "sick" portion of troubled plans.

### Talks to continue

With the House and Senate taking very different approaches to the problem, a bipartisan breakthrough is not expected this year, but discussions will continue. Key elements of the ongoing debate focus on higher PBGC premiums, hefty new penalties on employers withdrawing from plans, modified assumptions for measuring plan liabilities and an injection of federal funds into the PBGC.

Other suggestions under consideration involve cutting benefits in underfunded plans. A 2014 law, the [Multiemployer Pension Reform Act](#), allows troubled plans to seek government permission to trim benefits if the reductions would extend the life of the plan. While a number of these reductions have already been [approved](#), the law has faced resistance from labor unions and retiree organizations.

### Relief for coal miners

The December 2019 spending package includes provisions from Senate legislation ([S 27](#)) to help certain struggling pension and health plans for coal miners. The measure transfers additional funds to bolster these benefits from other government programs for the mining industry. Costs are also offset in part by reducing the minimum age for in-service distributions from DB pension and 457(b) plans from age 62 to 59-1/2. This may increase the pressure on lawmakers to deliver relief for more multiemployer plans.

### PBGC premium and funding reforms sought

The PBGC's multiemployer insurance program is [projected](#) to run out of money in 2025. Concerns about the perilous state of that program will complicate efforts by single-employer plan sponsors to roll back rapidly escalating premiums and take premium increases "off budget."

**Budget integrity bill.** Plan sponsor groups are still pushing for passage of the Pension Budget Integrity Act ([HR 4035](#)). This measure would end the federal budget practice of "double counting" PBGC premium hikes as revenue for both the agency and general government spending. Backers of the bill, including Mercer, contend that it will remove an incentive that has encouraged Congress to raise premiums unnecessarily to pay for unrelated costs.

**President's budget plan.** President Trump's fiscal 2021 [budget plan](#) recognizes the relatively healthy condition of PBGC's insurance program for single-employer plans and recommends a three-year freeze

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on indexing premium rates for those plans. The budget plan also proposes, however, to increase the per participant premium cap for single-employer plans to \$900 per participant to target employers that represent a greater risk to the PBGC. For multiemployer plans, the president is calling for premium increases totaling \$26 billion over 10 years.

Congress is unlikely to act on the president's proposals, and lawmakers say they are not currently interested in more premium hikes for single-employer pension plans. But plan sponsors worry that could change at some point as Congress looks for ways to fund general government spending and/or decides to tap the relatively rich single-employer program to help the multiemployer system.

**Other proposals.** The Portman-Cardin bill includes a provision to eliminate inflationary indexing of single-employer variable-rate premiums, a feature many actuaries and other practitioners consider inappropriate and unsound. Employers are also asking lawmakers to address high PBGC single-employer premiums, advocating for reductions in both the flat-rate and variable-rate premiums. Whether Congress responds with legislation remains to be seen.

In addition, a number of companies are suggesting Congress extend the pension funding stabilization discount rates, currently scheduled to start phasing out in 2021. Some sponsors are also urging that any relief include help in addressing very large pension liabilities. These proposals have no obvious path forward, but they would raise revenue (by decreasing deductible contributions to pension plans). So Congress may revisit the proposals when it takes up "must pass" health policy legislation in May that will need revenue offsets.

### Financial transaction tax

Several Democratic presidential candidates and members of Congress have expressed an interest in implementing a financial transaction tax. A number of these proposals, including a bill ([S 1587](#)) introduced by Sen. Bernie Sanders, I-VT, would tax trades of stocks, bonds and derivatives in order to limit speculation or high-frequency trading and raise money for various legislative priorities. The levies would also apply, however, to activity within DB and DC retirement plans and other tax-advantaged accounts.

Passage of a financial transaction tax is all but impossible this year and unlikely in the foreseeable future. However, the potential impact on retirement plans is so substantial that some plan sponsor groups are urging members to weigh in against the idea with policymakers.

### Regulatory focus on SECURE Act

The SECURE Act tasks both Treasury/IRS and DOL with regulatory action, so employers should expect some significant guidance from both agencies, particularly for provisions with immediate effect. While SECURE Act guidance is a priority, regulators are also working to wrap up some other retirement-related projects.

