



Retirement plan items slated for work on latest regulatory agenda

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The spring 2021 update to the Biden administration's [regulatory agenda](#) includes several items of interest to retirement plan sponsors. The semiannual update lists items on each agency's to-do list. This article highlights some of the retirement plan items on the updated agendas for the Internal Revenue Service (IRS), the Department of Labor (DOL)'s Employee Benefits Security Administration (EBSA) and the Pension Benefit Guaranty Corp. (PBGC), but omits some routine items. The agendas generally specify anticipated completion dates within the next year; however, those dates are aspirational — unless Congress or the White House has set deadlines for a particular piece of guidance. The agencies have placed certain items on their [long-term action lists](#), so no movement is expected on those items during the next year.

IRS

The IRS agenda includes a number of proposed regulations that have appeared on previous agendas and are unlikely to see much action until the agency has issued guidance on the American Rescue Plan Act's relief for single-employer and multiemployer plans.

Proposed regulations

Some familiar items relating to employer-sponsored retirement plans include proposals for:

- Determining [governmental plan status](#) under Internal Revenue Code Section 414(d) and [church plan status](#) under 414(e)
- Providing individual statements to [terminated vested participants](#)
- Addressing nondiscrimination testing, Section 411(b) backloading rules, plan termination rules, Section 436 benefit restrictions and top heavy rules for [statutory hybrid plans](#)

Newer items on the agenda include proposed regulations on:

- Failures by participating employers in [pooled employer plans](#) to satisfy the plan qualification requirements (the “one bad apple” rule)
- Changes made by the Setting Every Community Up for Retirement Enhancement (SECURE) Act ([Pub. L. No. 116-94](#)) to 401(k) plan [safe harbors and participation rules](#) for long-term, part-time employees
- Guidance on [required minimum distributions](#) (RMDs) under Section 401(a)(9), reflecting the SECURE Act’s changes to the RMD rules and statutory changes to the rollover requirements made since regulations were first issued in 1995
- [Nondiscrimination testing relief](#) for closed defined benefit (DB) plans reflecting the SECURE Act’s relief under Sections 401(a)(4), 401(a)(26) and 410(b)
 - These proposed regulations presumably would replace IRS’s 2016 proposal.

Final rules

The IRS agenda includes final rules for the following items, though they have been on the agenda in some form for years and may not be top agency priorities:

- Changes to the IRS [Form 8955-SSA](#) for reporting [terminated vested participants](#)
- Updates to the Section 417(e) [minimum present value rules](#) for changes made by the Pension Protection Act of 2006 (PPA)
- Application of the normal retirement age regulations to [governmental plans](#)

Long-term actions

IRS has moved several noteworthy items to its long-term action list, including proposed regulations on:

- [Income inclusion](#) and [calculation of taxes](#) under Section 409A
- Changes to the [minimum vesting standards](#) for qualified plans
- Allocation and use of [forfeitures in qualified plans](#)
- Updated guidance for single-employer DB plans relating to the [determination of benefits and liabilities](#) for minimum funding purposes, the use of funding balances, and Section 436 benefit restrictions
- [Affiliated service groups](#) under Section 414(m)
- [Indian tribal government plans](#)
- [Employee stock ownership plans](#)

EBSA

Proposed rules

EBSA's agenda includes several retirement-plan proposals:

- [Form 5500](#) changes reflecting the SECURE Act's provision for a consolidated annual report for similar defined contribution (DC) plans for plan years beginning after Dec. 31, 2021
 - To meet the Jan. 1, 2022, statutory implementation deadline, EBSA set an anticipated publication date of June 2021 for the proposed regulation, which didn't happen
- Changes to two Trump-era rules on considering [environmental, social and corporate governance \(ESG\) factors](#) in investment and proxy voting, following an EBSA review
 - President Biden's executive orders on climate change encourage DOL to issue a notice of proposed rulemaking suspending, revising or rescinding those rules by September 2021
- A new definition of [investment advice fiduciary](#)
 - This follows DOL's announcement in prohibited transaction exemption [2020-02](#) that the agency was conducting outreach on this topic

Final and interim final rules

The EBSA agenda includes a new final rule on [lifetime income disclosures](#) as required by the SECURE Act. EBSA anticipates publishing a final rule in July before last year's interim final rule takes effect on Sept. 18, 2021. The agenda also includes two interim final rules (which have been on the agenda for several years):

- Restatement of the [Voluntary Fiduciary Correction Program](#) (VFCP), originally adopted in 2002 and last revised in 2006
- Amendments to DOL's program for [abandoned individual account plans](#), originally proposed in 2012, removed from the agenda in 2019 and now back on it

Long-term actions

DOL has one long-term action on its list affecting retirement plans: [revisions to the Form 5500](#) in addition to the consolidated return for similar DC plans noted above. These changes would modernize Form 5500's financial and annual reporting requirements and make its investment and other information more data-mineable.

PBGC

PBGC's agenda lists several proposals, all of which have previously appeared on the agenda, including:

- Determination of guaranteed benefits for [multiemployer plan participants](#)
- Codification of PBGC's policy for [assessing and waiving penalties](#) for failure to provide certain required notices

- [Miscellaneous updates](#), clarifications and improvements, including SECURE Act changes to premium rates for cooperative and small-employer charity (CSEC) plans

The agenda includes a single new interim final rule that will provide guidance on the [special financial assistance](#) for multiemployer plans provided under the American Rescue Plan Act (ARPA) of 2021. ARPA requires PBGC to issue these rules by July 9.

No long-term actions

PBGC currently has no items listed as long-term regulatory projects.

Related resources

Non-Mercer resources

- [IRS regulatory agenda](#) (Office of Management and Budget, June 11, 2021)
- [DOL regulatory agenda](#) (Office of Management and Budget, June 11, 2021)
- [PBGC regulatory agenda](#) (Office of Management and Budget, June 11, 2021)

Mercer Law & Policy resources

- [Biden, lawmakers seek to reverse Trump-era ESG investing, proxy rules](#) (May 25, 2021)
- [Pension funding relief, union plan reforms in aid bill near enactment](#) (March 10, 2021)
- [Investment advice PTE takes effect as DOL hints at more changes](#) (Feb. 17, 2021)
- [IRS issues Q&As on SECURE Act safe harbor 401\(k\) plan changes](#) (Dec. 21, 2020)
- [DOL takes first stab at SECURE Act's DC plan lifetime income disclosures](#) (Sept. 1, 2020)
- [SECURE, CARES acts change rules on required minimum distributions](#) (April 7, 2020)
- [SECURE Act set to become law](#) (Dec. 19, 2019)
- [IRS proposes relief from 'one bad apple' rule for DC multiple-employer plans](#) (July 3, 2019)

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