2022 legislative, regulatory and judicial outlook for retirement plans

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March 15, 2022

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Retirement plan sponsors can expect continued evolution of the legislative and regulatory landscape in 2022, shaped by activity in Congress, the Biden administration and federal courts. Before the upcoming midterm elections, Congress appears poised to move forward with broad, bipartisan "SECURE 2.0" legislation, building on the framework of the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. The Department of Labor (DOL) and IRS will continue working on guidance to implement the SECURE Act, while proceeding with several regulatory projects central to the Biden administration's policy goals. One of these projects involves updating regulations on fiduciary considerations for environmental, social and governance (ESG) factors in plan investment decisions. The trajectory of the many excessive-fee claims percolating through the federal courts may change after the US Supreme Court's recent ERISA ruling. This GRIST summarizes expected 2022 legislative, regulatory and judicial developments affecting retirement benefits.

Legislative outlook

After the president's climate and social spending package — the Build Back Better Act (BBBA) — died in the Senate last December, Democrats are reevaluating what parts of the legislation can pass this year. Some BBBA proposals could get folded into a budget reconciliation package that the Senate can pass with a simple majority instead of the 60 votes usually needed to overcome a filibuster. But with no party consensus in sight and Congress tackling other issues in a compressed election-year calendar, those hopes appear to be fading. However, revenue-raising provisions in the House-passed BBBA that could get revived include proposals to:

- Ban Roth conversions of after-tax contributions in employer retirement plans
- Cap combined defined contribution (DC) plan and individual retirement account (IRA) balances for high earners

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- Set new restrictions on conversions and rollovers to Roth accounts
- Impose a new minimum corporate tax that could hit large defined benefit (DB) pension plan sponsors

At the same time, key lawmakers in both parties are intent on enacting broad, bipartisan SECURE 2.0 legislation this year that builds on the SECURE Act. Three major bills — two in the House, the Securing a Strong Retirement Act (SSRA) (HR 2954) and the Retirement Improvement and Savings Enhancement (RISE) Act (HR 5891), and one in the Senate, the Retirement Security and Savings Act (RSSA) (S 1770) — share many similar provisions aimed at expanding plan coverage, boosting savings, increasing lifetime income opportunities and easing plan administration.

As these bills move through the legislative process, they will undergo some changes. Those changes could incorporate additional proposals under discussion, such as requiring spousal consent for DC plan distributions, allowing small DC plan distributions without penalty for emergencies and permitting DC plan sponsors to establish an annuity component in default investments. Ongoing debates over pension risk transfers, ESG investing, electronic disclosure rules and plan sponsors' duties to find missing participants may flare up along the way.

The legislative path forward won't be easy as election season heats up and Congress heads home early to campaign. Nonetheless, strong bipartisan support in both chambers suggests that a final package could become law this year, possibly during a post-election lame-duck session.

Prospects fading for Democrats' budget package

With slim majorities on the line in the upcoming midterm elections, Democrats are under pressure to revive and pass some parts of the BBBA this year under budget reconciliation rules. The retirement reforms in the expansive bill passed by the House in November have broad support across the party and could help offset the cost of a smaller measure. Prospects for even a scaled-down bill are diminishing as time goes by. Nonetheless, if Democrats try again, the following BBBA provisions could be in play — though they are unlikely to win enough Republican support to advance outside of the budget reconciliation process, and the effective dates would almost certainly change:

- **Roth conversions of after-tax contributions prohibited.** Conversions of employee after-tax contributions in qualified retirement plans (and nondeductible contributions in IRAs) into Roth-designated accounts or Roth IRAs would be prohibited, starting in 2022.
- **All Roth conversions banned for high earners.** Roth conversions — including ordinary rollovers — would be prohibited for high-income taxpayers (individuals earning at least $400,000–$450,000, depending on their filing status), starting in 2032.
- **Contribution limit and mandatory distributions for large account balances.** High-income taxpayers with combined DC plan and IRA balances exceeding $10 million (annually indexed) could not make additional contributions to a traditional or a Roth IRA, starting in 2029. These individuals would also face mandatory minimum distributions for accounts exceeding $10 million (annually

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indexed) and immediate distributions from Roth accounts if aggregate balances in tax-preferred accounts exceed $20 million (annually indexed).