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### IRS

**SECURE Act.** In meetings with employer groups, Treasury/IRS officials have said they are forming internal working groups to determine which SECURE Act provisions to tackle first, with a focus on filing deadlines, notice requirements and employers' administrative duties. While agency officials have not shared their to-do lists, a few items seem like good bets for guidance this year:

- **Distributions after childbirth or adoption.** Plans can start offering the new qualified birth or adoption distributions this year. However, the statute left many unanswered legal and practical questions, so some employers may be reluctant to offer the distributions without IRS guidance.
- **Nondiscrimination testing relief.** The new nondiscrimination testing relief for DB and DC plans with closed groups of participants is one of the SECURE Act's more high-profile provisions. The rules are complex and broad — providing relief for benefits, rights and features testing; cross-testing; and minimum participation. IRS may decide to issue guidance this year, since employers can start using the relief immediately. But the statute left a number of highly technical questions that IRS may not want to address hastily. The agency might instead choose to let employers rely on a good-faith interpretation of the law until comprehensive guidance is proposed.
- **Required minimum distributions.** The SECURE Act raised the age for required minimum distributions (RMDs) from 70-1/2 to 72 for individuals turning 70-1/2 in 2020 or later. IRS has already issued guidance ([Notice 2020-6](#)) to financial institutions that mistakenly issued RMD notices to individuals turning age 70-1/2 in 2020. Additional guidance is needed on several technical questions raised by the statute. But IRS might not view issuing additional RMD guidance as a priority for this year, since the first distributions under the new law won't be made until 2022 (for participants turning age 72 in 2021).
- **Open multiple-employer plans (MEPs).** The SECURE Act directs IRS (and DOL) to issue guidance on the new open MEPs — called "pooled employer plans" — that employers can join starting in 2021. IRS has a host of issues to address for the plans, but may prioritize implementation-related items — such as the registration requirements for pooled plan providers, the administrative responsibilities of those providers and the model plan document required by the statute. Other guidance for pooled plans could take longer. The statute recognizes that possibility and allows employers and pooled plan providers to comply in good faith with law's requirements until regulatory guidance becomes available.
- **In-kind distribution of 403(b) custodial accounts.** The SECURE Act also requires IRS to issue guidance by June on the distribution of 403(b) custodial accounts upon plan termination. The law allows accounts from terminated plans to remain with custodians until actually paid to the participant or beneficiary. The guidance will be effective retroactively to Dec. 31, 2008.

**Other guidance.** Treasury/IRS are also continuing to work through other regulatory projects, including:

- Regulations relating to the 2017 Tax Cuts and Jobs Act's extended rollover deadline for qualified plan loan offset amounts
- Additional guidance on student loan repayment and qualified retirement plans
- Changes to the Employee Plans Compliance Resolution System's requirements for correcting overpayments
- Guidance on uncashed checks and other issues related to missing participants

The agency might also be able to finalize proposed rules updating the mortality tables for RMDs. But other, heftier items — such as final rules under Section 417(e) updating the minimum present value requirements for lump sums and other accelerated payment forms — may have to wait.

## DOL

**SECURE Act.** DOL officials indicate that quickly getting guidance out on the following SECURE Act reforms is a top priority:

- **Open MEPS.** DOL, like IRS, has regulations on its plate for pooled employer plans — which will likely require coordination between the agencies. The statute directs DOL, like IRS, to develop guidance on the administrative responsibilities of pooled plan providers. DOL is also tasked with developing rules for transferring plan assets attributable to a noncompliant employer (or taking another action DOL deems appropriate), as well rules covering the noncompliant employer's liability to its employees. The statute allows providers and employers to comply in good faith until DOL issues guidance.
- **Lifetime income disclosures.** Under the SECURE Act's new lifetime income disclosure requirements, DC plans will have to provide annual benefit statements showing the annuity equivalent of a participant's account using DOL-prescribed assumptions. The law gives DOL a year to issue interim final rules, prescribe assumptions for converting account balances to lifetime income streams and issue a model disclosure. If DOL sticks to this timeline, guidance should be available by year-end at the latest.
- **Safe harbor rule for selecting lifetime income provider.** Also high on DOL's priority list are regulations for the SECURE Act's fiduciary safe harbor for selecting guaranteed lifetime income contracts. The new safe harbor is intended to address concerns about the existing regulatory safe harbor rule that have made DC plans reluctant to include these options in their investment lineups.
- **Consolidated Form 5500 for similar DC plans.** Although this provision is effective for plan years beginning after Dec. 31, 2021, DOL officials anticipate early demand for guidance. The SECURE Act

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directs both DOL and IRS to implement a consolidated Form 5500 for similar DC plans. Plans eligible for consolidated filing must have the same trustee, named fiduciary (or named fiduciaries), administrator, plan year, and investments or investment options for participants and beneficiaries. The group can include a DC plan not subject to Title I of ERISA — such as a governmental or church plan — if the same person carries out each specified function for all plans in the consolidated filing.

**Other guidance.** DOL may issue more guidance this year on retirement plan notices. Plan sponsors welcomed last October's [proposed regulations](#) on electronic delivery of notices, and DOL hopes to issue final regulations this year. Last year's proposal also included a request for information on additional ways to make retirement plan disclosures more effective. DOL could issue more guidance reflecting the responses to that request — either as part of the final e-delivery regulations or in separate guidance.

