



Legislative and Regulatory Report

A monthly review of the latest information of importance to retirement plan sponsors

November 2022

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SECURE 2.0 remains under consideration in the lame-duck session

On November 14, members of Congress returned to Washington for the final weeks of the 117th Congress. At the top of the to-do list is approving government funding, which is set to expire on December 16. SECURE 2.0 also [remains under consideration](#). Congressional staff continue to make meaningful progress on reconciling the differences between the three outstanding bills (SSRA, EARN Act, and RISE & SHINE Act) and finalizing legislative text. The goal is to include SECURE 2.0 in the government funding bill in December. The primary issue remains whether there will be a full FY23 spending bill or another short-term continuing resolution. If there is an omnibus full-year spending bill (not just a continuing resolution), SECURE 2.0 is well positioned to become law. Without an omnibus spending bill, there is little chance of enactment.

SEC proposes swing pricing and hard close rules for mutual funds

On November 2, the SEC [proposed changes](#) to open-end funds that would likely negatively impact retirement plan participants. The proposal would require open-end funds, other than money market funds and ETFs, to use a liquidity management tool called “swing pricing,” which is a method to allocate costs stemming from inflows or outflows to the investors engaged in that activity, rather than diluting other shareholders. The proposal would also require a “hard close” for relevant funds to help operationalize the swing pricing. With a hard close, investor orders would need to be received by the fund, its transfer agent or a registered clearing agency by the time of the fund’s pricing, typically 4 p.m. ET, to receive that day’s price. The SEC acknowledges the impact that hard close requirements will have on retirement plans, saying in part, “We believe that retirement plan recordkeepers would need to substantially update or alter their processes and systems to accommodate the proposed hard close requirement to submit orders more quickly.” This idea was previously proposed by the SEC in 2003 but was never adopted, in large part due to concerns about the negative impact on retirement and other individual savers.

IRS extends determination letter program to individually designed 403(b) plans

On November 7, the IRS [released](#) changes to its determination letter program and remedial amendment rules for individually designed retirement plans. The new guidance, [Rev. Proc. 2022-40](#), will open the determination letter program to individually designed 403(b) plans. Additionally, Rev. Proc. 2022-40 solicits comments on the circumstances under which the IRS should consider expanding its determination letter program. Rev. Proc. 2022-40 also includes other modest changes that will impact the determination letter application procedures and remedial amendment rules that apply to plans qualified under Code section 401(a) (Qualified Plans).

DOL finalizes ESG rule

On November 22, the Department of Labor [issued a final rule](#) on “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.” It reverses the Trump-era rule and clarifies that ERISA plan fiduciaries may consider climate change and other environmental, social and governance (ESG) factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations. The final rule will be effective 60 days after publication in the Federal Register. A fact sheet from DOL is available [here](#).

Senators renew scrutiny of crypto in retirement plans

On November 21, Senators Elizabeth Warren (D-MA), Dick Durbin (D-IL) and Tina Smith (D-MN) [sent a letter](#) to Fidelity urging the company to reconsider its decision to allow 401(k) plan sponsors to expose plan participants to Bitcoin. The letter reads in part, “In light of the recent stunning events in the digital asset market, we write today as a follow up to our previous letter sent on July 26, 2022. ... Since our previous letter, the digital asset industry has only grown more volatile, tumultuous, and chaotic—all features of an asset class no plan sponsor or person saving for retirement should want to go anywhere near.” In March 2022, the Department of Labor [cautioned](#) plan fiduciaries against allowing investments in cryptocurrencies. Separately, in April, Fidelity [announced](#) plans to allow investments in Bitcoin in their retirement plans.

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References and source material used in this publication

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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](https://www.nrsforu.com/plansponsor).



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