- **Employer reporting duties.** Beginning in 2029, employers would have to report DC account balances exceeding $2.5 million (annually indexed) to IRS, regardless of the individual's employment status or income level.
- **Corporate minimum tax.** Beginning in 2022, a 15% minimum corporate income tax would apply to entities with accounting income exceeding $1 billion. This provision would hit DB plans sponsored by affected employers and would effectively eliminate deductions for plan contributions. However, any final measure could reflect a Senate proposal exempting DB and other post-retirement plans from the tax.

Focus shifting to SECURE 2.0 reforms

The House is expected to pass a SECURE 2.0 package within weeks that combines elements of the SSRA (SSRA), which passed the Ways and Means Committee, and the RISE Act, which cleared the Education and Labor Committee. The bills, which passed unanimously, reflect the committees' separate jurisdictions over the Internal Revenue Code (IRC) and ERISA, respectively. The bills also share many provisions with each other and the Senate's RSSA, including:

- Treating student loan payments as elective deferrals eligible for employer matching contributions
- Expanding the IRS self-correction program
- Increasing catch-up contribution limits for participants age 60 or older
- Simplifying and consolidating DC plan participant notices
- Allowing 403(b) plans to invest in collective investment trusts
- Increasing the starting age for required minimum distributions
- Expanding coverage for part-time workers
- Encouraging use of qualified longevity annuity contracts (QLACs)
- Creating a "lost and found" database to help locate retirement accounts

More Roth savings sought. Tax provisions in the SSRA designed to raise revenue would direct more workplace savings into after-tax Roth accounts. These provisions would mandate Roth treatment for catch-up contributions and allow employers to let employees elect to treat some or all of their matching contributions as Roth contributions under 401(k), 403(b) or governmental 457(b) plans. These changes are likely to land in a final House product.

Scrutiny of pension risk transfers proposed. The SECURE Act created a safe harbor for DC plan fiduciaries selecting annuity providers, but the safe harbor doesn't apply to DB plans, whose sponsors

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sometimes purchase annuities to outsource pension risk. These pension risk transfers have drawn fire from some policymakers who say that participants' benefits are potentially at risk if the annuity provider goes out of business or otherwise cannot meet its contractual obligations.

The RISE Act directs DOL to review how ERISA's fiduciary standards apply to DB sponsors undertaking such transfers. DOL would have to determine whether its current guidance for DB plan fiduciaries — Interpretive Bulletin 95-1 — needs amending and report the findings to Congress, including an assessment of any risk to participants. The provision is likely to survive in final House legislation. In any event, DOL appears inclined to take another look at the related fiduciary standards, though whether the department might seek changes without prompting from Congress is far from clear.

Additional House legislation in the mix

Other bipartisan House legislation that could make its way into a package before a House vote includes a bill that would allow qualified default investment alternatives (QDIAs) in DC plans to include an annuity component worth up to 50% of a participant's total account value. A separate proposal from Democrats would effectively require new eligible automatic contribution arrangements (EACAs) and safe harbor qualified automatic contribution arrangements (QACAs) to conduct automatic reenrollment at least every three years.

Help for DB plans in Senate bill

In the Senate, legislation containing much of the RSSA may get approved before August by the Finance Committee, whose members include the bill's sponsors Ben Cardin, D-MD, and Rob Portman, R-OH. A handful of RSSA provisions not included in the House bills seek to help DB plans, including:

- **No indexing of PBGC variable-rate premiums.** The bill would end inflation increases to Pension Benefit Guaranty Corp. (PBGC) variable-rate premiums, which are a specified percentage of a plan's unfunded vested benefits. Variable premiums would be frozen at the 2018 level of $38 per $1,000 of unvested benefits. The inflationary indexing, in place since 2014, has been widely criticized as theoretically unsound.
- **Projected interest-crediting rate.** To demonstrate compliance with applicable IRC rules like the benefit limitations under Section 415 and the accrual rules of Section 411, statutory hybrid plans that credit interest at a variable rate could use a reasonable projection of the actual interest-crediting rate — not to exceed 6% — rather than the previous year's rate, as IRS auditors have sometimes required.
- **Timing of alternative interest rates.** IRC Section 417(e) defines permissible interest rates and mortality tables for determining minimum lump sums. Under the bill, plan sponsors that determine lump sums using an alternative (but still 417(e)-permissible) interest rate to provide "greater of" lump sums could change the alternative rate's lookback month under the same rules that apply to the plan's 417(e) rate.