Whether DOL will move forward with a new investment adviser fiduciary rule is unclear. The [2016 rule](#) appeared to be dead after the 5th US Circuit Court of Appeals vacated the regulation in 2018 (*Chamber of Commerce v. US Dep't of Labor*, 885 F.3d 360 (5th Cir. 2018)). But the rule reappeared on DOL's 2018 regulatory agenda and remains on the latest [one](#), which suggests DOL is reworking the rule in light of the 5th Circuit opinion. Some people speculated that DOL would coordinate a new rule with the SEC's "best interest" [package](#) of revised investment adviser rules. But that didn't happen, leaving the potential new DOL rule in doubt.

### PBGC

PBGC recently ticked off a big ticket piece of guidance: [final regulations](#) updating the rules for premiums, ERISA 4010 filings and 4043 event reporting. It's unclear what, if anything PBGC will take on this year. Some items that are on PBGC's [2019 fall agenda](#) won't be of much interest to employers — for example, updated rules on benefit payments from trusteed plans and the recoupment of overpayments.

One controversial item that's of interest to many employers is a final rule updating the present value rules for *de minimis* lump sums from terminated single-employer plans. Some employer plans still use PBGC's interest rates to determine minimum lump sums. The [proposal](#) would create new fixed immediate and deferred rates for some of these employer plans. However, many sponsors and practitioners, [including Mercer](#), have urged PBGC to rethink its proposal. If PBGC is persuaded, this could delay final rules.

## Related resources

### Non-Mercer resources

- [DOL 2021 budget](#) (White House, Feb. 10, 2020)
- [Final PBGC rule: Miscellaneous clarifications, corrections and improvements](#) (Federal Register, Feb. 4, 2020)
- [HR 5676, Retirement Plan Modernization Act](#) (Congress, Jan. 24, 2020)

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- [PL 116-94, SECURE Act](#) (Congress, Dec. 20, 2019)
- [HR 397, Rehabilitation for Multiemployer Pensions Act of 2019](#) (Congress, Dec. 18, 2019)
- [Multiemployer Pension Recapitalization and Reform Plan](#) (Senate Finance Committee, Nov. 20, 2019)
- [Press release on PBGC 2019 Annual Report](#) (PBGC, Nov. 18, 2019)
- [Proposed IRS rule: Updated life expectancy and distribution period tables for determining minimum required distributions](#) (Federal Register, Nov. 8, 2019)
- [Proposed DOL rule: Default electronic disclosure by employee pension benefit plans under ERISA](#) (Federal Register, Oct. 23, 2019)
- [Proposed PBGC rule: Lump sum payment assumptions](#) (Federal Register, Sept. 30, 2019)
- [HR 4035, Pension Budget Integrity Act](#) (House Rules Committee, July 25, 2019)
- [S 1587, Inclusive Prosperity Act of 2019](#) (Congress, May 22, 2019)
- [S 1431, Retirement Security and Savings Act of 2019](#) (Congress, May 13, 2019)
- [S 27, American Miners Act of 2019](#) (Congress, Jan. 3, 2019)
- *Chamber of Commerce v. US Dep't of Labor*, 885 F.3d 360 (5th Cir. 2018)
- [HR 4610, Receiving Electronic Statements to Improve Retiree Earnings Act](#) (Congress, Dec. 11, 2017)
- [HR 4524, Retirement Plan Simplification and Enhancement Act of 2017](#) (Congress, Dec. 1, 2017)
- [HR 4523, Automatic Retirement Plan Act of 2017](#) (Congress, Dec. 1, 2017)
- [Multiemployer Pension Reform Act of 2014](#) (PBGC, Nov. 30, 2017)
- [Proposed IRS rule: Update to minimum present value requirements for defined benefit plan distributions](#) (Federal Register, Nov. 25, 2016)
- [Final DOL rule: Definition of the term "fiduciary"; conflict of interest rule-retirement investment advice](#) (Federal Register, April 8, 2016)

## Mercer Law & Policy resources

- [PBGC regulations put the kibosh on spin-term premium reductions](#) (Feb. 10, 2020)
- [SECURE Act leaves questions about distributions for birth or adoption](#) (Jan. 28, 2020)
- [SECURE Act set to become law](#) (Dec. 19, 2019)
- [Mercer urges PBGC to consider alternatives to old lump sum rates](#) (Dec. 9, 2019)
- [DOL proposes new electronic delivery rule for retirement plan notices](#) (Nov. 1, 2019)
- [PBGC proposal would end publication of old lump sum rates](#) (Sept. 30, 2019)
- [Bill would end government double counting of PBGC premium hikes](#) (Aug. 21, 2019)
- [Multiemployer pension rescue plan passes House, but Senate outlook dim](#) (Aug. 2, 2019)
- [Senate reintroduces expansive retirement bill](#) (May 20, 2019)

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