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- **Mortality.** The mortality tables Treasury sets for sponsors to determine minimum funding requirements and minimum lump sums couldn't use future mortality improvements greater than 0.78% at any age, or another figure Treasury determines is consistent with the overall rate of mortality improvement projected by the Social Security Administration.

More Senate proposals coming

The Finance Committee will almost certainly make some changes to the RSSA and may add other proposals, including legislation (S 1870) allowing DC plan participants to access small amounts of their accounts for emergency uses without any penalty. In addition, the Senate Health, Education, Labor and Pensions (HELP) Committee likely will again propose legislation that seeks, among other reforms, to apply the IRC's and ERISA's spousal consent rules to DC plans on essentially the same terms that already apply to DB and money purchase pension plans.

Bills passed by the Finance and HELP committees will need to be reconciled with each other and eventually with House-passed legislation before becoming law. Whether the Senate passes its own bill first or a final measure reflecting negotiations with the House remains to be seen. However, finding a legislative vehicle for passing SECURE 2.0 legislation in the chamber could be a challenge. Retirement bills don't often pass the Senate on stand-alone basis, but a post-election lame-duck measure tying up legislative loose ends could carry a SECURE 2.0 package over the finish line.

Key issues as lawmakers work to reconcile differences

Meanwhile, House and Senate lawmakers and staff continue to discuss how to resolve some discrepancies and open questions in the bills, including electronic disclosure provisions. The SSRA would require delivering paper copies of annual benefit statements to participants, unless they have affirmatively consented to electronic delivery or have access to the employer's electronic information system as an integral part of their job duties. The RISE Act and the RSSA are both silent on electronic disclosure. However, the House Education and Labor Committee and Senate HELP Committee Democrats are interested in further action on this issue as participant groups continue to advocate for limiting DOL's recent regulations on defaulting participants into electronic disclosure. The department recently defended its electronic disclosure rules in a report to Congress.

Proposals in all three bills to establish a government-run retirement savings lost-and-found registry are also generating discussion and suggestions from plan sponsor groups. None of the bills addresses long-standing inconsistencies among IRS, DOL and PBGC on the necessary steps to try locating missing participants, and none provide a statutory safe harbor for employer plan sponsors.

Regulatory outlook

Both IRS and DOL have packed regulatory agendas, and sponsors should expect several significant regulatory actions this year.

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SECURE Act

Much of IRS's and DOL's anticipated regulatory activity focuses on changes made by the SECURE Act. Already this year, IRS has proposed an update to the regulations under IRC Section 401(a)(9) to reflect the SECURE Act's change to the triggering age — from 70-1/2 to 72 — for required minimum distributions and new restrictions on life expectancy distributions to DC plan beneficiaries. Both agencies' agendas still have several significant regulatory actions for the SECURE Act.

Nondiscrimination testing relief. The SECURE Act provides nondiscrimination testing relief for DB plans that are fully or partially closed to new entrants, DC plans providing benefits designed to make up for reduced or frozen DB plan benefits, and the IRC's minimum participation requirement. IRS's fall 2021 regulatory agenda indicates that these regulations are in the final stage. IRS apparently intends to include the SECURE Act changes in a final version of its 2016 proposed regulations, which offered relief from a variety of testing requirements.

While that 2016 proposal and the SECURE Act's relief share some similarities, the two also have significant differences. For example, the SECURE Act allows testing a closed DB plan on an aggregated basis with DC plan matching contributions or with employee stock ownership plan benefits and permits aggregating plans with different plan years. However, the 2016 proposal didn't include these options. In addition, the SECURE Act's relief from the minimum participation requirement is entirely new. These are novel and complicated issues that arguably merit a separate rule-making proposal with a notice and comment period.

Safe harbor 401(k) and 401(m) plans. The SECURE Act made several changes to the rules for safe harbor 401(k) and 401(m) plans. These changes include increasing the maximum default rate for auto-enrollment plans, eliminating the notice requirement for certain plans that provide for safe harbor nonelective contributions (NECs) and allowing employers to add safe harbor NECs after the start of the plan year. IRS's regulatory agenda indicates that proposed regulations could arrive as early as March of this year.

Other 401(k) plan changes. The SECURE Act expanded the 401(k) plan participation rules for long-term part-time employees, allowed participants to transfer lifetime income options being eliminated from a plan's investment lineup, and permitted penalty-free withdrawals after the birth or adoption of a child. IRS intends to include guidance on these changes in the same regulatory package as the safe harbor plan rules.

Pooled employer plans. The SECURE Act authorized a new kind of multiple-employer plan — known as a pooled employer plan (PEP) — for unrelated employers with no common business nexus. The statute contemplates regulations on several operational issues, including a PEP provider's administrative duties, termination of noncompliant PEPs and removal of participating employers that fail to comply with the IRC's plan qualification requirements. But how close DOL is to proposing these regulations is unclear. The fall 2021 regulatory agenda says DOL intends to consult with stakeholders (including employers, employees and plan service providers) to "explore areas where regulatory or other guidance

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would facilitate the establishment of pooled employer plans." In the meantime, the SECURE Act allows PEP providers and employers to operate based on a good-faith interpretation of the statutory language.

Lifetime income disclosures. DOL is also working on final rules relating to the SECURE Act's requirement that DC plans disclose the annuity equivalent of participants' accounts at least once every year. DOL issued an interim final rule (IFR) on the requirement in August 2020 and indicated it planned to release a new final rule before the IFR took effect in September 2021. But that deadline has passed, and the agency has been tight-lipped on the timing and details of the final rule. DOL posted informal Q&A guidance on its website last summer acknowledging stakeholder concerns about differences between the IFR to the final rule, but declined to say whether plans would have a transition period to comply with the new rule.

Participant-directed plans must give the first lifetime income disclosure by the due date for the quarterly benefit statement for the second quarter of 2022, which calendar-year plans must provide by Aug. 14. Plans that aren't participant-directed must include the disclosures in the annual statement for the first plan year ending after Sept. 18, 2021 — meaning calendar-year plans have until Oct. 15, 2022.

New investment advice fiduciary rule

DOL is currently working on a new definition of an investment advice fiduciary under ERISA, including amendments to existing prohibited transaction exemptions and new exemptions. The new rule will likely align with DOL's interpretation of the current regulatory definition articulated in the preamble to Prohibited Transaction Exemption (PTE) 2020-02. Arguably the most controversial aspect of that interpretation is a statement that a one-time recommendation to roll over a retirement plan account could be fiduciary advice. This reverses DOL's long-standing position on rollover recommendations and, as explained below, has led to two separate lawsuits. In a recent American Academy of Actuaries webcast, a DOL representative said this rule-making is one of the agency's top priorities.

ESG considerations for plan investments

Another DOL priority involves the final regulation on fiduciary considerations for selecting plan investments and related rules on proxy voting and exercising other shareholder rights. The goal is to make clear that ERISA fiduciaries can — and in some cases, may be required to — take ESG factors into account when making investment decisions. DOL issued a proposed rule on Oct. 14, 2021, and has said it expects to finish analyzing the large volume of public comments this spring.

At the same time, the agency is actively seeking stakeholder input on the risk climate change poses to retirement savings. In a recent request for information (RFI), DOL asked about the impact of climate change on a variety of savings arrangements, including ERISA plans, IRAs and the federal government's Thrift Savings Plan. For ERISA plans, DOL specifically asked for information on what sources plan fiduciaries use to evaluate climate-related financial risks, input on whether annuities and other lifetime income products mitigate participants' climate change risks, and stakeholder views on whether and how DOL should collect plan information on climate-related financial risks. The RFI also questions whether plan administrators should be required to report on their efforts to manage climate-related risks.

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Comments are due by May 16, 2022. DOL is not accepting additional comments on the proposed ESG rules, so any guidance that DOL develops in response to the RFI will likely be separate from the final ESG rule.

Updated Form 5500

DOL, IRS and PBGC are working to finalize last year's proposed updates to the Form 5500 series, which would take effect for 2022 plan-year filings. The proposal contains several significant changes, including a new group filing alternative for certain single-employer DC plans and a new schedule for multiple-employer plan reporting. The proposal also demonstrates IRS's renewed focus on compliance issues, adding questions on whether a plan has relied on aggregation to pass minimum coverage and nondiscrimination testing and what testing method a plan uses to pass the actual deferral percentage (ADP) and actual contribution percentage (ACP) tests. Employers with preapproved plan documents would also have to report the serial number and date of their opinion letters. These questions are intended to help IRS identify plans to audit. DOL has also signaled that a broader Form 5500 modernization proposal could come in the near future.

Contributions for student loan repayments

Contributions to 401(k) and 403(b) plans to match participants' student loan repayments have appeared in IRS's priority guidance plan for several years, including the most recent plan for 2021–2022. However, at the American Bar Association's 2021 Fall Tax Meeting, a Treasury representative noted that the agency would focus much of its resources on issuing SECURE Act regulations. So sponsors who have been anticipating this guidance may have to wait a while longer.

PBGC focus on multiemployer plans

PBGC appears to be focusing on multiemployer plan guidance this year. The agency's latest regulatory agenda lists proposed rules on determining guaranteed benefits and updated assumptions for calculating withdrawal liability, as well as a final rule on the special financial assistance for multiemployer plans under the American Rescue Plan Act of 2021 (Pub. L. No. 117-2). The final rule will replace the IFR that took effect last July.

IRS enforcement uptick

Sponsors should anticipate increased IRS enforcement activity in the 2022 and later plan years. The IRS Tax Exempt and Government Entities (TE/GE) division's fiscal 2022 program letter noted that TE/GE significantly increased its enforcement staff in 2021 and will continue to do so in 2022. Although the letter didn't specifically mention heightened enforcement activity for retirement plans, IRS previously signaled that employers should expect that to happen. As noted above, the proposed Form 5500 for the 2022 plan year includes several new questions designed to help IRS identify plans to audit, with a focus on minimum coverage and nondiscrimination testing and preapproved plan documentation.

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DOL audit initiatives

Last year, DOL issued retirement plan cybersecurity best practices and began auditing plan sponsors and fiduciaries just a few months later. These audits ask wide-ranging and probing questions about the cybersecurity and data storage systems of plan sponsors and their service providers. DOL is seeking to determine the extent to which plans and service providers have been following best practices.

DOL is also continuing its Terminated Vested Participant Project, which launched in 2018. The project looks to ensure that DB plans are maintaining accurate census records and effectively communicating with terminated vested participants nearing normal retirement age about their eligibility for benefit distributions. In 2021 alone, this project resulted in the payment of more than $1.5 billion in benefits owed to terminated vested participants (roughly two-thirds of the total $2.4 billion DOL recovered last year for plans, participants and beneficiaries).

DOL also recently announced that it intends to investigate DC plans that allow participants to invest in cryptocurrency and other digital assets, whether directly as a plan investment option or through a brokerage window. Although DOL stopped short of saying cryptocurrency is an inherently imprudent investment, the announcement warns that fiduciaries of these plans should be prepared to explain how the decision to offer a crypto investment squares with their ERISA duties of prudence and loyalty.

Judicial outlook

Federal courts will continue to field myriad ERISA issues relevant to retirement plans, plan sponsors and fiduciaries. Excessive fee lawsuits against DC plan fiduciaries will continue to evolve as courts interpret and apply the US Supreme Court's recent ERISA ruling. In addition, DOL's fiduciary rule guidance is being challenged again; courts are beginning to encounter arbitration provisions in plan documents; and the Supreme Court has declined to rule on whether ERISA preempts California's CalSavers program for private-sector employers.

Continuing evolution of excessive fee lawsuits

Lower courts will continue to evaluate lawsuits involving DC plans on a case-by-case basis after the Supreme Court's recent decision in *Hughes v. Northwestern University* (No. 19-1401 (US Jan. 24, 2022)).

Case-by-case review. Because the Supreme Court said lower courts' review of excessive fee claims should be context-specific, the ruling does little to bring a quick resolution to ongoing excessive fee lawsuits or to deter the filing of new ones. Recognizing that "the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs," the Supreme Court also said that lower courts must "give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." However, the court didn't explain how lower courts should apply this newly articulated concept to particular fiduciary breach claims, leaving lower courts to further define the concept.

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New attention to arbitration. A recent court decision upholding a binding arbitration provision in an excessive fee lawsuit may foreshadow a new trend (*Holmes v. Baptist Health S. FL*, No. 1:21-cv-22986 (S.D. FL Jan. 20, 2022)). The court considered whether the plan sponsor could amend the plan document to require arbitration of excessive fee claims. Even though participants hadn't consented to the arbitration provision — and one participant had withdrawn all funds from the plan before the amendment — the court found the provision was enforceable for claims brought on behalf of the plan, including allegations of fiduciary breaches that predated the amendment. While this is one of the first court decisions on an arbitration provision in a plan document, the ruling may lead more plan sponsors to consider adding arbitration requirements.

New challenges to DOL's fiduciary rule guidance

As noted above, two lawsuits recently filed in different federal courts seek to invalidate DOL's current guidance on rollover recommendations. The first lawsuit attacks DOL's interpretation of the five-part test for determining investment fiduciary status under the agency's current regulations (*Fed'n of Ams. for Consumer Choice v. DOL*, No. 3:22-cv-00243 (N.D. TX filed Feb. 3, 2022)). One part of that test says advice must be given on a "regular basis" to be fiduciary investment advice. But in the preamble to PTE 2020-02, DOL says a one-time recommendation to roll over a participant's plan account to an IRA may meet the regular basis requirement — and be fiduciary investment advice — if there is an expectation of ongoing advice after the rollover. A second lawsuit asks the court to invalidate similar guidance issued last year in FAQs on PTE 2020-02 (*Am. Sec. Ass'n v. DOL*, No. 8:22-cv-00330 (M.D. FL filed Feb. 9, 2022)). Whether these lawsuits could hamper DOL's efforts to promulgate new fiduciary rule guidance isn't clear.

Reprieve for state and local retirement programs

In recent years, more than a dozen states and localities have established mandatory retirement savings programs for private-sector employers that don't offer a retirement plan. The programs typically require those employers to automatically enroll their employees in a government-managed IRA product. In 2018, a self-described pro-taxpayer group filed a lawsuit alleging that ERISA preempts California's CalSavers program. The Supreme Court's recent decision not to hear the case leaves in effect the lower court's dismissal of the lawsuit — a ruling upheld by the 9th US Circuit Court of Appeals (*Howard Jarvis Taxpayers Ass'n v. Cal. Secure Choice Ret. Sav. Program*, No. 20-15591 (9th Cir. May 26, 2021)). This outcome could discourage potential challenges to similar programs.

Actuarial equivalence lawsuits

Judicial action will continue on the recent spate of lawsuits challenging DB plans' actuarial factors. Since 2019, more than a dozen lawsuits have been filed against DB plan sponsors for using allegedly outdated actuarial equivalence factors to calculate early retirement benefits and optional payment forms. The lawsuits claim that ERISA requires plans to use reasonable factors, and plans failing to use factors based on current mortality tables and interest rates are shortchanging participants.

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The cases have had mixed success, with some cases settling, while others have been dismissed. No case has yet made it to trial. In the latest action, Partners Healthcare won dismissal on the grounds that ERISA doesn't impose a reasonableness standard for the actuarial factors written into the plan document to calculate early retirement benefits or optional forms (*Belknap v. Partners Healthcare Sys., Inc.*, No. 1:19-cv-11437 (D. MA March 4, 2022)). Whether this ruling will have any effect on the cases still working through the courts remains to be seen.

Related resources

Legislative outlook

Non-Mercer resources

- HR 5891, the Retirement Improvement and Savings Enhancement Act (Congress, Feb. 25, 2022)
- Section-by-section explanation of the RISE Act (House Committee on Education and Labor, Nov. 5, 2021)
- Press release on the Retirement Security and Savings Act of 2021 (Sen. Ben Cardin, May 21, 2021)
- S 1770, the Retirement Security and Savings Act of 2021 (Congress, May 20, 2021)
- HR 2954, the Securing a Strong Retirement Act of 2021 (Congress, May 4, 2021)
- Description of the Securing a Strong Retirement Act of 2021 (Joint Committee on Taxation, May 3, 2021)

Mercer Law & Policy resources

- Senate measure would exempt DB plans from minimum corporate tax (Dec. 16, 2021)
- House retirement bill advances, seeks scrutiny of pension risk transfers (Nov. 15, 2021)
- Senate bills seek spousal consent for DC plan, expanded saver's credit (July 29, 2021)
- Senators revive major retirement reform legislation (May 28, 2021)
- Senate bill boosts PEPs, eases fixes for plans with automatic features (May 24, 2021)
- Major bipartisan retirement reform bill gets House committee approval (May 6, 2021)

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Regulatory outlook

Non-Mercer resources

- Compliance Assistance Release 2022-01, 401(k) plan investments in "cryptocurrencies" (DOL, March 10, 2011)
- Proposed regulations, Required minimum distributions (Federal Register, Feb. 24, 2022)
- RFI on possible agency actions to protect life savings and pensions from threats of climate-related financial risk (Federal Register, Feb. 14, 2022)
- Proposed regulations, Prudence and loyalty in selecting plan investments and exercising shareholder rights (Federal Register, Oct. 14, 2021)
- Notice of proposed changes to Form 5500 series (Federal Register, Sept. 15, 2021)
- Temporary implementing FAQs, Pension benefit statements — lifetime income disclosures (DOL, July 26, 2021)
- Interim final rule on pension benefit statements (Federal Register, Sept. 18, 2020)
- Pub. L. No. 116-94, the SECURE Act (Congress, Dec. 20, 2019)

Mercer Law & Policy resources

- DOL digs deeper into climate change impact on retirement plans (Feb. 17, 2022)
- Latest regulatory agenda offers few surprises for retirement plans (Dec. 22, 2021)
- IRS signals increased enforcement for retirement plans (Nov. 10, 2021)
- DOL proposes to warm the climate for ESG investing (Oct. 26, 2021)
- Form 5500 proposal reflects SECURE Act changes and more (Sept. 29, 2021)
- DOL issues FAQs on lifetime income disclosures (July 28, 2021)
- IRS issues Q&As on SECURE Act safe harbor 401(k) changes (Dec. 21, 2020)
- DOL finalizes pooled plan provider registration requirements (Nov. 20, 2020)
- SECURE Act leaves questions about distributions for birth or adoption (Sept. 28, 2020)
- IRS issues FAQs on SECURE and Bipartisan American Miners acts (Sept. 22, 2020)
- DOL takes first stab at SECURE Act's DC plan lifetime income disclosures (Sept. 1, 2020)
- DOL seeks input on pooled employer plans and open MEPs (June 19, 2020)

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- SECURE, CARES acts changes rules on required minimum distributions (April 7, 2020)
- SECURE Act set to become law (Dec. 19, 2019)

Judicial outlook

Non-Mercer resources

- *Belknap v. Partners Healthcare Sys., Inc.*, No. 1:19-cv-11437 (D. MA March 4, 2022)
- *Am. Sec. Ass'n v. DOL*, No. 8:22-cv-00330 (M.D. FL filed Feb. 9, 2022)
- *Fed'n of Ams. for Consumer Choice v. DOL*, No. 3:22-cv-00243 (N.D. TX filed Feb. 3, 2022)
- *Hughes v. Northwestern Univ.*, No. 19-1401 (US Jan. 24, 2022)
- *Holmes v. Baptist Health S. FL*, No. 1:21-cv-22986 (S.D. FL Jan. 20, 2022)

Mercer Law & Policy resources

- Resources for tracking state and city retirement initiatives (March 2, 2022)
- High court declines to raise the bar on excessive fee cases (Feb. 8, 2022)
- DOL issues guidance on fiduciary investment advice PTE (April 16, 2021)

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